

November 14, 1990

CERTIFIED MAIL

Mr. Don McIntosh
Kona Surveyors
P. O. Box 2902
Kailua-Kona, HI 96745

Dear Mr. McIntosh:

Variance Application (V90-36)
Petitioner: Ramona Martinez
Variance from Minimum Setback Requirements
Tax Map Key: 9-2-77: 34

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 7.9 feet and clearspace of 6.4 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.

The subject property is located on the west side of the Paradise Parkway block halfway between Kona Drive and Coral Parkway in the Hawaiian Ocean View Estates Subdivision, Kahuku, Ka'u, Hawaii, TMK: 9-2-77: 34.

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 dwelling was completed by the petitioner. At this particular time, the petitioner had a survey done of the property to ascertain the property boundaries as there appeared to be a question on the setbacks from the side boundaries of the subject property. After the completion of the survey, it was found that the wrong boundary lines were used to construct the dwelling. The staking error was made in the field and the petitioner had unknowingly erred in allowing the contractor to construct the structure in that particular location.

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The 7.9 foot encroachment into the 20 foot sideyard setback is for the entire length of the dwelling facing this side yard. The length of the dwelling adjacent to this side yard is 24 feet. The dimensions of the lots adjacent to the subject property are also 70 feet in width by 623 feet in depth. The Zoning Code's minimum average width for a 1-acre lot is 120 feet. For a similar width lot in the residential zone, the minimum sideyard setback for dwelling would be 8 feet. The topography of the lots in this area are relatively flat. The surrounding lands are presently vacant of any structures.

Therefore, considering the foregoing facts, it is determined that there are special or unusual circumstances applying to the subject property which exist 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 total resiting or remodeling of the completed dwelling. The petitioner has also investigated the consolidation/resubdivision alternative without success and indicates that resiting or remodeling the structure is not economically feasible.

The subject property width is only 70 feet. However, the depth of the adjacent lots is 623 feet. In addition, the topography of the adjacent lots are relatively flat. The adjacent lots are also presently vacant. 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 considering the particular circumstances.

INTENT AND PURPOSE

The intent and purpose of requiring buildings setbacks within a subdivision is to assure that adequate air and light circulation is available between structures. The subject dwelling is situated to the front of the property. There are no dwellings constructed on either side of the subject property.

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The width of the lot is 70 feet which is comparable to a Single Family Residential 7,500 square foot lot, whose minimum side yard setback requirement is 8 feet. The 7.9 foot setback would be consistent with a typical size 7,500 square foot lot. The depth of the adjacent lot is 623 feet which provides ample siting space for development without being adversely impacted by the granting of this setback variance for this particular situation. The 623 feet depth of the lot will also provide the necessary air and light circulation between the lots as well as between any structures.

In this particular case, the primary impacted property is the property to the south of the subject property. However, this property is presently vacant and therefore no impact is being created at this time. Moreover, the 623 feet depth of the lots gives the adjacent landowner other options for development of that property. While the Zoning Code requires a minimum 20 foot side yard setback, the requested 7.9 feet setback in this particular case will offer the light and air circulation normally associated with a similar width type lot in the residential zone. In addition, the variance approval is also being granted with a condition that stipulates any future additions to the present dwelling comply with all zoning setback requirements and that no further variance will be considered. This will assist in lessening any further impact of the approval of this variance on the adjacent landowner.

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:

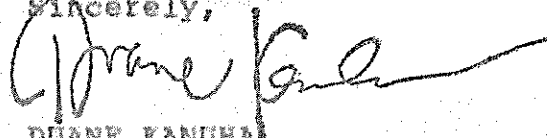
1. The applicant, its assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. That all future structural additions to the dwelling shall be in compliance with all zoning code requirements and no other setback variances shall be considered for any development of this property.

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

Should you have any questions, please feel welcome to contact our office.

Sincerely,



DUANE KANUHA
Planning Director

RHY:aeb

cc: Ramona Martinez
P. O. Box 1027
Kealahou, HI 96750