

CERTIFIED MAIL

August 17, 1989

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

Dear Ms. Yamasaki:

Variance Application (V89-1)
Daniel T. Doran
Tax Map Key 7-6-23:71

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 2-story single family dwelling to remain with a side yard setback of 9.10 feet in lieu of the minimum required 10 feet side yard setback; and to allow the existing deck roof overhang with a side yard clear space of 3.76 ft. in lieu of the required 5 feet clear space setback allowed for projections. The subject property is 10,186 sq. ft. in area and identified by tax map key 7-6-23:71. It is located at 76-6301 Kaheiau Street on the northeast side (mauka) of the Kaheiau Street cul-de-sac turnaround, approximately 950 feet from its intersection with Lako Street in the Komohana Kai Unit I Subdivision, Holualoa I, North Kona, Hawaii.

The approval is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special or unusual circumstances which apply to the subject property which exist to a degree which deprives the applicant of substantial property rights that would otherwise be available and to a degree which obviously interferes with the best use or manner of development of the property.

With 12 years experience as a licensed general contractor, the applicant exercised every precautions to accurately site and measure the placement of the dwelling. The applicant assumed that the dwelling siting and construction complied with all governmental regulations as appropriate building permit and subsequent construction inspection were approved upon completion of the dwelling.

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However, a field survey conducted in October 1988 on the adjacent parcel north of the subject property and subsequently additional survey on the subject property revealed that only the northwest corner of the existing dwelling and not an entire wall encroached into the side yard setback, approximately 10.8 inches or 0.9 foot.

The applicant recognized the importance of setback distances and realized that the resultant error is his responsibility. Nevertheless, the denial of the variance to retain the existing dwelling with a 9.10 foot side yard setback would impose an undue economic as well as a design hardship on the applicant.

Due to the height and expansiveness of the deck roof overhang, the variance request to allow the 3.76-foot clear space projection be denied. The applicant agrees to comply with stipulation that the projection be reduced to the conforming 5 feet clear space setback requirement.

ALTERNATIVES

There are no other reasonable alternatives to resolve the difficulty. The alternative to relocate the existing dwelling to comply with the minimum 10 feet side yard setback requirement or to remove 10 inches of the northwest corner would be an unreasonable and burdensome solution to the applicant. The action taken by the applicant to legitimize the structure is one which is being done of his own accord. In view of the foregoing, any other alternatives in resolving this situation would be putting excessive demands upon the applicant when a more reasonable solution is available.

The deck's roof proximity at its 15 or 16 feet height is determined to be imposing and disturbing to the adjacent property. Therefore, the corner of the deck roof overhang is required to be structurally reduced approximately 14.88 inches, so as to conform to the clear space projection setback requirement.

INTENT AND PURPOSE

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 County General Plan. The intent and purpose of the setback requirements are to ensure that sufficient light, air, circulation, and visual and spatial considerations are available between structures and property lines. In this

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particular request, the location of this existing dwelling will still provide for these functions, although it would not meet the minimum 10 foot setback as required by the Zoning Code. The adjacent lot to the north is presently vacant. However, should a proposed dwelling be constructed on the premises with its building wall extending to the minimum 10 foot side yard setback, there will be approximately 19.1 feet between the two structures which would still be sufficient. Thus, the existing location would still employ and afford the air, light and circulatory functions that is the basis of requiring setbacks.

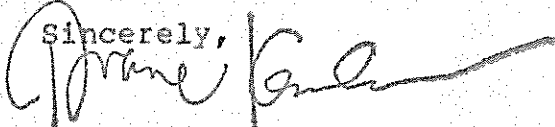
In view of the above issues, it is further determined that the granting of the variance would not be considered to be materially detrimental to the public's welfare; and will not cause substantial adverse impact to the area's character or to adjoining properties.

The deck roof overhang will considerably cause substantial adverse impact to the adjoining property. As such, it is determined that the variance request to allow the 3.76-foot clear space projection be denied.

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

1. A building permit encompassing the roof's alteration shall be obtained within 30 days of receipt of this variance. Removal of the northwest corner of the deck's roof to the extend where it conforms with the required 5 feet clear space shall be completed within 90 days of receipt of this variance.
2. Compliance with all other applicable State and County regulations.
3. Should any of the foregoing conditions not be met, the Director may proceed to declare this variance null and void.

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

Sincerely,


DUANE KANUHA
Planning Director

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cc: Building Division, DPW
Daniel T. Doran