

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 (V86-38)  
S. Cotta Schoenberg  
Tax Map Key 7-3-33:21

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 with a side yard setback of 9.45 feet in lieu of the minimum 10-foot side yard setback as required in the Unplanned zoned district. The subject property which consists of 10,585 square feet and identified by TMK: 7-3-33:21, is located on the south side of Awakea Street, approximately 80 feet east (mauka) of the Holoholo Street/Awakea Street intersection, Kona Palisades Unit II, Kalaoa 5th, North Kona, 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 exist to a degree that would otherwise be available and to a degree which obviously interferes with the best use and manner of development of the property. The subject 10,585 square foot parcel was created in November 18, 1968 and is considered as a non-conforming lot. Building Permit No. 06147 was approved on December 27, 1983 for the construction of a 3-bedroom single family dwelling under owner/builder. The approved plans show a 10-foot side yard setback. The dwelling was constructed by Mr. Joe Atree (owner/builder) the previous owner. Final approval was

DEC 11 1986

Ms. Crystal Thomas Yamasaki  
December 10, 1986  
Page 2

granted for the dwelling on April 8, 1985. The setback violation and prior knowledge of the side yard setback violation cannot be attributed to the petitioner's negligence, since the dwelling was constructed by the previous land owner (Joe Altree) and passed onto him. Therefore, the denial of the variance from the minimum side yard setback would impose an undue economic, as well as a design hardship on the petitioner.

#### ALTERNATIVES

That there are no reasonable alternatives to resolve the difficulty. The alternative to remove that portion (6-5/8") of the dwelling to comply with the minimum 10 foot side yard setback requirements would be putting excessive demands upon the applicant, when a more reasonable solution is available. This removal alternative would be unreasonable and burdensome to the petitioner, as it was not a self created problem, but one which was passed onto him by the previous owner. The action of the petitioner to legitimize the structure is one which is being done on his 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 a common side yard boundary between the subject parcel and the adjoining vacant parcel to the east (parcel 20), any future construction will require a minimum 10-foot side yard setback and may ultimately result in a minimum distance of 19 feet 6-5/8 inches between building walls. The existing 9 feet 6-5/8 inch side yard setback meets with the requirements of the County Housing Code. Therefore, while the existing dwelling 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 or adverse impact to the areas character or to adjoining properties.

Ms. Crystal Thomas Yamasaki  
December 10, 1986  
Page 2


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 shall be permitted under the non-conforming provision of the Zoning Code.
3. 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,

  
for ALBERT LONO LYMAN  
Planning Director

MO:aeb

cc: S. Cotta Schoenberg