

VAR 535

COPY

October 13, 1993

CERTIFIED MAIL

Mr. Dennis Haserot  
P.O. Box 2086  
Kailua-Kona, Hawaii 96745

Dear Mr. Haserot:

Variance Application WH(VAR 93-26)  
Petitioner: DENNIS HASEROT  
VARIANCE FROM MINIMUM FRONT AND SIDE YARD SETBACK  
REQUIREMENTS  
TAX MAP KEY: 7-6-17: 23

After reviewing your application and the information submitted in behalf of it, the Planning Director certifies the approval of your variance request as modified to allow the construction of a new two story single family dwelling with a front yard setback of 11 feet and a side yard setback of 5 feet in lieu of the minimum 15 foot front yard setback and 8 foot sideyard setback as required by Chapter 25 (Zoning Code), Article 5 (Double Family Residential District, Section 25-132 (Minimum yards) respectively.

The subject property is a 2,852 s.f. parcel in the Holualoa Beach Section Subdivision situated on the mauka side of Alii Drive, a corner lot approximately 540 feet north of the Royal Poinciana Drive/Alii Drive intersection in the Holualoa Beach Section Subdivision, Holualoa, North Kona, Hawaii, TMK: 7-6-017: 023.

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

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The Holualoa Beach Section Subdivision was approved by File No. 7623 in May of 1914 and is on file with the Department of Public Works.
2. The subject property which consists of 2,852 s.f. is in the County's Double Family Residential (RD-3.75) zoned district.

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3. The minimum structural setback requirements for this zone district and this particular property is a minimum 15 feet with a minimum 10 feet open clearspace yard from the front yard property line and a minimum 8 feet with a minimum 4 feet open clearspace yard from the side property line.
4. After application of the minimum setback requirements for this particular parcel, a building envelope of approximately 8 feet by 68 feet is available.
5. The property is 2,852 square feet in size and is considered a substandard lot with respect to the existing Zoning Code requirements for this particular zone district. There are approximately 30 substandard size lots within this subdivision.
6. The lot configuration is rectangular in shape and is a corner lot. The lot is relatively level in topography.
7. The west front property line is 31.09 feet, the north property line is 93.02 feet, the south property line is 96.52 feet and the east property line is 31.09 feet.
8. The subject property is a substandard lot and part of the Holualoa Beach Section Subdivision which was created prior to the adoption of the present Zoning and Subdivision Codes.
9. The substandard condition results from the comparison of the subject lot to the Zoning Code's minimum lot size for this particular zoning district. This substandard condition is considered a special or unusual circumstance relating to the subject property.
10. Since the lots were created in 1914 and the present zoning code was adopted in 1967, the subject property is a recognized grandfathered parcel. The zoning district within which the subject property is located presently requires a minimum lot size of 7,500 square feet. The subject property which is 2,852 square feet in size is 4,648 square feet below the minimum lot size presently required for this zone district.

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.

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#### ALTERNATIVES

There are no reasonable alternatives in resolving the difficulty of the applicant. The subject property is a corner lot. In this situation, the subject property is required to have two front yard setbacks and two side yard setbacks. Alternatives available to the petitioner include building a dwelling approximately 8 feet by approximately 68 feet or try to purchase the adjacent property to consolidate it with the subject property. Both alternatives are economically unreasonable and would disrupt the design, function and architecture of the proposed improvements.

Based on the above cited considerations, there is no reasonable available area for construction of the proposed dwelling without excessive cost and undesirable design changes. Therefore while alternatives are available to the petitioner, they are deemed to be unreasonable and would place excessive demands on the petitioner when a more reasonable alternative is available by the granting of this variance application.

#### 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 and property lines. The proposed dwelling on the subject property will provide a minimum 7 foot front yard and a 6 foot side yard with the other two front and side yards setback comply with the minimum zoning and housing code requirements. Therefore, although only a 7 foot front and 6 foot side yard setback is going to be permitted by this variance approval, it will still provide a distance of 16 feet of adequate light, air and open space between the existing dwelling to the south of the subject property. This would be commensurate to two dwellings within the RS-7.5 zoned district where a minimum of 16 feet (8 foot side yard setbacks for each property) is provided by the Zoning Code. Therefore, while the Zoning Code requires a minimum 15 foot front yard and 8 foot side yard setbacks, in this particular case, the proposed 2 story dwelling will not visually or physically impact or be adverse to any adjacent properties or development with the granting of this variance. The rest of the proposed dwelling will comply with the minimum yard setbacks requirements of the Zoning Code.

There were no objections from any of the participating government agencies. There were also no objections from any surrounding property owners to the proposed variance request.

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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 applicant, its assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. The proposed dwelling shall be two (2) stories in height and:
  - a. Shall not exceed 25 feet in height;
  - b. Shall have a front yard setback from Stardust Lane of 7 feet to the wall with a maximum 2 foot overhang and 5 foot open clearspace yard between the edge of the eave to the front property line;
  - c. Shall have a south side yard setback of 6 feet with a maximum 2 feet inch overhang and 4 feet inch open clearspace yard between the edge of the eave to the side property line;
  - d. Shall obtain a building permit within one year from the date of receipt of this variance permit; and a building permit one year thereafter.
3. Because of the proximity of the proposed dwelling to the Stardust Lane, the applicant shall:
  - a. Absolve the County of any responsibility for any damage to the dwelling or property occurring from any accidents or adjacent public improvements, repair or maintenance of the fronting roadway. Acceptance of this variance shall be considered as the applicant's immediate acceptance of this condition.
  - b. Should road widening occur, the applicant shall remove any new improvements (added beyond this date) at their own expense to the extent necessary to conform with the standard front yard requirements at that time.

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- c. Within 90 days from the date of receipt of approval of this variance permit, the applicant shall submit to the County, for its review and approval, a written document describing the conditions stated in this condition no. 3, to be included as a restriction in the deed to this property. Upon acceptance of this document by the County, the applicant shall, at their own cost, record this document with the State of Hawaii Bureau of Conveyances and submit a recorded copy of this document prior to the approval of the building permit application for the proposed dwelling.
4. All other applicable State and County rules and regulations shall be complied with.

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 GOLDSTEIN  
Planning Director

RHY:rld  
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xc: West Hawaii Office