

CERTIFIED MAIL

August 15, 1991

Mr. and Mrs. Rex Kato  
696A Wainaku Avenue  
Hilo, HI 96720

Dear Mr. and Mrs. Kato:

Variance Application (V91-3)  
Front Yard and Clearspace Requirements  
TMK: 2-6-14:15

After reviewing your application and the information submitted in its behalf, the Planning Director by this letter hereby certifies the approval of your variance request to permit the enclosing of a second story front deck which would result in the dwelling being 11 feet in lieu of the required 15 feet from the front boundary. Clearspace would be 8 feet in lieu of the required 10 feet. The property is identified by Tax Map Key: 2-6-14:15 and is located at the north side of Vierra Road which is 100 feet south and east (makai) of its intersection with Haaheo Road and the old Mamalahoa Highway in Halepuna, South Hilo.

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 interfere with the best use or manner of development of the property.

The lot is 5200 square feet in area which is smaller than the 7500 square feet minimum allowed by today's County Zoning Code. However this lot was created in the early 1950's prior to the enactment of the county's comprehensive zoning ordinance,

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and is thus a grandfathered, nonconforming-as-to-size lot. It is located at the end of a 300 feet long private dead end street which is 25 feet wide. There is no possibility of the street's being extended as it ends above the Belt Highway to which no access is allowed from this road.

Although the lot is 69% of the legal minimum size (7500 square feet) it has maintained or exceeded the minimum setback requirements. The dwelling is 17 feet from the boundary where it needed to be only 15 feet. The deck is required to have 10 feet of clearspace, and this one has 11 feet.

The living room is adjacent to the deck and is separated by a set of sliding doors, all on the same level. After the deck was completed, the applicants found that the locality's wind and rain seeped into the living and downstairs rooms continually where it is now damaging the interior of the dwelling. With 140 inches of rain fall annually (and last year's 212 inches), the water seepage problem is growing unabated. The applicants have attempted placing a canvas shield from the roof down over the railing of the deck and that solution is unsuccessful.

A structural change is necessitated and the applicants request that a wall be permitted up from the edge of the deck to the roof, and that the roofline be extended 3 feet more. This would give the dwelling protection from the rain. Without such improvements the house will continue to be damaged by rainwater seepage along the floor of the deck, below it, and through the sliding doors which can not be made water tight.

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 owners of substantial property rights that would otherwise be available, or which unreasonably interfere with the best use or manner of development of the property.

#### ALTERNATIVES

There are no reasonable alternatives to having a roof extend over and a wall enclosure above the deck for protection of the living and downstairs sections of the dwelling from water seepage.

A wall replacing the sliding door would prevent access to the deck and render it useless except as a continued conductor of water seepage into the house. Removing the deck would render the carport too short (16 feet) and expose the electric panels to the elements.

A wall enclosing the deck and a roof extension of 3 more feet are considered the only reasonable solutions to this dilemma which will continue to damage the front of the house without corrective changes as are being proposed. The canvas strung from the roof is not a reasonable solution.

Admittedly the owners own design did not account for the heavy rains' direction, but the building now exists and other alternatives are impractical.

#### INTENT AND PURPOSE

The intent and purpose of the required clearspace and front yard are to afford a certain consistent amount of air, space, light, and related spatial considerations between buildings and adjacent properties.

In this case, the narrow private street, contains 4 and 5 lots on each side. The applicants' dwelling is at the bottom of the sloping roadway and dead ends after their lot; there is no turnaround, thus only the opposite side dwelling would have reason to travel to the end of the road, besides the applicants. For all intents and purposes only the neighbor across the street and the applicants traffic would drive to the end of the road where the slight encroachment would be noticeable.

The encroachment being pursued by the applicants would have no effect on others besides the non-objecting neighbor across them. No view planes would be interrupted by granting the variance, and no adverse effects would burden the neighborhood or community by the approval.

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; 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 petitioners, their assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. The construction within the 11 feet front yard and 8 feet clearspace shall be limited to the wall enclosure

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and the 3 feet eave only, as shown on drawings submitted with the application.

3. A building permit for the dwelling must be secured within one year of the effective date of the variance and shall be completed within two years thereafter.
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 initiate proceedings to revoke the permit. --

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

Sincerely,



NORMAN K. HAYASHI  
Planning Director

DT:mra  
2785D

cc: TMK File