

CERTIFIED MAIL

December 10, 1986

Ms. Crystal Thomas Yamasaki, R.L.S.
Wes Thomas and Associates
75-5722 Kalawa Street
Kailua-Kona, HI 96740

Dear Ms. Yamasaki:

Variance Application (V86-15) Var 257
Mildred Freeman
Tax Map Key 6-8-12:28

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 and garage with a 1.05 foot side yard setback in lieu of the minimum 10-foot side yard setback as required in the Single Family Residential (RS-10) zoned district. The subject property which consists of 10,514 square feet and identified by TMK: 6-8-12:28, is located on the north side of Lina-Poepoe Street approximately 300 feet northeast of the Pau Nani/Lina-Poepoe Street intersection, Waikoloa Village, Unit 1-C, Waikoloa, South Kohala, Hawaii.

The approval is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

That there are special and unusual circumstances which apply to the subject property which exists 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 subject property 10,514 square foot parcel was created in 1971. Building Permit No. 790686 was approved for the construction of a 3-bedroom single family dwelling and garage. Plans approved to construct the existing dwelling are no longer available from the files in the

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parcel (lot 143), any future siting of a new dwelling or permitted structures on the vacant parcel with a required minimum 10-foot side yard setback may ultimately result in a minimum distance of 13.05' between the building walls. Therefore, while a portion of the existing dwelling and carport does not meet the minimum side yard setback requirement as stipulated by the Zoning Code, it is felt in this instance that adequate air, light, and circulatory functions will still be provided for.

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 adverse impact to the areas character or to adjoining properties.

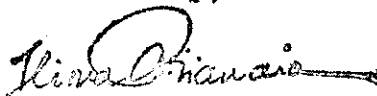
The variance request is approved, subject to the following conditions:

1. The petitioner, its successors or assigns, shall be responsible for complying with all stated conditions of approval.
2. 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 single family dwelling and attached carport shall be permitted under the non-conforming criteria established in the Zoning Code.
3. The petitioner or its authorized representative shall file an application for a variance from the Housing Code requirements.
4. All other applicable State and County rules, regulations and requirements shall be complied with.

Should any of the foregoing conditions not be complied with, the variance shall automatically be deemed void.

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

Sincerely,


ALBERT LONO LYMAN
Planning Director

MO:aeb

cc: Mildred Freeman

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Department of Public Works, Building Division. The petition indicates that it appears that the wrong rear property corner was used and the setbacks held from that line. Final approval was granted on August 5, 1980, and it was assumed that all existing building improvements complied with governmental regulations. However, a field survey and map dated June 19, 1985, shows the existing dwelling and garage encroaching into the 10-foot side yard setback area. The setback violation and prior knowledge of the side yard setback violation cannot be attributed to the petitioner's own negligence although the dwelling and garage was constructed under owner/builder, since final approval was granted for the dwelling by the County. Therefore, the denial of the variance from the minimum side yard setback would impose undue economic, as well as a design hardship on the petitioner.

ALTERNATIVES

That there are no reasonable alternatives to resolve the difficulty. The petitioner through her real estate agent contacted the affected adjoining property owners (Mr. and Mrs. Scheetz) to acquire a portion of the property to correct the violation. However, this offer was not acceptable to the Scheetz's. Another alternative is to remove that portion of the dwelling and carport that encroaches into the side yard setback area. However, this alternative would create a design hardship and would be unreasonable and burdensome to the petitioner although it may have been a self-created problem since the dwelling was constructed as an owner/builder, but also one which was attributed to a possible governmental error made approximately 7 years ago. The action of the petitioner to legitimize the structure is one which is being done in their own accord. In view of the above considerations, any other alternatives in resolving this issue would only be putting excessive demands upon the applicant when a more reasonable solution is available.

INTENT AND PURPOSE

That 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, by establishing an accurate common side yard boundary between the subject parcel and the vacant