

CERTIFIED MAIL

August 7, 1984

Mrs. Crystal Thomas Yamasaki, R.L.S.  
Wes Thomas and Associates, Inc.  
75-5722 Kalawa Street  
Kailua-Kona, Hawaii 96740

Dear Mrs. Yamasaki:

Variance Application (V84-19)  
John P. Brossa  
Tax Map Key 7-3-23:95

After reviewing your application and the information submitted in behalf of it, the Planning Director by this letter hereby certifies the approval of your variance request to allow an existing single family dwelling which was constructed in 1977 with a side yard setback of 9 feet 6 inches in lieu of the minimum side yard setback of 15 feet as required by the Zoning Code for this zoned district.

The approval is based on the following:

Special and Unusual Circumstances

There are special or unusual circumstances which apply to the subject property which exist to a degree that would otherwise be available and to a degree which obviously interferes with the best use or manner of development of the property.

The Kona Coastview Subdivision was approved in 1966. Although there is no evidence of a possible governmental error in the approval of the construction of the dwelling in 1976, there is no record of the approved 1976 construction plans on file in order to determine how the error occurred and who made the error. Therefore, it cannot be conclusively determined whether the error was done by the petitioner, contractor, Planning Department or by the Building Inspector. The final inspection was completed on March 31, 1977. However, a new field survey was made in May 23, 1984, found that the existing

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dwelling encroached into the side yard setback. Therefore, the denial of the variance would impose an undue economic as well as a design hardship on the petitioner.

#### Alternatives

There are no other reasonable alternatives to resolve the difficulty. The alternative to relocate the single family dwelling to comply with the minimum setback requirements would be an unreasonable solution. This relocation alternative would be unreasonable and burdensome to the petitioner, as it was not a self-created problem, but one which was attributed to a possible contractor's or governmental error some 8 years ago. The action of the petitioner to legitimize the structure is one which is being done of their own accord. The alternative of purchasing the adjacent property for a consolidation and re-subdivision has been nullified since the offer to buy the adjacent property was never accomplished. In view of the above considerations, any other alternatives in resolving this issue would be putting excessive demands upon the applicant when a more reasonable solution is available.

#### Intent and Purpose

The granting of the variance is consistent with the general purpose of the zoning district, the intent and purpose of the Zoning Code, and the General Plan. The intent and purpose of the setback requirements are to ensure that light, air, physical and visual circulatory functions are available between structures and property lines. In this particular application, the location of the existing dwelling will still provide for these functions, although it would not meet the minimum as required by the Zoning Code. The adjoining property to the east (TMK: 7-3-23:96) is presently vacant. Should a dwelling be constructed on this property, it be required to have a 15-foot setback from the side property line. The physical separation between the existing dwelling and a future dwelling on the adjacent property will be a minimum of 24 feet 6 inches. Thus, the existing location would still employ and afford the air, light, and circulatory functions that is the basis of requiring setbacks.

In view of the above issues, it is further determined that the granting of the variance would not be considered to be materially detrimental to the public's welfare nor cause any substantial impact to the area's character or to adjoining properties.

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The variance request is approved, subject to the following conditions:

1. The petitioner, its assigns or successors, shall be responsible for complying with all conditions of approval.
2. All other structures, other than the single family dwelling, that do not meet with the minimum setback requirements, shall be removed within six (6) months of the approval of this variance. The petitioner shall inform the Planning Department upon the completion of the removal of the structures.
3. All future additions, renovations, and improvements on the subject property shall be in conformance with the requirements of the Zoning Code. Repair and maintenance of the non-conforming part of the dwelling shall be permitted under the non-conforming criteria established in the Zoning Code.
4. All other State and County rules, regulations, and requirements including the Housing Code shall also be complied with.

Should any of the foregoing conditions not be complied with, the variance application shall automatically be voided.

If you have any questions on this matter, please feel free to contact us.

Sincerely,

  
SIDNEY M. FURE  
Planning Director

MO:wkm

cc: Chief Engineer