

October 17, 1990

CERTIFIED MAIL

Ms. Jane K. Miller
P. O. Box 818
Pahoa, HI 96778

Dear Ms. Miller:

Variance Application (V89-34)
Tax Map Key 1-3-43:27

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 allow the retention of one corner of the existing carport/storage area of the single family dwelling structure with a minimum 15.5 feet side yard setback in lieu of the minimum 20 feet requirement.

The approval is based on the following:

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 a portion of the existing carport/storage area of the single family dwelling structure. The existing setback problem did not surface until the sale of the subject property was in transaction and the owner of the adjacent property created a driveway along the affected side property line.

The original plans for the existing two story single family dwelling and carport/storage structure was approved by the Planning Department and the Building Permit was issued by the 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 constructing said structure in that particular location.

The 4.5 foot encroachment into the minimum 20 foot side yard setback is for only one corner of the carport/storage portion. All other building lines of the existing structure complies with the minimum 20 foot setback requirement.

The subject property has already been purchased by a new owner. The action taken by the petitioner to correct the encroachment concern is one which is being done on her own accord rather than having the new owner to deal with this situation.

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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 petitioner 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 petitioner. Remodeling that corner of the existing carport/storage or, if possible, resiting the carport/storage to another location on the property is not economically feasible and would disrupt the design, function and architecture of the building. The adjacent property owner had constructed a driveway along the side property line where the encroachment occurs and, as such, a consolidation/resubdivision action would not be possible.

Although there is available land area for relocating the carport/storage, this would be putting an excessive demand on the petitioner when a more reasonable alternative is available.

INTENT AND PURPOSE

The intent and purpose of the minimum building setback requirements on a property are to assure that adequate air, light, circulation and visual and spatial considerations are available between structures and property lines. In this particular request, the location of this existing carport/storage will still provide for these functions, although it does not meet the minimum 20 foot side yard setback as required by the Zoning Code. The 4.5 foot encroachment in this particular case involves only one corner of the carport/storage. All other portions of the dwelling structure complies with the minimum 20 foot side yard setback and therefore should not have an adverse impact on the development of the affected adjacent property. The Zoning Code requires a minimum 20 foot side yard setback for one acre lot sizes for this subdivision. Should any structure be constructed on the affected adjacent property, a distance of a minimum 35 feet between the encroachment portion and a proposed structure will be provided.

In view of the above issues, this variance request would be consistent with the general 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.

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The 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.
2. That all future structures or improvements 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,



DUANE KANUHA
Planning Director

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cc: Building Division, DPW