

V485

CERTIFIED MAIL

January 26, 1993

Shewmaker Real Estate
77 Mohouli Street
Hilo, HI 96720

Gentlemen:

Variance Application (V 92-10)
Front and Sideyard Setbacks
Tax Map Key: 2-4-06: 153

After reviewing your application and the information submitted on its behalf, the Planning Director by this letter hereby certifies the approval of your variance request to permit the existing residence to remain where sited within its makai sideyard being 12.5 feet in lieu of the required 20 feet, and the frontyard being 38 feet in lieu of the required 45 feet. The property is 3.43 acres in area, zoned A-3a, identified by Tax Map Key: 2-4-06:153 and is located on the north side of Hoaka Road, 1000 feet from its intersection with Ainaola Drive in the Waiakea Homesteads, South Hilo.

The approval is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances applying to the real 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 property.

The present owner of this dwelling discovered only after they purchased the house that a building setback violation (Zoning Code) had occurred. The incursion occurred during construction by the original owner in 1987, and the home has been sold twice since, with no one being aware of the violation until the applicant had it surveyed this year. The person (original owner) responsible for the improper siting of the dwelling has long since left the islands. The applicant, an innocent party with regard to the setback violation, wishes to sell the property, and lending institutions are reluctant to finance this transaction without the violation being resolved.

The building is already set as close as possible to the existing County imposed drainage easement, and the dwelling could not have moved away from its right side without coming closer to the front boundary (note site plan).

Besides the existing 7-1/2 feet incursion into the 20-foot sideyard requirement, the engineer who drew the site plan later (after filing the original application) discovered that Hoaka Road, the property's front boundary, has a 5-foot future road widening setback which should also have been observed by the dwelling's builder. It was not, and the house, therefore, has a front setback violation of 8 feet as well.

In both setback instances, however, moving of the house would not be possible because of the structure's proximity to the drainage easement and parcel's boundary.

Based on the above circumstances, it is found that there are special and unusual circumstances inherent in this situation which warrant the granting of the requested variance.

ALTERNATIVE

There are limited alternatives to the resolution of this case. Moving of the house is not feasible nor practical because of the structure's proximity to the drainage easement which was required by the County. Any moving of the dwelling along the channel would increase either the front or the side setback violation. Removing portions of the dwelling in order to conform with the zoning would place the financial and related burdens on an innocent party. The original owner (the perpetrator) will have escaped any penalty. Shifting the boundaries between this and the most affected makai adjacent property is possible but would result in a most unusually shaped pair of lots. Furthermore, the adjacent owner has withdrawn his objection to the variance request. Granting of the variance remains the only equitable and fair recourse to this infraction.

INTENT AND PURPOSE

The intent and purpose of the building setback requirement is to afford an equitable amount of air, light, open space and related spatial considerations between buildings and property lines. In this case, the one affected neighbor who had initially objected to the granting of the variance is quoted as saying he had observed the relative closeness of the dwelling to the common property line they shared during its construction but did not question the proximity. Had he notified any enforcing agency at that time, the person actually responsible for the transgression could have been held directly accountable; and revised siting or construction would have been likely. As it now stands, any correcting of the situation will be at the expense and discomfiture of an innocent party.

Based on the foregoing reasons, it is found that there are special and unusual circumstances which justify the granting of the variance.

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 areas character and adjoining properties.

Therefore, the Planning Director has concluded that this request be approved subject to the following conditions:

1. The petitioners, their assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. Any other construction on the property shall be in full compliance with the Zoning Code.
3. Because of the proximity of the building to Hoaka Road, the applicant shall:
 - a) Absolve the County of any responsibility for any damage to the structure or property occurring from any accidents or adjacent public improvements, repair or maintenance of Hoaka Road. Acceptance of this variance shall be considered as the applicant's immediate acceptance of this condition.

- b) When road widening occurs, the applicant shall remove any improvements at their own expense to the extent necessary to conform with the standard front yard requirements at that time.
 - c) Within 90 days of receipt of this variance permit, the applicant shall submit to the County, for its review, a written provision encompassing these three (3) conditions (a, b, and c) to be included in the deed to this property, to run with the land for as long as this variance is necessitated. Upon acceptance of the provision by the County, the applicant shall, at their own cost, promptly have the document recorded as part of the deed at the State Bureau of Conveyances and submit a copy of the recorded document to this department.
4. All other applicable State and County rules and regulations shall be complied with.

Should any of the foregoing conditions not be met, the Planning Director may proceed with declaring this variance null and void.

Sincerely,



VIRGINIA GOLDSLEIN
Planning Director

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cc: Department of Public Works - Engineering Division

FEB 1 1993