

V506

May 12, 1993

Mr. Daryl Gardner  
P. O. Box 1044  
Mountain View, HI 96771

Dear Mr. Gardner:

Variance Application (V 93-7A)  
Applicant: Daryl Gardner  
Sideyard Requirement  
Tax Map Key: 1-6-23:73

You purchased a three (3) acre lot in the Hawaiian Acres Subdivision which contained a single family dwelling in May 1992 from Robert and Alice Richards who, as the owner-builders, completed it in December 1991.

In August 1992 you hired a surveyor to confirm the location of the structures on the property and found that there was only a 5.4 ft. distance between the dwelling and the east boundary of the property instead of the 20 ft. required by the Zoning Code.

In your reasons for requesting the variance, you state "the applicant was unaware of the existing setback encroachment when he purchased the property. The encroachments render the property unmarketable until it is resolved." You also state the only reasonable and practicable solution . . . is to obtain a variance.

The owner of the adjacent lot (Nani Lindsey) to the east of the applicant's, lot 6155, which is the one most directly affected by the sideyard encroachment telephoned in her objection from Honolulu, followed by a faxed letter from the owner of record, Mr. Frederick Lindsey. One other objection raised by a letter from Grace Ruggiero of San Francisco who feels the encroachment would "disrupt the planning of the eventual neighborhood appearance"; her property is 2 plats away.

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After reviewing your application and the information received from other agencies and the general public, the director has determined that your application should be denied for the following reasons.

#### SPECIAL AND UNUSUAL CIRCUMSTANCES

There are no special or unusual circumstances applying to the 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.

The property is topographically flat, has a 150 ft. frontage and is rectangular in shape, presenting little if any deterrent to locating boundary lines. The building permit application signed by Robert Richard also showed "20 ft." as the distance to the nearest boundary.

In this case, the encroachment is significant and more so to the affected adjacent land owner. The directly affected adjacent owner strongly objects to the application. Coupled with the finding that the case has no special or unusual circumstances applying to the real property (the entire area has level rectangular, similar sized lots, straight platted roads), leads us to the conclusion that this variance application should be denied.

#### ALTERNATIVES

The alternatives are limited in this case. Since the variance application is denied, the owner shall proceed to correct the deficiencies.

#### INTENT AND PURPOSE

The intent and purpose of the building setback requirements is to afford open space, air, light and related spatial considerations between buildings and property lines which are commensurate with a community's scale and scope and expectations. In this case, in agriculture zones in low density areas, the accepted standard is 20 ft. for sideyards, resulting in main buildings being 40 ft. apart at minimum. In this case, the east adjoining property owner is, as the result of a building encroachment, confronted with an adjacent building presently only 5 ft. away from her boundary.

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While it is recognized that the current owner, the applicant Daryl Gardner is not the perpetrator, it is in the public's interest to have, wherever possible, code violations corrected rather than excused by variance.

As a consequence of the denial, the applicant is required to correct the code violations within one year of the receipt of this letter. The applicant shall inform the Director by letter every six months on the progress of the corrective action being undertaken.

The Director's decision is final, except that within thirty days after receipt of this letter, you may appeal the decision in writing to the Planning Commission in accordance with the following procedures:

1. Non-refundable filing fee of one hundred dollars (\$100); and
2. Ten (10) copies of a statement of the specific grounds for the appeal.

Should you decide to appeal, the Planning Commission shall conduct a public hearing within a period of ninety days from the date of receipt of a properly filed appeal. Within sixty days after the close of the public hearing or within such longer period as may be agreed to by the appellant, the Planning Commission shall affirm, modify or reverse the Director's action. A decision to affirm, modify or reverse the Director's action shall require a majority vote of the total membership of the Planning Commission. A decision to defer action on the appeal shall require a majority vote of the Planning Commission members present at the time of the motion for deferral.

If the Planning Commission fails to render a decision to affirm, modify, or reverse the Director's action within the prescribed period, the Director's action shall be considered as having been affirmed.

All actions of the Planning Commission are final except that, within thirty days after notice of action, the applicant or an interested party as defined in Section 25-27.2 of this article in the proceeding before the Planning Commission may appeal such action to the Board of Appeals in accordance with its rules.

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All actions of the Board of Appeals are final except that they are appealable to the Third Circuit Court in accordance with Chapter 91 of the Hawaii Revised Statutes.

Should you have any questions, please feel free to contact Norman Olesen, Deputy Director of this office at 961-8288.

Sincerely,



VIRGINIA GOLDSTEIN  
Planning Director

DT/NO:mjs  
8876D

xc: Building Division  
Mr. Michael Moore