

CERTIFIED MAIL

February 12, 1991

Ms. Diana S. Damon
SR 13053
Keaau, HI 96749

Dear Ms. Damon:

Variance Application (V90-24)
Minimum Side Yard Setback
Tax Map Key: 1-5-22:254

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 allow an existing 2-story single family dwelling to remain as sited with a minimum 17-1/2 foot sideyard and 10-foot clearspace in lieu of the minimum requirement of 20-foot sideyard with 14-foot clearspace. The subject property is one acre in area, identified by Tax Map Key 1-5-22:254 and is located on the southwest side of 24th Street, 150 feet northwest from its intersection with Makuu Drive in the Hawaiian Paradise Park Subdivision in Keaau, Puna.

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.

In 1988, the applicant purchased an improperly sited building, a nearly completed single family residence which began its construction by the owner-builder, Daniel Moore, in 1980. The seller, Mr. Moore, incorrectly sited the structure and also constructed it with substandard electric wiring and plumbing.

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The applicant discovered the encroachment after purchasing the property and moving into the residence. She now has to incur the expense of retrofitting the wiring and plumbing and resolving the faulty siting of the dwelling. It is unusual in that the direct person to person sale (owner to buyer) did not reveal the numerous shortcomings of the purchase such that the buyer became responsible for the seller's misdeeds.

ALTERNATIVES

The alternatives for resolving this issue are very few and limited. The applicant can move the dwelling or cut off walls; however, this would destabilize the entire structure for an issue of 2-1/2 feet out of 20 feet. She tried to obtain a boundary shift/land exchange with the affected neighbor. However, the neighbor currently has his property on the market, and tampering with the boundaries at this time or otherwise encumbering what is now a free and clear property would be grossly impractical and unreasonable at this time. The alternative of seeking a variance permit appears the most reasonable of the options available since there are special and unusual circumstances applying to the real property (the dwelling improvement).

INTENT AND PURPOSE

The intent and purpose of the setback distances is to afford a certain amount of light, air, open space and related spatial considerations between properties and/or buildings in a ratio or standard indicative of the local community, its density, character and expectations.

This entire subdivision consists of 8,000 approximately one-acre sized lots. The duly adopted building setback distance for these lots is 20 feet for the sideyards which have been in effect since 1968. The home which the applicant is attempting to legalize is sited 2-1/2 feet short of the required 20 feet. The neighbor who is affected most by the proximity of the applicant's dwelling has written a letter stating that he does not object to the variance request.

The applicant's lot is filled with an extremely dense growth of trees and vegetation rendering the dwelling hidden from view from two of four sides. Only from the northwest side, parcel 263 owned by Mr. Arnott and containing one dwelling, can the applicant's home

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be seen, and it is mostly obscured due to the heavy tropical growth between the properties. Since the light, air, open space and visual effect between the two properties is not significantly affected by the applicant's house location; and the surrounding trees and brush are heavy in volume and there are no significant effects on other properties, any intrusive effect of the applicant's property is negated.

Therefore, given the facts and findings described above and the finding that the proximity of the applicant's residence to the adjoining affected neighbor has no negative effects, the Director hereby grants this variance permit. 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 be materially detrimental to the public's welfare; and 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 petitioner, her assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The construction within this 20-foot sideyard shall be limited to the existing building and no other structures or portions thereof.
3. A building permit for the dwelling must be secured within one year of the effective date of the variance, and construction shall be completed within two years thereafter.
4. 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 proceed to declare this variance null and void.

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

Sincerely,



NORMAN K. HAYASHI
Planning Director

AK:syw

cc: DPW/Building Division