

CERTIFIED MAIL

November 15, 1991

Mr. Sidney Fuke
Sidney Fuke & Associates
100 Pauahi St., Ste. 212
Hilo, HI 96720

Dear Mr. Fuke:

Applicant: Yasuo Kuwaye
Variance Application (V91-12)
Variance from Minimum Rear Yard Requirements and
Non-conforming Expansion of a Non-conforming Building
Tax Map Key 2-4-14:32

After reviewing your application and the information submitted in its behalf, the Planning Director has concluded that the subject variance request should be denied. The reasons for the denial are:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are not found to be special and unusual circumstances applying to the subject real property, thus, the basic criteria (for a variance to be granted) cannot be met. It is the applicant's design and choice of siting and his own preferences for the future design without considering standard setback requirements which result in the need for a variance from the Zoning Code. The houselot, over half an acre in area, has more than adequate buildable area in three (3) directions to readily accommodate expansion.

It is recognized that this is the applicant's long-time permanent home and that elderly persons often prefer some special accommodation. It is also acknowledged that the current adjacent property owners have written-in that they have no objections to the proposed addition to the general public. However, these factors are of a personal nature which alone do not meet the criteria for granting a variance. Furthermore, there are reasonable alternatives available to the applicant to develop a bathroom adjacent to his master bedroom and still meet the zoning requirements without a variance.

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ALTERNATIVES

There are reasonable alternatives available to the applicant which would not compromise the setback requirements of the Zoning Code. The middle bedroom could be transformed into an adjacent bathroom, and if still needed, that transformed bedroom could be located at the south end of the dwelling and still be in line with the other bedrooms. In fact, three (3) other corners of the dwelling could contain a relocated bedroom of even larger size and still respect the standard setback requirements.

The Zoning Code is specific that non-conforming aspects of a building should not be expanded. The request by the applicant, however, goes even further than expanding the non-conformity. It instead would vastly increase the already protruding wall lines of the dwelling. The existing building's non-conforming rear yard is already only 12+ ft. instead of the 20 ft. now required. That situation is allowable by virtue of its having been built prior to the establishment of the zoning code's requirements (i.e. "grandfathered"). But the request is to further decrease the rear yard requirement from 20 ft. to 10 ft. while alternatives are available which would not exacerbate the non-conformity.

Relatively minor, and even temporary land exchange or an easement from the adjacent property could give the applicant the requisite land area to obtain the standard rear yard as well as his desired addition without compromise. The land, if a temporary assessment approach were utilized, could revert to original ownership after a mutually agreed tenure.

The application also indicates a desire by the applicant to provide himself with an additional "escape route" in case of fire, but admits it is presently possible to create the direct access "to the patio area" with the existing layout. Furthermore, if the concern is a compelling one, any window can be transformed into a doorway.

INTENT AND PURPOSE

The intent and purpose of the building setback requirement is to afford adjacent properties an adequate amount of air, light, open space and related spatial considerations between them in amounts commensurate with a community's standards and expectations and scale. In this case, the already nonconforming 12 ft. setback (requirement is 20 ft.) is proposed to encroach 2 ft. more, decreasing the rear yard setback distance to 10 ft.

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Even though the affected property owners may be long time residents of the area who have expressed no objection to the increased rear yard encroachment, land ownership does change. Future owners could be disadvantaged by the granting of this request, or could be objectors to such an application. Granting a request which did not meet the "special or unusual circumstances" criteria of a variance could compel approving similar personal preference type requests. This would be contrary to the intent of the variance procedure and lead to a general lowering of the already accepted community standard. It would thus be injurious to other properties in the vicinity which were required to and complied with the zoning requirement.

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

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

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 days from the date of receipt of a properly filed appeal. Within sixty 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.

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All actions of the Planning Commission are final except that, within thirty 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 us.

Sincerely,


NORMAN K. HAYASHI
Planning Director

DT:lm
3726D

Enc: Background Report

cc: Yasuo Kuwaye
Planning Commission w/enc.