

V507

May 18, 1993

Ms. Alice Rosenfeld  
RR 1 Box 51-D  
Captain Cook, HI 96704

Dear Ms. Rosenfeld:

Variance Application (V 93-9)  
Rear Building Setback  
Tax Map Key: 6-4-15:89

In February 1992 you purchased a pole house in Waimea which now has been found to encroach into the required rear yard space. Neither the owner-builder, a Mr. Cornell, nor the realtor advised you of the encroachment when you bought it, and you are now confronted with the task of rectifying the Zoning Code violation.

The main exterior stairway into the house intrudes 5 ft. into the code-required clear space of 24 ft. for this A-la zoned property such that it is 19 ft. from the boundary. The main portion of the dwelling is not in contention; only the staircase and landing intrudes 5 ft. deeper into the rear setback area than is permitted by the "projections into required yards and open spaces" subsection of the Zoning Code, Section No. 25-66.

Having reviewed your application and the information relevant to it, the Planning Director has concluded that the subject variance request should be approved, for the following reasons.

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 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.

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The main building is itself in conformance with the Housing and Zoning Codes. The main rear stairway is the encroachment, by a measurement of 5 ft. While the original owner-builder, Mr. Cornell, sited the main dwelling properly, the stairway's location was not, and was subsequently "x'd" out on the plans. The builder then apparently proceeded on his own to build the stairway, did so, then sold the house without revealing the inconsistency.

Removing the offending portion of the stairway would involve the landing (where the steps change direction), but that would narrow it to 24 inches where the Building Code requires 36 inches. Furthermore the poles of this polehouse would thereupon require moving, meaning the most integral support of the house would be tampered with.

With these special and unusual aspects of the real property (the house itself) being the critical issues, the granting of the subject variance permitting the stairway to remain where built appears justified and the variance is hereby granted.

Notably, there were no objections expressed over this application by either the general public nor the cooperating agencies.

#### ALTERNATIVES

There are only a few alternatives. Approval of the variance would not be disturbing to any neighbors -- there is a roadway at the property boundary, and the pole house is surrounded by a wide lanai, which is "open" construction and edged by an open stairway.

The only sense of the encroachment would be the visible effect from neighbors. The 20 ft. roadway borders the rear boundary so the nearest dwelling would be almost 80 ft. distant where a 5 ft. encroachment of an open stairway would be indiscernible.

#### INTENT AND PURPOSE

The intent and purpose of the building setback requirements is to allow an adequate amount of air, light, circulation and open space between buildings and property lines in a scale commensurate with a community's expectations and desires.

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In this case, the 5 ft. encroachment of an "open" type construction is nearly imperceptible, given the actual 38 ft. separation between the building's walls and rear boundary and the added 20 ft. of road right of way along the rear property line. The nearest house in this direction would be 74 ft. away from the applicant's. At that distance the infraction would not be noticeable.

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 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 has concluded that this request be approved subject to the following conditions:

1. The petitioner his assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. No other construction shall be allowed to project into the rear clear space of this lot other than the existing staircase which is 19 ft. instead of 24 ft. from the rear boundary.
3. 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.

Should you have any questions, please feel free to contact Donald Tong of this office at 961-8288.

Sincerely,



VIRGINIA GOLDTSEIN  
Planning Director

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xc: West Hawaii Office