

CERTIFIED MAIL

February 7, 1991

Ms. Lani Apodaca  
P. O. Box 295  
Hawi, HI 96719

Dear Ms. Apodaca:

Variance Application (V90-32)  
Existing Building Setback - Rear Yard  
Tax Map Key: 5-4-04:05

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 dwelling in a proposed 2-lot subdivision to remain approximately six feet from the rear property line in lieu of the required 25 feet in a Residential - Agricultural area (RA-1) zoned district. The property is 2.1 acres in area, identified by Tax Map Key: 5-4-4:05 and is located on the east side of Kapaau Waterworks Road approximately 1,000 feet south of its intersection with the Hawi Niulii Road in Kapaau, North Kohala.

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 parcel of land is an uneven--width "L" shaped lot 2.1 acres in size. While large enough for a variety of dwelling locations, the applicant attempted to build away from the roadway. Unfortunately, wrong measurements were taken, placing one dwelling too close to the adjacent IDC boundary.

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However, only about 2,000 square ft. of land will be required to extend the applicant's boundaries sufficiently to accommodate the legal setbacks, and the adjacent land owner has consented to sell, in the near future, sufficient land to the applicant to enable her to comply with the setback requirements. The proper redistricting and rezoning will have to first occur on the IDC property, however.

#### ALTERNATIVES

There are no other reasonable alternatives that would resolve the situation. Moving or cutting off a portion of the house would be possible but is considered an unreasonable option. Moving the boundaries to add more land to the applicant so that the proper setbacks can be met may be possible. However, the additional land from IDC would have to be redistricted into the State Land Use Rural District and also rezoned to the County's RA-1a zoned district. Therefore, from the standpoint of timing, the variance permit procedure is the only reasonable alternative available to the applicant. As part of the approval process, the applicant will be required to negotiate the purchase of additional land from IDC and seek the appropriate zone changes.

#### INTENT AND PURPOSE

The intent and purpose of the building setback requirements are to provide air, light, open space and related spatial considerations between properties in a scale appropriate to the community and its expectations. In this case, a low density and rural community, 25 ft. rear yards for lots of this size have been the norm since 1968. Although this requirement has been accidentally breached, the applicant has taken efforts to resolve it by arranging to obtain more land from the large, adjacent landowner. This variance permit, moreover, would only be temporary in nature. The applicant will be required to increase her land area to encompass the requisite setback distance.

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 cause substantial adverse impact to the area's character and adjoining properties.

The variance request is approved subject to the following conditions:

1. The applicant, her assigns or successors, shall be responsible for complying with all stated conditions of approval.

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2. The applicant shall initiate the purchase of the additional land area required to meet the minimum setback required from IDC. Application for the required Land Use changes shall be submitted within one year from the effective date of this permit.
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 procedures to revoke the permit.

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

Sincerely,

  
NORMAN K. HAYASHI  
Planning Director

DT:mra

cc: Subdivision 90-11

bcc: West Hawaii Office