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CERTIFIED MAIL

December 24, 1990

Mr. Oren Dorsett  
73-965 Ahikawa Street  
Kailua-Kona, HI 96740

Dear Mr. Dorsett:

Variance Application (V90-3)  
Sideyard Setback  
Tax Map Key 7-3-28:61

After reviewing the request and the information submitted in its behalf, the Planning Director by this letter hereby certifies the approval of your variance request to allow a proposed on-grade swimming pool to be sited five (5) feet from the west side property line in lieu of the minimum fifteen (15) foot side yard setback and ten (10) foot clearspace requirements as stipulated in the Zoning Code. The subject property, consisting of 21,391 square feet in area, is located on the north (Kohala) side of Ahikawa Street, approximately 500 feet west of its intersection with Nana Street in the Kona Coastview Subdivision, Kalaea 3rd, North Kona.

The approval of this variance is based on the following findings:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances applying to the subject real property which exist to a degree which interferes with the best use or manner of development of the property.

A single family dwelling was constructed on the subject property in 1977. The rest of the property has since been improved for nursery purposes with irrigation lines and a shade house. Further, most of the other portions of the property is underlaid with blue rock which would pose some construction problems and costly excavation.

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The applicant recognizes the importance of setback distances and realizes that the resultant error is his responsibility. Nevertheless, the denial of the variance to retain the siting of the proposed swimming pool with a 5 foot side yard setback and clear space setback would impose an undue economic as well as a design hardship on the applicant.

#### ALTERNATIVES

There are no other reasonable alternatives to resolve the difficulty. The alternative to relocate the partially constructed swimming pool to comply with the required minimum 15 foot side yard setback and 10 foot clearspace setback requirements 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.

Any other alternative in resolving this situation would be putting excessive demands upon the applicant when a more reasonable solution is available.

#### INTENT AND PURPOSE

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 particular request, the location of this proposed swimming pool will still provide for these functions, although it would not meet the required 15 foot side yard setback and 10 foot clearspace setback from the side property line as required by the Zoning Code. The encroachment is along the side boundary, however, there is an 8-10 foot bank within the affected adjoining property which has plumeria plantings and other trees grown along this boundary area. The existing dwelling and the carport on the adjoining property is situated approximately 55 feet and 30 feet, respectively, from the affected side boundary. There is also a 20-foot wide gravel driveway (within the 30-foot area) which runs along the base of the bank. In addition, the owner of the affected adjoining property has no objections to the variance request. Thus, the existing location of the swimming pool would not impact the adjoining property and at the same time would still employ and afford the air, light and circulatory functions that is the basis of requiring setbacks.

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In view of the above elements, it is further determined that the granting of the variance would not be considered to be materially detrimental to the public's welfare; would not be inconsistent with the intent and purpose of the Zoning Code nor the General Plan; and will not cause substantial adverse impact to the area's character or to the adjoining property.

Based on the foregoing, the Planning Director has concluded that this 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. Within ninety (90) days of receipt of this variance permit, the owner shall obtain the necessary building approvals from all affected agencies.
3. All other applicable State and County rules and regulations shall be complied with.

Should any of the foregoing conditions not be met, the Director may proceed with declaring this Variance Permit null and void.

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

Sincerely,

  
NORMAN K. HAYASHI  
Planning Director

AK:syw

cc: Building Division, DPW  
West Hawaii Office