

V493

CERTIFIED MAIL

March 25, 1993

Blaine Ito, RLS
President
True North Surveys
P. O. Box 10336
Hilo, HI 96721

Dear Mr. Ito:

Variance Application (V 92-3)
PETITIONER: Ronald Ulmer
Request: Sideyard - Existing 2-Story Dwelling
Tax Map Key: 9-2-96:59; Hawaiian Ocean View Estates

The applicant, Ronald Ulmer, has owned this dwelling in the Hawaiian Ocean View Estates Subdivision since 1987, having purchased it from a previous owner, the Bryants (Owners 1983-1987). Prior owners were the Manoa's (1980-1983) and the Gnesedich Family (1974-1980) who were the builders in 1979.

The original building permit application in December 1977, indicated the proper 20 ft. sideyard. However, it was evidently not built that way.

Only when the applicant considered the sale of this property did he become aware of its encroachment into the side yard where it is situated 7.45 ft. from the west boundary. Clearspace is 3.76 ft. The zoning code requirement for this A-la zoned lot is a 20 ft. sideyard. Prior owners did not disclose any violations concerning the siting of this structure on this lot. The applicant is therefore requesting a variance from the zoning code's setback requirements. He has also been made aware that a building code variance might be required as well, since the dwelling is two stories in height, wherein that sideyard requirement becomes 10 ft.

After reviewing the application and the situation surrounding it, the Planning Director finds that this request for a zoning code variance should be approved. The reasons are:

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SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special or unusual circumstances applying to the subject real property which exist either to a degree which deprives the owner or applicant of substantial rights that would otherwise be available or to a degree which obviously interferes with the best use or manner of development of that property.

The error in siting of the structure was not caused by the applicant. It was caused by the builder in 1979, three different owners removed prior to the Ulmer's acquisition. The surrounding lots are vacant in this vast, sparsely inhabited subdivision.

If the applicant were denied this variance request, he would be burdened with the cost of renovating or moving the structure despite being the innocent party. The builder can not be located.

There have been no stated objections to the variance request from surrounding property owners nor the general public.

ALTERNATIVES

There are limited alternatives open to the applicant. Acquiring additional land from the adjacent property owner could be considered but absentee owners are not readily acquiescent in these matters. Physically correcting the encroachment is also possible, but would incur great expense to the applicant who did not cause the violation.

INTENT AND PURPOSE

The intent and purpose of the sideyards is to afford light, air, space, circulation in sufficient amounts between buildings and properties in a scale commensurate with their zoning and community expectations. In this case, although the zoning requirement on most buildings in the subdivision have maintained the requisite 20 ft. side yard, the lots in this general area are vacant, and have been since 1968, almost 25 years. They appear likely to remain vacant.

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.

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

1. The petitioner, his assign or successors, shall be responsible for complying with all stated conditions of approval.
2. No ohana dwellings shall be permitted while this variance permit is necessitated.
3. All other applicable State and County rules and regulations shall be complied with.

Should any of the foregoing conditions not be met, the variance shall be deemed null and void.

This variance permit applies only to the County's Zoning Code. Your structure also violates the County's Housing Code which setback requirement for a 2 story dwelling is 10 ft. In order for your dwelling to be fully sanctioned by the County, you must apply to the Board of Appeals for a variance from the Housing Code. This was mentioned to you in the 3rd paragraph, 1st page of this variance approval letter.

The initial requirements for a variance from the Housing Code are therefore enclosed with this letter. Should you have any questions please contact Donald Tong of my staff.

Sincerely,



VIRGINIA GOLDSTEIN
Planning Director

DT:mjs
8347D

Attachment

xc: Building Division