

VAR 517

CERTIFIED MAIL

July 13, 1993

Mr. George Martins  
912 Lehua Street  
Pearl City, HI 96782

Dear Mr. Martins:

Variance Application (V 93-10)  
Applicant: George Martins  
Sideyards and Rearyard for Small Lot  
Tax Map Key: 2-9-1:16

You are purchasing a small 2550 sq. ft. parcel of land from your aunt Julia Riviera with the intention of building a correspondingly small house on it with 800 sq. ft. of floor area. Your intent is to slowly build it and move into the dwelling when you retire from your job in Honolulu in a few years. However, even an 800 sq. ft. building, 40' x 20' would place it 10 ft. from the rear and 5 ft. from each side boundary, in this situation, necessitating a rear and two sideyard variances. The code requirement is otherwise 15 ft. rear and 8 ft. sides.

You have also revised your plans a number of times since your application was received, the most recent and final revision occurring on June 6 by telephone. You are now agreeable to removing the two side porches and steps and moving them to the front and rear of the house. The rear steps will also need a variance from the clearspace requirements as will the rear roof eaves.

One letter was received objecting to the variance request. He is Agrifino Aquino and is the adjacent landowner to the north and west who would be the most affected by the rear yard variance. His land is vacant and is 1 1/4 acres in size. Mr. Aquino's main point is that the Martins were aware of the shortcomings of the lot before they purchased it; the Aquino's do not wish to have the Martin's home in such close proximity.

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Having reviewed the application and related relevant information, the Director has concluded that this variance request should be granted, based on the following:

#### SPECIAL AND UNUSUAL CIRCUMSTANCES

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

This lot is exceptionally small, being 30' x 85' and was created before the County's Comprehensive Zoning laws were enacted. Thus it is nonconforming as to size, but still a legal building lot on which the owners are assessed residential property taxes. Because of its dimensions, however, a house built without any variances from the Zoning Code would have to be 14 ft. wide and no more to conform with two 8-ft. sideyards. A 14 ft. wide dwelling is considered unreasonably small for normal living.

Therefore, the applicant tried to accommodate the smallest proportioned rooms he can live with and the least amount of variance from the Zoning Code. The result is a request for 5 ft. sideyards and a 10 ft. rearyard in lieu of 8 ft. and 15 ft. respectively.

Although the applicant knew of the small size of this lot, there is no prohibition against seeking to construct on such a lot; it is still a legal building site no matter its size. Under current Zoning Laws, a lot of this size could not be created or platted today, the minimum size being 7500 sq. ft. This 2550 sq. ft. lot was partitioned (in 1944) prior to the County's adoption of the comprehensive Zoning Code in 1968 and is considered a non conforming lot, as to size.

#### ALTERNATIVES

There are no practical alternatives. The lot can not be enlarged, as Mr. Aquino, who objects to the variance request, would obviously refuse. Mr. Unoki, adjacent to the south although not objecting, will not sell the requisite amount of land. The house can not be made smaller and still be livable; it would end up with one dimension being 14 ft. wide (or deep) to comply fully with the code; the carport is already shrunken to 15 ft. in length.

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INTENT AND PURPOSE

The intent and purpose of the setback requirements are to provide an equitable amount of light, air, open space and related spatial accommodations between boundaries and buildings in a quantity commensurate with a community's expectations.

In this case there is a special and unusual case of a very small lot which is yet a legal building site. In order for it to contain even a smaller than the smallest "package deal" home, it would need variances from two sideyard requirements and the rear yard requirement. Although this would mean that the dwelling would be closer to (by 3 ft.) the side boundary and that neighbor, the neighbor's own property is 1 1/4 acres in size and is presently vacant. The subject 2550 sq. ft. lot was created in 1944 according to Real Property Tax Office information.

Therefore in consideration of the special and unusual circumstances applying to this case and the limited practical alternatives available and 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.

Therefore, the Planning Director hereby grants this variance to permit two sideyards of 5 ft. each and the rearyard of 10 ft. subject to the following conditions:

1. The petitioner, his assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. Construction within the two 5 ft. sideyards shall be strictly limited to the side walls and roof of the 40' x 20' proposed dwelling. The building is limited to 1 story. The side roof eaves only may project 30 inches; clear space shall therefore be no more than 30 inches.
3. Construction within the rear setback shall be strictly limited to the rear walls of the dwelling which are granted a 10 ft. setback in lieu of 15 ft. as required by the Zoning Code. The only projection allowed will be the minimum size stairway and landing and roof eave which are permitted to project 30 inches.

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4. 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.

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 the variance null and void.

Sincerely,

A handwritten signature in cursive script that reads "Virginia Goldstein". The signature is written in dark ink and is positioned below the word "Sincerely,".

VIRGINIA GOLDSTEIN  
Planning Director

DT:mjs  
9465D

xc: Mr. Agrifino Aquino  
West Hawaii Office