

V481

Note: Duplicate approval ltrs. Keep V478 #.

CERTIFIED MAIL

December 23, 1992

Robert D. Triantos, Esq.
Carlsmith Ball Wichman Murray
Case Mukai & Ichiki
P. O. Box 1720
Kailua-Kona, Hawaii 96745

Dear Mr. Triantos:

Variance Application (V92-7)
PETITIONER: John and Anna DeFazio
Variance from Minimum Sideyard Setback Requirements
Tax Map Key: 7-6-20: 56

After reviewing your application and the information submitted in behalf of it, the Planning Director certifies the approval of your variance request to allow the existing dwelling to remain as built in 1983 over the adjacent property line with no sideyard setback in lieu of the minimum required 8 foot and 4 foot open clearspace yard as required in Chapter 25 (Zoning Code), Article 4 (RS, Single Family Residential Districts), Section 25-124 (a)(1)(A) (Minimum Yards) and Chapter 25 (Zoning Code), Article 1 (General Provisions), Division 10 (Supplementary Yard and Open Space Regulations), Section 25-66 (a)(1)(Projections into required yards and open spaces).

The subject property is located on the makai (west) side of Kupuna Street approximately 860 feet north of the Lako Street/Kupuna Street intersection in the Kilohana Subdivision Unit 1-A, Holualoa, North Kona, Hawaii, TMK: 7-6-20: 56.

The Planning Director has concluded that the variance request from the minimum side yard setback requirements should be approved, based on the following findings:

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SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances that exist which would warrant or necessitate a waiver from the minimum setback requirements for the existing single family dwelling.

The existing setback problem did not surface until a new survey of the subject property was conducted after all improvements had been completed and approved for the last 12 years. The original plans for the existing two story single family dwelling were approved by the Planning Department and the Building Permit issued by the Department of Public Works, Building Division as the plans for the dwelling had shown that all required building setbacks were to be complied with.

The subject property has a south to north slope as well as a minimal east to west slope. The Kilohana Subdivision has open space common areas between all of the parcels in the subdivision. Access to this common area is available from different points within the subdivision, such as the one situated on the east side of the subject property. However, all of the common areas and the common area accesses have not been improved and are basically overgrown with vegetation or landscaped and maintained by adjacent landowners.

The sloping topography, the location of the property pins for the common area access and the location of the property pins of the subject property reinforces the assumption that the laying of the foundation was due to a staking error in the field.

Therefore, considering the foregoing facts, it is determined that there are special or unusual circumstances applying to the subject property which exist either to a degree which deprives the owner or applicant of substantial property rights that would otherwise be available or to a degree which obviously interferes with the best use or manner of development of the subject property.

ALTERNATIVES

There are no other reasonable alternatives in resolving the difficulty of the petitioner. Alternatives available to the petitioner include a possible consolidation/resubdivision action of the subject property with the relocation of the common area access to the west side of the subject parcel, removing the improvements or remodeling the improvements.

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The petitioners have been able to secure a consent from the Association of Property Owners of Kilohana to submit for both variance applications by the execution of a Hold Harmless Agreement with them. They have also executed a Grant of Easement document with the Association to allow the petitioners to receive from the Association an easement for the dwelling that encroaches onto the Association's property and an easement for access to all portions of the dwelling for the benefit of the petitioner for the petitioner's use and the use of the petitioner's successors and assigns, forever.

The Hold Harmless Agreement and the Grant of Easement Document will also be recorded with the State of Hawaii Bureau of Conveyances upon approval of the variance.

In addition, the petitioners have also investigated the alternative to relocate the common area access to the west side of the subject property, but only have been able to secure the consent for the Hold Harmless Agreement and Grant of Easement document. In essence, execution and approval of both documents by the Association indicate that they prefer not to relocate the common area access.

Therefore, the consolidation/resubdivision alternative to relocate the common area access is not a viable alternative due to these factors. The resitting or remodeling of the improvements is economically unreasonable and would disrupt the design, function and architecture of the existing improvements.

In addition, the County of Hawaii Board of Appeals approved on August 14, 1992, the petitioners concurrent variance application from the Housing Code setback requirements.

Based on the above cited considerations, there is no reasonable available area for resitting and/or remodeling the improvements without excessive cost and undesirable design changes for the unfortunate staking error that was done. The petitioner is also unable to consider a consolidation/resubdivision alternative. As such, the imposition of any other alternatives other than granting of the variance application would be deemed to be unreasonable and would place excessive demands on the petitioner when a more reasonable alternative is available.

INTENT AND PURPOSE

The intent and purpose of requiring buildings setbacks within a subdivision is to assure that adequate air and light circulation is available between structures. The certified survey shows that the existing dwelling and roof overhang encroaches over the east side property line into the open space access by 3.05 feet at the front of the dwelling, 3.25 feet at the midpoint portion of the dwelling and 1.51 feet at the rear of the dwelling. The actual building wall encroachment is 1.08 feet at the front of the dwelling and 1.51 feet at the rear of the dwelling. This leaves a distance of 13.38 feet between the wall of front portion of the dwelling and the eastern side property line of parcel 57 and a distance of 11.47 feet from the wall at the midpoint of the dwelling to the eastern side property line of parcel 57.

There is a minimal slope down from the adjacent property to the subject property which provides an added visual open space between the subject dwelling and the adjacent dwelling to the east.

Thus, in distance terms, the required setbacks between any two structures on two separate lots are being provided. In addition, the location of the slope between the properties will lessen the impact of the building encroachments.

In this particular case, the primary impacted property is parcel 57 located to the east of the subject property. While the Zoning Code requires a minimum 8 foot side yard setback, the 1.08 foot and 1.51 foot building wall encroachments respectively in this particular case are only for a portion of the subject dwelling. The remainder of the dwelling on the east side is 2.53 feet from the side property line.

Therefore, although this portion of the dwelling does not encroach over the property line, it also does not meet with minimum sideyard setback requirements. But, nevertheless, with the common area access width, the Hold Harmless Agreement and the Grant of Easement in perpetuity, the granting of this variance should not have an adverse impact on the dwelling on the property to the east.

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Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning and Subdivision Codes 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 to adjoining properties.

This variance request is approved, subject to the following conditions:

1. The petitioner, successors or assigns, shall be responsible for complying with all stated conditions of approval.
2. That all future structural additions to the dwelling shall be in compliance with all zoning code requirements and no other setback variances shall be considered for any development of this property.
3. A Hold Harmless Agreement in favor of the County shall be executed and sent to the Director for approval. It shall hold the County harmless in perpetuity from any liability emanating from the permitted proximity of the dwelling to the property line, and be binding on the heirs and successors of the property. The Hold Harmless Agreement and Grant of Easement Document shall be recorded with the State of Hawaii Bureau of Conveyances within one (1) year from the effective date of approval of the variance. A copy of both documents shall be submitted to the Planning Department within six (6) months from the date of recordation.

Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,


VIRGINIA H. GOLDSTEIN
Planning Director

RHY/rld:mlm
7424D

cc: West Hawaii Office