

V470

CERTIFIED MAIL

April 29, 1992

Mr. Shozo Taketa
65-A Waiakea Place
Hilo, HI 96720

Dear Mr. Taketa:

Variance Application (V91-30)
PETITIONER: Shozo Taketa
Request: Additional Lot on a Private Dead-end
Street and Minimum Rear Yard Setback
TMK: 2-4-37:32; Waiakea Homesteads, South Hilo

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 allow the retention of the existing dwelling structure at minimum 10 feet from the rear property boundary in lieu of the required minimum of 20 feet 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 variance from the minimum setback requirements for the retention of the existing single family dwelling at a minimum 10 feet from the rear property boundary.

The present Single Family Residential with minimum lot size of 10,000 square feet (RS-10) zoning designation allows two dwelling units to be constructed on the 21, 383 square foot lot.

Because of the irregular shaped building site, the Planning Department previously approved the building permit and construction plans for the first dwelling structure with the setback determination that it be setback 20 feet from the rear (south) property boundary and 10 feet from the side (west) boundary. The Building Division subsequently issued the building permit and granted final inspection in November 1990. Subsequently, the Planning Department also approved a building permit and construction plans for a second dwelling again denoting the 20-foot rear yard setback from the south boundary

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and 10-foot side yard setback from the west boundary. The Building Division issued and final inspected the second dwelling structure in 1991.

The setback situation has surfaced due to the applicant submittal of a proposed 2-lot subdivision of the subject property. Given the 21,383 square foot lot, the RS-10 zoning designation allows the property to be subdivided into minimum 10,000 square foot lots.

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 of manner of development of the subject property.

ALTERNATIVES

There are no reasonable alternatives in resolving the difficulty of the petitioner. Removing or remodeling the existing dwelling is not economically feasible and would disrupt the design and function of the dwelling structure. Further, the alternative would be putting an excessive demand on the petitioner when a more reasonable alternative is available. The action taken by the petitioner to legitimize the existing dwelling rear yard setback is one which is being done on his own accord.

INTENT AND PURPOSE

The intent and purpose of the minimum building setback requirements on a property are to assure that adequate air and light circulation, visual and spatial considerations are available between structures and property lines. In this particular request, the location of this existing dwelling will still provide for these functions, although it does not meet the minimum 20-foot rear yard setback as required by the Zoning Code. Given a proposed dwelling to be constructed on a parcel(s) to the west of the subject property and meeting the minimum 20-foot rear yard setback requirement, there will be an approximate 30 feet separation between the structures.

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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Based on the foregoing, the Planning Director has concluded that this variance request be approved subject to the following conditions:

1. The petitioner, 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.

This letter also certifies the approval of your variance request to allow one additional lot to be served by an existing private dead-end street in lieu of the required maximum of six (6) lots be approved based on the following findings:

SPECIAL AND UNUSUAL CIRCUMSTANCES

The subject property which consists of 21,383 square feet is situated within the County's Single Family Residential (RS-10) zoned district. Under this zoning designation, two (2) single family dwellings are permitted on the parcel.

There are special and unusual circumstances related to the land in this particular application with respect to the fact that there are two existing single family dwellings located on the subject property. The petitioner is proposing to locate one house on each of the proposed lots. No increase in traffic is foreseen by the proposed subdivision action since the existing private dead-end roadway already serves as access to the existing homes.

Considering the foregoing factors, 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 of manner of development of the subject property.

ALTERNATIVES

There are no reasonable alternatives which the petitioner could use to resolve the difficulty that he is claiming for the proposed subdivision. An alternative is to acquire a strip of

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land 15 feet in width from property owners on both sides of the existing road to provide for a 50-foot right-of-way and increasing the pavement width to 20 feet. However, this alternative would decrease some of the existing parcels with land areas below the minimum 10,000 square foot lot size requirement. In addition, some of the existing dwellings would not meet with the minimum 20-foot front yard setback requirement if the 15-foot strip was acquired.

In certain situations, the roadway needs of an area have to be evaluated, not only from the cost perspective but whether or not the minimum roadway requirements would be excessive in light of the existing use and property characteristics. In this particular case, the cost/benefit ratio and the existing condition that the existing two dwellings already utilize the present roadway are specific circumstances which serve to justify the reasonableness of the request. Thus, in this particular variance request, the economic consideration is not the sole basis for the granting of the variance request.

Therefore, in consideration of these factors, the variance request is reasonable. Although it could be argued that the other alternatives are available to the petitioner, the reasonableness and practical application of those alternatives have to be evaluated with respect to the existing conditions. In this particular case, the imposition of other alternatives in this situation is considered to be excessive when a more reasonable solution is available.

INTENT AND PURPOSE

The intent and purpose of the minimum roadway requirements is to ensure that minimum safety standard relative to traffic, drainage, etc., are provided for.

The existing 20-foot right-of-way with a 16-foot pavement is determined to be adequate for the proposed 2-lot subdivision which will result in seven (7) lots being served by the existing road. No additional traffic will be generated by the proposed subdivision action since the existing two dwellings already use the existing road as access. However, the granting of this variance shall not be construed nor used as a justification for any future variances from the minimum roadway standards for further subdivision action of two parcels that are presently served by this road.

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Inasmuch as the existing 20-foot road is not a through street and will remain in private ownership, the granting of this variance request will not be materially detrimental to the public's welfare nor cause any substantial adverse impact to the area's character and to adjoining properties. Further, this variance request does not apply to density limitation nor introduces a use not otherwise permitted within this single family residential zoned district.

As such, in view of these findings, the approval of this variance request would still be consistent with the general purpose of the zoning district, and the intent and purpose of the Subdivision Code and the County General Plan.

Based on the foregoing, the Planning Director has concluded that this variance request be approved subject to the following conditions:

1. The petitioner, its assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. The petitioner, its assigns or successors, shall be responsible for securing final subdivision approval within one year of the date of this approval.
3. No ohana dwelling shall be permitted or built on any of the affected lots unless the applicable road and related Subdivision Code requirements, without variances, are met. A written agreement stipulating this condition shall be duly recorded at the Bureau of Conveyances of the State of Hawaii by the Planning Department at the cost and expense of the subdivider. Further, the written agreement shall be considered as a condition and covenant running with the land and shall be binding upon the subdivider or owner, his heirs, executors, administrators or assigns and its successors and shall be incorporated as an exhibit and made part of each agreement of sale, deed, lease or other similar documents affecting the title or ownership of each subdivided lot. A recorded copy of such condition shall be submitted to the Planning Department for its files.
4. All other applicable Federal, State and County rules and regulations shall be complied with.

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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Should you have any questions, please feel free to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "Norman K. Hayashi". The signature is written in a cursive style with a large initial "N" and "H".

NORMAN K. HAYASHI
Planning Director

AK:smo
5119D
Enclosure

cc: Ed Cheplic