

CERTIFIED MAIL

October 29, 1991

Mrs. Eva Kaholoa'a
HC 7
Mountain View, HI 96771

Dear Mrs. Kaholoa'a

Variance Application (V91-11)
Variance from Sideyard and Clearspace Requirements
PETITIONER: EVA KAHOLOA'A
TMK: 6-4-22:08

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 for a sideyard and clearspace variance of 4.6 feet and 1.9 feet respectively.

The approval is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances applying to the subject property which deprive the petitioner of substantial property rights that would otherwise be available, or which obviously interferes with the best use or manner of development of the property.

The improper siting of the dwelling is obvious but was not caused by the applicant. It was instead, an act of the seller. Any correcting of the situation which would involve alteration of the building or the shifting of the building would inconvenience the new landowner who was not at all involved in the siting of the structure. The physical disruption and inconvenience would be theirs even if the costs were fully borne by the seller.

The placement of two adjacent dwellings on two lots has caused this special and unusual circumstance to occur. Furthermore, it is not the applicant or new owner who through design or accident caused the situation; but instead, the seller

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who was the builder (the builder's ex-spouse, specifically) who now lives next door on the property most affected by the deficient setback distance.

Based on the foregoing, it has been determined that there are special and unusual circumstances applying to the subject property which exist to a degree which deprive the owner of substantial property rights that would otherwise be available, or which obviously interferes with the best use or manner of development of the property.

ALTERNATIVES

The alternatives available to correcting this situation are limited to:

1. Moving or removing the intruding portions of the building.
2. Obtaining the requisite amount of land from the adjacent owner.
3. Requesting a variance from the zoning code.

The first alternative even if its costs were to be paid for by the seller-builder rather than the applicant, would be an unreasonable burden to place on the applicant or current owner who would be dispossessed of his home for possibly months while the work was being done. The second alternative is not a viable option because that adjacent home is also encroaching toward the mutual side yard resulting in its own insufficient side yard. That violation will be addressed separately from this issue.

The variance request is deemed a reasonable and rational alternative given these circumstances, as the proximity of the applicant's dwelling to the side boundary was caused by one of the owners of the adjacent lot which is the only property directly affected by the violation.

INTENT AND PURPOSE

The intent and purpose of the setback distances is to afford neighboring properties with an adequate amount of open space, air, light and related spatial considerations. In this case, the community standard for lots of this size and in this

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area is 8 feet of sideyard with clearspace of 4 feet. However, this sideyard situation of 4.6 feet in lieu of 8 feet, and 2.7 feet in lieu of 4 feet of clearspace affects only the adjacent side property owned and occupied by the seller of the building setback violation. It has evolved into this application for a variance from the code requirement but it was not caused by the new property owner.

No other properties are affected or are likely to be affected by this transgression, and the neighbors and the community are not likely to be aggrieved nor disenfranchised by the granting of this variance request. There were no objections to this request from the general public.

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

Therefore, the Planning Director has concluded that this request be approved subject to the following conditions:

1. The petitioner, her assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. The construction within the setback area shall be limited to the existing portions of the dwelling which are the subject of this variance application.
3. No Ohana dwelling shall be permitted on this property while this variance permit is necessary.
4. All other applicable State and County rules and regulations shall be complied with. Should any of the foregoing conditions not be met, the Director may proceed to declare the variance null and void.

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

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If you have any questions on this matter, please feel free to contact Donald Tong of this office.

Sincerely,



NORMAN K. HAYASHI
Planning Director

DT:smo
3474D

cc: West Hawaii office
DPW - Building Division