

CERTIFIED MAIL

January 22, 1991

Dawayne & Chris Anderson
and Mr. Alan Higginbotham
19220 McCrary Road
Eagle River, AK 99577

Gentlemen:

Variance Application (WHV 90-2)
Petitioner: Dawayne & Chris Anderson, Alan Higginbotham
Variance from Minimum Sideyard Setback Requirements
Tax Map Key: 7-3-41: 1

After reviewing your application and the information submitted on 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 existing one-story single family dwelling with a side yard setback varying between 6.2 feet and 7.6 feet and open clearspace yard ranging between 3.2 feet and 4.6 feet in lieu of the minimum 10-foot side yard setback and 5-foot open clearspace yard as required by Chapter 25 (Zoning Code), Article 18 (Unplanned), Section 25-237 (b).

The subject property is located on the west side of Kakahiaka Street approximately 238 feet south of the Kakahiaka Street/Kaiminani Drive intersection in the Kona Palisades Subdivision in North Kona, Hawaii, TMK: 7-3-41: 1.

The Planning Director has concluded that the variance request from the minimum sideyard setback requirements should be approved, based on the following findings:

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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 one-story single family dwelling. The existing setback problem did not surface until the subject property was purchased by the petitioners. At the time of the conveyance of the property to the petitioners, they were not aware of the setback problem. The original plans for the existing one-story single family dwelling was approved by the Planning Department and the Building Permit issued by the Department of Public Works, Building Division as the plans had shown that all required building setbacks were to be complied with. It appears that a staking error was made in the field and that the original owner had erred in allowing the contractor to construct the structure in that particular location.

If the adjacent lot (lot 131) property line is used, it appears that there was a field error when the staking of the home was originally constructed. The portion of the structure which encroaches into the sideyard setback is only on the north side property line. The total encroachment varies between 2.4 and 3.8 feet into the 10-foot sideyard setback. The remainder of the structure complies with the minimum yard setback requirements. This reinforces the assumption that the encroachment was due to the original staking error.

Therefore, 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 deprive the owner or applicant of substantial property rights that would otherwise be available or to a degree which obviously interfere 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 a possible consolidation/resubdivision action if possible, moving the structure or remodeling the structure. The petitioner has investigated ~~the~~ consolidation/resubdivision alternative without success and

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indicates that resiting or remodeling the structure is not economically feasible and would disrupt the design, function and architecture of the building.

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.

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. The dwelling on the adjacent property to the north is approximately 15 feet from the common side property line and approximately 21 feet from the subject dwelling. Thus, in distance terms, the required setbacks between any two dwellings on two separate lots is being provided. In this particular case, the primary impacted property is the property to the north of the subject property. While the Zoning Code requires a minimum 10-foot side yard setback, the 2.4 to 3.8 feet encroachment in this particular case is only one side of the subject dwelling. The remainder of the structure complies with the minimum yard setback requirements.

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 area's 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.

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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.

Should any of the foregoing conditions not be complied with, the Planning Director shall initiate procedures to revoke this Variance Permit.

If you have any questions on this matter, please feel free to contact us.

Sincerely,



NORMAN K. HAYASHI
Planning Director

RHY:syw

cc: Wes Thomas & Associates
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