

CERTIFIED MAIL

February 10, 1989

Mr. Clement Coite
 931 San Anselmo Ave.
 San Anselmo, CA 94960

Clement Coite

73-1173 Loloa Dr.

KR 96740

Re-mailed

FEB 23 1989

Dear Mr. Coite:

Variance Application (V88-38)
 Variance from Minimum Side Yard Setback Requirements
 Tax Map Key 7-3-14:3

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 dwelling to remain where built, with a 5.69 feet in lieu of 8 feet side yard and a clear space of 1.58 feet in lieu of 4 feet as required by the Zoning Code. The subject property is 7,500 sq. ft. in area, identified by tax map key 7-3-14:3 and is located on the south side of Loloa drive, 62 feet east of the Kiekie Street intersection in the Kona Wonder View Subdivision, Kalaea, 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 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 subject lot, parcel 3, is an average of 10 ft. below the level of the mauka parcel to the east. A similar rock wall is also along the makai or west boundary of the subject property. The survey map shows both rock walls canted the same angle away from the surveyed property line. It is evident that both rock

FEB 13 1989

walls were apparently used, erroneously it has turned out, as the property lines; the subject dwelling would indeed have met the setback requirements of the Zoning Code had the rock wall been the actual boundary line. Unfortunately, there are no copies of the dwelling's building permit on file. These circumstances are considered special and unusual with regard to the property which caused the house to be sited where it is in violation of the setback requirement.

Furthermore, the subject dwelling is virtually hidden from the mauka property owner's view by the presence of the rock wall and heavy foliage which has grown on, through, and over it. Very importantly, the mauka adjacent property owner (Parcel 2) does not object to the intrusion into the setback area by her neighbor below. The two houses have co-existed with this siting situation for almost twenty years with no record of objection or complaint over the building setback issue.

ALTERNATIVES

There are few alternatives available to correcting this situation. One would be to attempt acquisition of some of the mauka property, but this would require the mauka property to be reduced in size below the county's minimum (7,500 sq. ft.). Another would be to move or cut the dwelling. But this is considered to be unreasonable; it would affect the structural stability of the dwelling in order to attain the code required setback distance.

Requesting the variance was the remaining alternative.

INTENT AND PURPOSE

The intent and purpose of the side yard setback requirement are to afford neighboring and adjacent properties and buildings a degree of open space, air circulation, light, visual and spatial considerations between them, in a scale proportionate to the neighborhood, and the immediate surroundings as well.

In this case, the space required by the Zoning Code has been invaded by the subject owner's building and roof wherein it is closer by 3.55 ft. and 2.42 ft., respectively. However, the situation is tempered by the fact that the the subject property and its mauka neighbor are on two very different levels of ground where the subject lot is 10 to 12 ft. below the mauka one. Along with the dense, high brush and trees growing on and within the rock wall between the properties, the lower, subject dwelling is virtually invisible from the mauka property which would be the most affected. Also, the mauka property owner does not object to the existing situation which has lasted almost 20 years without conflict.

Mr. Clement Cointe
Page 3
February 10, 1989

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 propertites.

Therefore, the Planning Director has concluded that this request be 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. No further additions or projections shall be permitted within the subject setback area unless it fully and completely conforms with the standard Zoning Code requirements. No other variance shall be approved for this property.
3. All other applicable State and County rules and regulations shall be complied with.

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

Sincerely,



DUANE KANUHA
Planning Director

DT:lv

cc: Sheila Maguire