

CERTIFIED MAIL

March 19, 1987

Ms. Chrystal Thomas Yamasaki
Wes Thomas and Associates
75-5722 Kalawa Street
Kailua-Kona, HI 96740

Dear Ms. Yamasaki:

Variance Application (V86-52)
Kaye Barnett Campbell
Tax Map Key 6-8-18:17

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 9.26 feet in lieu of the minimum 10 foot side yard setback requirement within the Single Family Residential (RS-10) zoned district. The subject property which consists of 10,427 square feet and identified by TMK: 6-8-18:17, is located on the northeast side of Niu-Hachao Place, approximately 95 feet north of Ho'oko Street/Niu-Hachao Place intersection, 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 was created in 1971. Building Permit No. 78-2309 was approved on September 1, 1978 for the construction of a 3-bedroom single family dwelling and garage. The Building Permit was issued to Douglas Schilling as an

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owner/builder. Plans for the dwelling are no longer available from the files in the Department of Public Works, Building Division. The Building Permit application indicates a minimum 10 foot setback. Final approval of the dwelling was granted on August 5, 1981, and it was assumed that all existing building improvements complied with all governmental regulations. However, a field survey and map dated November 7, 1986, shows the existing dwelling encroaching 8 inches into the 10-foot side yard setback area. The setback violation and prior knowledge of it cannot be attributed to the petitioner's own negligence although the dwelling was constructed under owner/builder and final approval was granted by the County. Therefore, the denial of the variance from the minimum side yard setback would impose under 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 (8") of the dwelling to comply with the minimum 10 foot side yard setback requirement would be putting excessive demands upon the applicant, when a more reasonable solution is available. All the exterior wall on one side of the dwelling would have to be removed and rebuilt including a modification of the roof structural system. The action of the petitioner to legitimize the structure is one which is being done on her own accord. In view of the above consideration, 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 adjoining parcel to the east (Lot 21), any future construction on that parcel would require a minimum 10-foot side yard setback, resulting in a minimum distance of 19.26 feet between building walls. Further, due to the topographical difference in elevation (adjoining

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parcel is over 4 feet above the subject parcel) between the properties, 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 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,



ALBERT LONG LYMAN
Planning Director

MO:

cc: Building Division
Kaye Barnett Campbell