

CERTIFIED MAIL

October 17, 1988

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

Dear Ms. Yamasaki:

Variance Application (V87-55)  
Carl Naffz  
Tax Map Key 6-8-10:36, Lot 248

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 (covered lanai portion) to remain with a side yard setback of 4.03 feet and a clearspace of 0.23 feet in lieu of the minimum 10 feet and 5 feet clearspace requirement within the Single Family Residential (RS-10) zoned district. The subject property which consists of 14,060 square feet and identified by TMK: 6-8-10:36, is located on the east side of Auhili Loop and across of Auhili Place, Waikoloa Village, Unit 1-B, Waikoloa, South Kohala, Hawaii.

The approval is based on the following. Please note, however, that since there have been objections filed on the above request, they have ten (10) working days in which to file a request to have the Planning Commission review this application.

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 or manner of development of the subject property. The subject 14,060 square foot parcel was created in 1971. Building Permit No. 780865 was approved on April 12, 1978, for the construction of a 3 bedroom single dwelling residence with a carport and lanai. Plans approved to

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construct the existing dwelling are no longer available from the files in the Department of Public Works, Building Division. The application indicates that it appears that the wrong rear property corner was used and the setbacks held from that line. Final approval was granted on June 15, 1978, and it was assumed that all existing building improvements complied with governmental regulations. However, a field survey and map dated June 30, 1987, shows the existing dwelling (covered lanai) 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 applicant's own negligence due to the fact that the dwelling was constructed by a licensed contractor and 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 applicant.

#### ALTERNATIVES

That there are no reasonable alternatives to resolve the difficulty. An alternative is to remove that portion of the lanai that encroaches into the side yard setback area. However, this alternative would create a design hardship and would be unreasonable and burdensome to the applicant although it may have been a problem created by the applicant's contractor, but also one which was attributed to a possible governmental error made approximately 10 years ago. 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 parcel (lot 247), any future siting of a new dwelling or permitted structures on the vacant parcel with a required minimum 10-foot

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side yard setback may ultimately result in a minimum distance of 14.03' between the building walls. Therefore, while a portion of the existing dwelling (lanai area) 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.

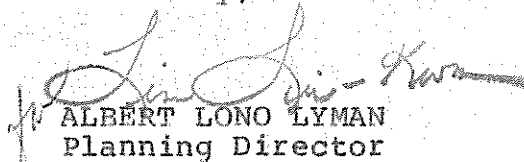
This variance request is approved subject to the following conditions:

1. The applicant, its successors or assigns, shall be responsible for complying with all stated conditions of approval.
2. The applicant complies with the minimum setback requirement of 5'-0" and 30" clearance between the roof and property line of the County Housing Code requirement.
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 single family dwelling shall be permitted under the non-conforming criteria established in the Zoning Code.
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 in a timely fashion, the Planning Director may nullify this variance permit.

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

Sincerely,

  
ALBERT LONO LYMAN  
Planning Director

MO:aeb

cc: Building Dept - Kona  
Carl Naffz