

CERTIFIED MAIL

July 21, 1988

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

Dear Ms. Yamasaki:

Variance Application (V87-51)
Applicant: Dan Fitzpatrick
Tax Map Key 5-2-09:46

After reviewing the subject application and the information submitted in behalf of it, the Planning Director by this letter hereby certifies the approval of the subject variance request to allow the construction of a single family dwelling with a front and rear yard setback of 5 feet and a clearspace of 2.5 feet in lieu of the minimum 15 foot and 10 foot clearspace requirement as required in the Single Family Residential (RS-15) zoned district, identified by tax map key 5-2-09:46, Niulii Village, North Kohala, Hawaii.

The approval is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances applying to the subject property which deprive the applicant of substantial property rights that would otherwise be available, or which interfere with the best use or manner of development of the property.

The lot, less than 1/10 of an acre in size (4,223 square feet), was created even prior to 1944 (oldest Tax Office records) with the aforementioned dimensions. As an extremely small lot tapering from 37 feet to 25 feet at its smallest width, building and siting options are very limited, inasmuch as standard front and rear yard setbacks together consume 30 feet of a parcel's total depth. Yet this lot can contain a narrow dwelling provided setback variances are granted.

JUL 22 1988

The County zoning, RS-15, permits the construction of a single family dwelling, and the owner has continually paid the required property taxes on this parcel. There is no County law prohibiting the construction of a dwelling on lots below a certain size, and the variance provisions of the zoning ordinance exist to attempt reasonable solutions to situations of this nature which are not caused by the owner.

ALTERNATIVES

There are no design alternatives other than constructing a narrow dwelling and requesting front and rear yard setback variances due to the 25 feet to 37 1/2 feet depth of the lot. The alternative to granting a reasonable variance is to deny the application in which case this owner is deprived of using his land in the reasonable manner which its zoning designation allows.

INTENT AND PURPOSE

The intent and purpose of the setback requirements are to ensure that reasonable scale of light, air, circulation and spatial openness is preserved between a building, and its property lines and those of adjacent owners as well.

Given the small, shallow lot, and the narrow house to be built, the reduced setbacks are deemed a reasonable accommodation given the spaciousness and non-built up character of the surroundings and the very narrow house (18 feet deep) the landowner is willing to have.

In this case, the owner is willing to construct a very narrow 18 foot dwelling, thus allowing a 9 foot tapering to 6+ foot front and 5 foot rear yards where 15 feet is the code requirement (for front and rear yards) on this extremely shallow proportioned lot.

The owner is confronted with another difficulty which must be architecturally resolved, caused by the steep slope, and which involves the housing code (apart from the zoning code). The structure, as tentatively designed, may be considered a 2-story building because of the length of the "basement" which has to be built (due to the slope), therefore requiring a 10 foot setback according to the housing code whereas a 5 foot setback would suffice for a one story structure. Should this be the case (a two story determination made), a variance request of the Board of Appeals would be necessitated, in addition to this variance approval.

Based on the foregoing findings, the variance request would be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning Code and the County General Plan; will not be materially detrimental to the public's welfare; and will not cause substantial adverse impact to the area's character and adjoining properties.

Therefore, the Planning Director has concluded that this variance request be approved subject to the following conditions:

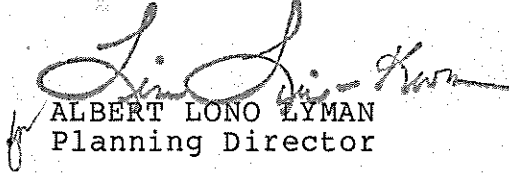
1. The applicant, its assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. Construction within the parcel shall consist of a single family dwelling no more than 18 feet wide. The rear yard setback and clearspace requirements shall be as shown on the site plan dated July 15, 1987, by Wes Thomas and Associates, submitted to the Planning Department. Roof overhangs for the front and rear yards shall not exceed 2 1/2 feet.
3. All rainwater runoff caused by the construction and establishment of the dwelling and its driveway access shall be contained and disposed of on this parcel.
4. Prior to or concurrent with the application for a building permit, the owner shall submit to the Planning Department, evidence of the State Department of health's approval of the method and density requirements of the wastewater disposal system to be utilized for the dwelling.
5. Should the final building design be considered a two story dwelling by the Building Division, a variance application by the owner to the County Board of Appeals and their subsequent approval will be necessitated in order to obtain a building permit.
6. A building permit for the dwelling must be secured within one year of the effective date of this variance approval and shall be completed within two years thereafter.
7. All other applicable State and County rules and regulations shall be complied with.

Should any of the foregoing conditions not be met, this variance request shall be deemed null and void.

Ms. Chrystal Yamasaki
Page 4
July 21, 1988

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

Sincerely,


ALBERT LONO LYMAN
Planning Director

DT:lv

cc: Dan Fitzpatrick
Department of Public Works