

CERTIFIED MAIL

February 8, 1991

Mr. Henry DeSa, Jr.  
P.O. Box 351  
Pepeekeo, HI 96783

Dear Mr. DeSa:

Variance Application (V89-37)  
Existing Building Setback - Sideyard  
Tax Map Key: 2-6-10:13

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 permit an existing single family dwelling built in 1984 to remain sited with a 12.96 foot sideyard in lieu of the required 15 foot sideyard for a lot of this size. The subject property is 41,643 square feet in area, identified by Tax Map Key: 2-6-10:13 and is located along upper Kaiwiki Road, 2,100 feet west (mauka) of Kaiwiki Park, Kaiwiki Homesteads, 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.

There is just one high, level spot on this lot, and it was chosen for the dwelling's location, about 50 feet from the front property line which is Kaiwiki Road. Besides its presenting the only location for a view of Hilo Bay and the ocean, the remainder of the lot is moderately to very steeply sloping. The applicant chose

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this one obvious building site, but at the same time, his carpenters ventured 2 feet more westward than they should have and, in doing so, intruded into the required sideyard distance of 15 feet. The steepness of the slope at the front is such that a vehicle can only negotiate the driveway in first gear and the yard to the east (makai) is a +30 percent slope at least.

The building, therefore, had to be built as close to the west boundary as possible. In this case, it exceeded the sideyard requirement by 2 feet with the error attributed to the applicant's carpenters' measurements. The present inhabitants (new owners) of the dwelling had no part in the siting nor construction of the building. The original owner-builder, Henry DeSa, built and then sold the house and lot in 1988 to the present occupants.

To the west of the dwelling is where the only affected adjacent property is located. That lot's owner has written a letter to the department stating that he does not mind the incursion toward his parcel. His land is vacant, 3.4 acres in size and rises above the applicant's lot.

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 owner 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 limited alternatives. One is to move or cut off part of the dwelling, and that is considered unreasonable given the cause of the problem and the effect of that alternative. Furthermore, the innocent party would bear the brunt of the effects of those actions even though the dollar cost would be the responsibility of the previous owner.

Acquiring land or easement from the adjacent owner is not an option. That owner prefers not to have his present straight boundary line altered, and he has not objected to the 2 foot shortage of the applicant's mutual sideyard.

The variance alternative is deemed reasonable given the situation, the consent from the affected adjacent land owner and the open, low density character of the general area, where the closest dwelling being across the road 100 yards distant.

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INTENT AND PURPOSE

The intent and purpose of the sideyard requirement, in this case 15 feet, is to afford a certain amount of light, air, open space and related spatial considerations between both properties in an amount or quantity appropriate to the neighborhood. The disparity in this case is approximately 2 feet. With this lot being .956 acre in size, it is required by the duly adopted Zoning Code to have a 15 foot sideyard.

The effect of the 2 foot deficiency is not apparent to the neighborhood and, importantly, does not disturb the affected adjacent neighbor to the west. The neighbor has, in fact, written a letter to the department stating that the 2 foot difference does not disturb him. Furthermore, the neighbor's property is vacant, and the 2 foot distance is not discernible.

There would be no diminution of the purpose of the Zoning Code or the General Plan nor any negative effects on the surrounding community or adjacent properties as a result of the variance being granted. The closest dwelling is across the road and 100 yards away.

The variance request is approved subject to the following conditions:

1. The applicant, his assigns or successors shall be responsible for complying with all stated conditions of approval.
2. All further improvements shall observe the minimum setback requirements.
3. 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 initiate proceedings to revoke this permit.

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

Sincerely,



NORMAN K. HAYASHI  
Planning Director

DT:syw  
cc: Ms. Sandra Haiku