

PDV 41.400

August 10, 1990

CERTIFIED MAIL

Mr. John H. Tonzer
16303-5 Parthenia Street
Northridge, CA 91324

Dear Mr. Tonzer:

Variance Application (V90-22)
Petitioner: John H. Tonzer
Variance from Minimum Setback Requirements
Tax Map Key: 7-4-07: 58

After reviewing your application and the information submitted in behalf of it, the Planning Director by this letter hereby certifies the approval of your variance request to waive the requirements of the Zoning Code and allow the requested side yard setback of 14.6 feet and clearspace of 10.6 feet in lieu of the minimum 20 foot side yard setback and 14 foot clearspace requirement as required in the Agricultural (A-1a) zoned district.

However, there were two letters submitted in objection to the granting of this variance request. In accordance with the provisions of Section 25-27.0 of the Zoning Code, each person who qualifies as an "Interested Party" may request a review of the Director's action on the variance application within ten (10) days from the date of receipt of their being notified of the Planning Director's approval of your request.

Therefore, if a request for review is made by an "Interested Party", that request must be evaluated and presented to the County Planning Commission for its disposition. As such, approval of the variance is subject to the appeal process as provided for in the Zoning Code.

We shall inform you of all proceedings concerning any request for review submittals of the Director's action. The section of the Zoning Code relating to this request for review process has been enclosed for your information.

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The Planning Director has concluded that the variance request from the minimum setback requirements should be approved, based on the following findings:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances that exist which would warrant or necessitate a waiver from the minimum setback requirements for the existing single family dwelling. The existing setback problem did not surface until the subject property was purchased by the petitioner. At the time of the conveyance of the property to the petitioner, he was not aware of the setback problem. The original plans for the existing two story single family dwelling was approved by the Planning Department and the Building Permit issued by the Department of Public Works, Building Division, as the plans had shown that all required building setbacks were to be complied with. It appears that a staking error was made in the field and that the original owner had erred in allowing the contractor to construct the structure in that particular location.

The 5.4 foot encroachment into the 20 foot sideyard setback is for only one corner of the subject dwelling with the rear portion complying with the minimum 20 foot setback requirement which enforces the assumption that the encroachment was due to the original staking error.

Therefore, considering the foregoing facts, it is determined that there are special or unusual circumstances applying to the subject property which exist either to a degree which deprives the owner or applicant of substantial property rights that would otherwise be available or to a degree which obviously interferes with the best use or manner of development of the subject property.

ALTERNATIVES

There are no reasonable alternatives in resolving the difficulty of the applicant. Alternatives available to the petitioner include a possible consolidation/resubdivision

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action, if possible, moving the structure or remodeling the structure. The petitioner has investigated the consolidation/resubdivision alternative without success and indicates that resiting or remodeling the structure is not economically feasible and would disrupt the design, function and architecture of the building.

Although there is available land for resiting, the inability of the petitioner to re-partition, remodel or resite the structure would be an excessive demand on the petitioner when a more reasonable alternative is available.

INTENT AND PURPOSE

The intent and purpose of requiring building setbacks within a subdivision is to assure that adequate air and light circulation is available between structures. The subject dwelling is situated to the rear of the property. The dwelling being constructed on the adjacent property to the east is approximately 30 to 40 feet from the subject dwelling. Thus, in distance terms, the required setbacks between any two structures on two separate lots is being provided. In addition, the larger 1 acre lot sizes for this subdivision will help to lessen the impact of this 5.4 foot encroachment. In this particular case, the primary impacted property is the property to the east of the subject property. While the Zoning Code requires a minimum 20 foot side yard setback, the 5.4 feet encroachment in this particular case is only one corner of the subject dwelling. The rear portion of the dwelling complies with the minimum 20 foot side yard setback and should not have an adverse impact on the development of the property to the east.

Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning and Subdivision Codes and the County General Plan; will not be materially detrimental to the public's welfare; and will not cause substantial adverse impact to the areas character and to adjoining properties.

This variance request is approved, subject to the following conditions:

1. The applicant, its assigns or successors, shall be responsible for complying with all stated conditions of approval.

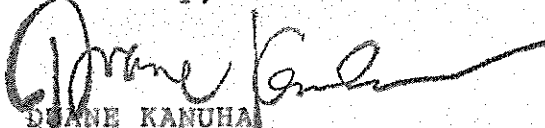
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2. That all future structural additions to the dwelling shall be in compliance with all zoning code requirements and no other setback variances shall be considered for any development of this property.

Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

If you have any questions on this matter, please feel free to contact us.

Sincerely,



DEANNE KANUHA
Planning Director

RHY:aeb

encl.

cc: Chrytal Thomas Yamasaki
Wes Thomas & Associates
75-5722 Kalawa Street
Kailua-Kona, HI 96740