

CERTIFIED MAIL

April 15, 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 (V88-4)  
Applicant: Dave Lucas  
Tax Map Key 7-3-45:20

After reviewing the above application and the information submitted in behalf of it, the Planning Director by this letter hereby certifies the approval of the above variance request to allow an existing single family dwelling to remain with a side yard setback of 7.30 feet in lieu of the minimum 8 foot requirement as required in the Unplanned district. The subject property is 8,400 square feet in area, identified by tax map key 7-3-45:20 and is located on the north side of Mahilani Drive, approximately 150 feet west (makai) of the Mahilani Drive/Kilapa Street intersection, Kona Highlands Subdivision, Kalaoa 1st, North Kona, 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 petitioner of substantial property rights that would otherwise be available, or which interfere with the best use or manner of development of the property.

The relatively small lot, 8,400 square feet in area, is back to back with another (Lot C-103), but their east corners are offset by about 8 feet (see survey map dated February 18, 1988, Project 07302, Wes Thomas and Associates). The contractor

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assumed or was told the pin he used was the Northeast corner of Dave Lucas' lot. Instead, it was the Southeast corner of the pentagonal adjacent lot to the rear (north of Mr. Lucas') and the two lots' affected corners do not meet.

While this error in itself is not determined to be a hardship related to the land, it is a slightly unusual subdivision platting (lot layout) circumstance that 2 pins would be so close together (8 feet). But carelessness by the contractor or owner should not be an excuse, because a normal, routine measurement of the lot's pertinent dimensions would have revealed the proper pin location, especially in this subdivision where the lots are relatively close and similarly sized.

However, the siting of the dwelling has partially compensated for the deficient side yard by exceeding the minimum requirement at the other end of the dwelling. The length of the dwelling is 44 feet. At the north end, it has a setback of 7.30 feet, but at the south end it has a 12.30 foot side yard setback. The County requirement is 8 feet in this case. At mid-point along this axis, the dwelling is 9.8 feet from the side boundary. Therefore, only about one-fourth of the building's length protrudes into the required setback area.

The adjacent neighbor to the east has not objected to the variance request; nor has any of the general public.

Based on the foregoing, it has been determined that there are special and unusual circumstances applying to the subject property which exist to a degree which deprive the owner of substantial property rights that would otherwise be available, or which unreasonably interfere with the best use or manner of development of the property.

#### ALTERNATIVES

There are limited alternatives to resolving the situation. Removing .70 feet of the building or moving the structure itself would physically correct the setback violation. But this alternative, given these circumstances, is considered unreasonable. Granting the variance request is another alternative.

#### INTENT AND PURPOSE

The intent and purpose of the side yard setback requirement is to ensure that light, air, and open spatial considerations are afforded, to scale, between a building and its property lines and between a building and its adjacent neighboring parcels as well. In this case, the Lucas' dwelling protrudes .70 feet into the required 8 foot setback at one point of its

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length. However, it is partially compensated or offset by the canted siting of the house instead of its being parallel to the side boundary. As a result, there is a 12.30 feet setback at the other end of the house. The degree or amount of violation is therefore relatively small and there exists an offsetting aspect to the protrusion into the required setback. Also, since the affected neighbor has not objected to the variance application, the action to approve the request is deemed reasonable and appropriate.

Although there is the contention by the applicant that "the structure was built and appropriately inspected by the County building inspector," it should be noted that it is not the inspector's responsibility to determine the location of the boundaries.

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.

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

1. The applicant, his assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. There shall be no further construction within the subject 7.3 to 8.0 foot setback area.
3. Any water runoff within the subject 7.3 to 8.0 foot setback area shall be directed away from the adjacent property owner to the east.
4. All other applicable State and County rules and regulations shall be complied with.

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

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

Sincerely,  
  
ALBERT LONO LYMAN  
Planning Director

DT:lv

cc: Dave Lucas