

VAR 599

June 17, 1994

Mr. Jerry M. Hiatt
Bays Deaver Hiatt Kawachika Lezak
Attorneys at Law
Suite 204, Parker Square
Kamuela, HI 96743

Dear Mr. Hiatt:

Variance Application (VAR 94-35)
Petitioner: Jerry Hiatt
Request: From Minimum Structural Setback Requirements
Tax Map Key: 4-8-06:01 Subdivision No. 94-52

After reviewing your application and the information submitted on behalf of it, including comments received from consulting agencies, the Planning Department, by this letter, hereby certifies the approval of your variance request to allow the consolidation/resubdivision of fourteen (14) existing lots each containing single family dwellings which some do not meet the minimum building setback requirements of the Chapter 25 Zoning Code, Article 4, Section 25-124.

The subject property, consisting of 211.720 acres, is known as Kukuihaele Camp No. 105, located at Waikoekoe, Hamakua, Hawaii Tax Map Key: 4-8-06:01.

The Planning Director has concluded that the variance request from the Zoning Code minimum structure setback requirements should be approved based on the following:

Special and Unusual Circumstances

There are special and unusual circumstances that exist which would warrant or necessitate a waiver from the minimum structural setback requirements of the Zoning Code.

07978

JUN 21 1994

Mr. Jerry M. Hiatt
Page 2
June 17, 1994

The existing fourteen (14) single family dwellings were built in the traditional "camp" style development over 60 years ago. The existing lots vary from 7,500 square feet to 15,000 square feet in size. However, in light of the "camp" cluster development, some of the existing structures given their specific locations and the limited land area cannot meet the minimum structural setbacks of the Zoning Code for this specific consolidation/resubdivision section. This section is to minimize the existing non-conforming camp development with regard to current land use rules and regulations.

Therefore, considering the foregoing facts, it is determined that there are special or unusual circumstances applying to the subject properties which exist either to a degree which deprives the owners or applicants 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 properties.

Alternatives

The subject properties are irregular in shape. The existing structures are existing non-conforming in terms of today's land use rules and regulations having been constructed over 60 years ago. The investigation of this particular situation has not shown any deliberate or intentional grounds in allowing the encroachment to occur.

Any architectural alterations or design changes to those dwelling encroaching to conform with the minimum setback requirements would create undue and excessive hardships to the homeowners when other more reasonable options are available.

Based on the close cited considerations, there are no reasonable available solutions without excessive demands placed on the homeowners when a more reasonable alternative is available by the granting of this variance application.

Intent and Purpose

The intent and purpose of requiring building setbacks within a subdivision is to assure adequate air and light circulation is available between structures and property lines. The existing non-conforming structures having been built over 60 years ago have not and will not diminish the ability for adequate light, air and open space. Therefore, while the Zoning Code requires minimum structural setbacks, in this particular case, the encroachment are being minimized so that they will not visually or physically impact

Mr. Jerry M. Hiatt
Page 2
June 17, 1994

or be adverse to any adjacent properties or developments with the granting of this variance. Most of the other dwellings comply with the minimum setback 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.


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 substantially 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 approval of this variance shall be included in the deed documents for the lots that have setback encroachments and a copy of the recorded deed documents shall be submitted to the Planning Department within one (1) year from the effective date of approval of this variance.
3. Comply with all other applicable State and County rules and regulations.

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

Sincerely,



VIRGINIA GOLDSTEIN
Planning Director

EC:pak
4133D

xc: Subdivision No. 94-52