

CERTIFIED MAIL

September 25, 1990

Mr. David Hamilton  
1508-G Palolo Avenue  
Honolulu, HI 96816

Dear Mr. Hamilton:

Variance Application (V90-7)  
Variance from Rear Yard Building Setback Requirements  
TMK: 1-5-1:43

Having reviewed the subject variance application, the Planning Director has concluded that the variance request to allow a single family dwelling with a twenty (20) foot setback from the rear property line in lieu of the required thirty (30) foot rear yard setback be denied.

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are no special or unusual circumstances applying to the subject property which deprive the applicant of substantial property rights that would otherwise be available, or which interfere with the best use or manner of development of the property.

The responsibility for correct placement of a building is the contractor's, if specified in the building contract, or the owner if the builder is the owner. In either case, it is not considered a circumstance attributable to the land itself but rather, self imposed.

Furthermore, on a lot of this size (5 acres), there is ample space on which to place a dwelling and other structures given that there are no unique or unusual topographic characteristics or constraints on the property.

Had the applicant properly applied for and received a building permit before constructing, he would have been advised, verbally and in writing on his site plan, to be cognizant of

SEP 26 1990

Mr. David Hamilton  
Page 2  
September 25, 1990

property boundaries and setback distances. The buildings' setbacks would also have been checked by the County inspectors when construction started, as it is a requirement, when constructing, to notify the Building Division at: 1) beginning of construction; 2) for foundation inspection; 3) for framing inspection; and 4) final inspection.

#### ALTERNATIVES

It has been determined that it is not unreasonable in this case to have the structure comply with the setback standards of the applicable zoning designation. Where the applicant's request is concerned, the dwelling and shed are not legally authorized structures and thus, will require building permits in order to become properly established. At that time, the building permits will require that the various standard health, building and zoning code requirements be met. Given the vast buildable land area available, 5 acres, the standards should be readily accommodated.

Approval of the subject request would not be consistent with the general purpose of the district, the intent and purpose of the Zoning Code and the County General Plan.

The purpose of the setback requirements are to ensure that adequate air, light, open space and circulation are provided between adjacent properties and structures. These setbacks are defined in the Zoning Code and are noted on every building plan approved by the County as part of the building permit application process.

In this case, the applicant failed to obtain the proper authorizations to construct the structures in question and therefore, did not receive this formal notification. To further complicate matters, during the course of land clearing, it is alleged that the rear property pins were inadvertently removed and replaced behind the proper boundaries.

These cumulative incidences are detrimental to the intent and purpose of the Zoning Code requirements and the approval of this request would only serve to perpetuate inconsistency with established requirements.

The Director's decision is final, except that within thirty (30) days after receipt of this letter, you may appeal the decision in writing to the Planning Commission in accordance with the following procedures:

Mr. David Hamilton  
Page 3  
September 25, 1990

1. Non-refundable filing fee of one hundred dollars (\$100); and
2. Ten copies of a statement of the specific grounds for the appeal.

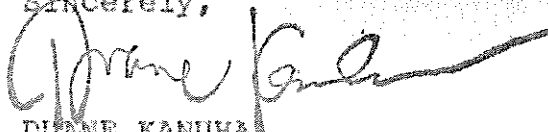
Should you decide to appeal, the Planning Commission shall conduct a public hearing within a period of ninety (90) days from the date of receipt of a properly filed appeal. Within sixty (60) days after the close of the public hearing or within such longer period as may be agreed to by the appellant, the Planning Commission shall affirm, modify or reverse the Director's action. A decision to affirm, modify or reverse the Director's action shall require a majority vote of the total membership of the Planning Commission. A decision to defer action on the appeal shall require a majority vote of the Planning Commission members present at the time of the motion for deferral. If the Planning Commission fails to render a decision to affirm, modify, or reverse the Director's action within the prescribed period, the Director's action shall be considered as having been affirmed.

All actions of the Planning Commission are final except that, within thirty (30) days after notice of action, the applicant or an interested party as defined in Section 25-27.2 of this article in the proceeding before the Planning Commission may appeal such action to the Board of Appeals in accordance with its rules.

All actions of the Board of Appeals are final except that they are appealable to the Third Circuit Court in accordance with Chapter 91 of the Hawaii Revised Statutes.

Should you have any questions, please feel free to contact Donald Tong of this office at 961-8288.

Sincerely,



DUANE KANUHA  
Planning Director

DT:lm

cc: DPW Building Div.  
Real Property Tax Div.