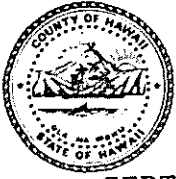


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Lorraine R. Inouye
Mayor

Norman K. Hayashi
Director

Tad Nagasako
Deputy Director



Planning Department

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720 • (808) 961-8288

CERTIFIED MAIL

January 30, 1991

Mr. and Mrs. Leslie Burford
74-5088A Palani Road
Kailua-Kona, HI 96740

Dear Mr. and Mrs. Burford:

Variance Application (WHV90-3)
Petitioner: Howard and Leslie Burford
Variance from Minimum Front Yard and
Open Clearspace Requirements
Tax Map Key: 7-6-17:69

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 to waive the requirements of the Zoning Code and allow a new three-story single family dwelling with a front yard setback of nine (9) feet and an open clearspace of six (6) feet in lieu of the minimum fifteen (15) foot front yard and ten (10) foot open clearspace yard as required by Chapter 25 (Zoning Code), Article 4 (Single Family Residential), Section 25-124 (a)(1).

However, there was one letter submitted in objection to the granting of this variance request. In accordance with the provisions of Section 25-27.0 of the Zoning Code, each person who qualifies as an "Interested Party" may request a review of the director's action on the variance application within ten days from the date of receipt of their being notified of the Planning Director's approval of your request.

Therefore, if a request for review is made by an "Interested Party," that request must be evaluated and presented to the County Planning Commission for its disposition. As such, the final approval of the variance has to be deferred until this time period for the appeal process has passed or until the appeal process has been completed by the Planning Commission.

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We shall inform you of all proceedings concerning any request for review of the director's action. The section of the Zoning Code relating to this request for review process has been placed at the end of this letter for your information.

The subject property is located on the northwest corner of a private roadway approximately 470 feet west of its intersection with Alii Drive in Holualoa (Beach Section), North Kona, Hawaii, TMK: 7-6-17:69.

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

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property is situated within the Holualoa Beach Section Subdivision as shown on File No. 7623 approved in May of 1914 on file with the Department of Public Works.
2. The property is within the County's Single Family Residential (RS-7.5) and State Land Use Urban zoned districts.
3. The minimum structural setback requirements for this zone district and this particular property is a minimum fifteen (15) feet for the front yards and a minimum ten (10) feet open clearspace yard. After the application of these minimum yard setback requirements, a building envelope of 15 feet in width, 75 feet in length and a height of 35 feet is available.
4. The property is 4,000 square feet in size and is considered a substandard lot with respect to the existing Zoning Code requirements for this particular zone district. There are approximately 30 substandard size lots within this subdivision.
5. The lot configuration is rectangular in shape and is a corner lot. The lot is relatively level in topography.
6. The south front property line is 40 feet in length, the west front property line is 100 feet in length, the north side property line is 40 feet in length and the east side property line is 100 feet in length.

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The subject property is a substandard lot and part of the Holualoa Beach Section Subdivision which was created prior to the adoption of the present Zoning and Subdivision Codes.

The substandard condition results from the comparison of the subject lot to the Zoning Code's minimum lot size for this particular zoning district. This substandard condition is considered a special or unusual circumstance with respect to the subject property.

Since the lots were created in 1914 and the present zoning code was adopted in 1967, the subject property is a recognized grandfathered parcel. The zoning district within which the subject property is located presently requires a minimum lot size of 7,500 square feet. The subject property which is 4,000 square feet is 3,500 square feet below the minimum lot size presently required for this zone district.

Considering the grandfathered situation of the subject property, the narrowness and reduced lot size, it can be concluded that the special or unusual circumstances are unique to the subject property and exist to a degree which deprive the owner of substantial property rights which would otherwise be available and to a degree which obviously interfere with the best use or manner of development of the subject property.

ALTERNATIVES

There are no other reasonable alternatives in resolving the difficulty of the applicant. The subject property is a corner lot. In this situation, the subject property is required to have two front yard setbacks and two sideyard setbacks. The imposition of the west front yard setback drastically reduces the building envelope for the subject property. The imposition of the minimum setback requirements leave a building envelope of 15 feet wide and a length of 75 feet.

The 15 foot width is not a reasonable width in which to design a single family dwelling. Even though a myriad of designs can be prepared, the narrowness and the substandard lot size places an excessive demand on the petitioner when a more reasonable alternative is available.

INTENT AND PURPOSE

The intent and purpose of requiring building setbacks within a subdivision is to assure that adequate air and light circulation is available between structures. The proposed dwelling will be situated approximately 9 feet from the west (front) property line, 15 feet from the south (front) property line, 11 feet from the east (side) property line and 21 feet from the north (side) property line.

The requested variance is for only from the west (front) property line. The proposed dwelling will comply with the other required minimum setbacks. Since the proposed variance will project further into the west (front) property line fronting the private roadway, it will not impact upon any adjacent development. As such, the proposed 9 foot front yard setback on the west front property line will still afford some measure of light and air circulation for the proposed dwelling. A condition of approval is also being imposed to absolve the County for any responsibility in the case of any vehicle-caused or traffic related damage to the dwelling or persons therein occurring from the use of the private roadway.

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 areas 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.
2. The owner shall:
 - a. Absolve the County of any responsibility for any vehicle-caused or traffic related damage to the proposed dwelling or persons therein occurring from the use of the private roadway fronting the subject

property by the general public and for any property damage resulting from the maintenance, improvement and/or repair of the private roadway. Acceptance of this variance permit shall be considered as the owner's immediate acceptance of this condition.

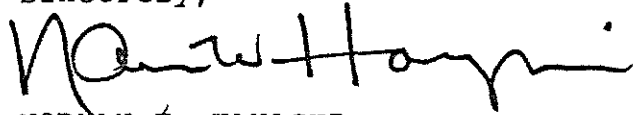
- b. Should the County require additional land for the widening and/or improvement of the private roadway, the owner shall agree that any land acquisition by the County of the subject property shall be based on its unimproved land price assessment, which shall not include the proximity of the dwelling or any portions of it which might project into the setback area.
 - c. Within ninety (90) days of receipt of this variance permit, the applicant shall submit to the County for its review, a written provision encompassing these two conditions a) and b) above to be included in the deed to this property, to run with the land for as long as the dwelling remains in this location. Upon acceptance of the provision by the County, the owner shall at his own expense, promptly have the document recorded as part of the deed at the State of Hawaii Bureau of Conveyances and submit a copy of the recorded document to the Planning Department prior to the issuance of the building permit application.
3. The site plan to be submitted for the building permit application shall be identical to the site plan submitted for the variance application.
 4. A building permit for the proposed dwelling must be secured within one (1) year of the effective date of the variance and shall be completed within two (2) years thereafter.
 5. All other applicable State and County rules and regulations shall be complied with.

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

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If you have any questions on this matter, 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".

NORMAN K. HAYASHI
Planning Director

RHY:syw

cc: Managing Director