CERTIFIED MAIL

July 23, 1991

Mr. Edmund Loo
c/o Chrystal Thomas Yamasaki, R.L.S.
Wes Thomas & Associates, Inc.
75-5722 Kalawa Street
Kailua-Kona, HI 96740

Dear Mr. Loo:

Variance Application (V91-4)
Applicant: Edmund Loo
Tax Map Key 6-8-17:21

We regret to inform you that after reviewing your application and the information presented in its behalf, the Planning Director is hereby denying your variance request. The reasons for the denial are as follows:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are not found to be 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 site is a corner lot, 14,277 sq. ft. in area, which therefore, has two (2)front yards and two (2) side yards. It contains adequate dimensions to containing the 17% groundcover or "footprint" of the structure. Although gently to moderately sloping, the siting of the dwelling on this lot is not constricted. The entire subdivision is characterized by sloping, undulating terrain; this lot is typical of the others in this area.

The building permit and the site plan accompanying it both stipulate 10 ft. side yards, but the contractor built it with a 3.2 ft. side yard tapering to 5.6 ft.

JUL 24 1991

The applicant's letter (by his surveyor) attempts to place responsibility for the builder's encroachment upon the County Building Inspector by stating, "It is our contention that special and unusual circumstances exist in that the structure was built and appropriately inspected by the County Building Inspector." There is the distinct inference, by this statement, that the County therefore approved the faulty siting of the dwelling or did not find the error and therefore contributed directly to the wrong enplacement. It is completely wrong to make the inference that some fault lies with the County inspection. It is not at all the County's responsibility to locate the property lines and ascertain the proper locating of the building. It is solely the builder's responsibility to place the building as called for on the building plans approved by the County. The builder can not pass on that responsibility which is his alone. The present encroachment is the builder's self-imposed situation and was not caused by any aspects of the real property.

Based on the foregoing, it has been determined that there are not found to be 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 alternatives, which involve some cost. The first is to seek an exchange of land with the most affected adjacent landowner (Lot #180) or a purchase of the land. This approach is being undertaken, although its outcome is not predictable. There is land area available, the property is vacant and foreseeably available at a price. The second is to renovate and/or remove the portions of the building which do not meet the setback requirements. These alternatives must be considered because the builder is an experienced licensed contractor who must know how to site a building, the building site is a corner lot which boundaries are easily measured and the errors are completely self-imposed. The slightest minimum of precautions would have prevented the mishap. The builder can not attribute the fault to the county inspector.

The approval of a variance is obviously the "easiest" solution for the applicant. However, the variance criteria are

established in order to differentiate between neglectful, self imposed or willfull acts of a builder and the situations involving special and unusual circumstances with no real alternatives. After-the-fact applications commonly state that the violation was not intentional, but this reason alone can not prevail as the singular rationale for approving a variance application.

INTENT AND PURPOSE

The intent and purpose of the setback requirement, side yard in this case, is to afford a common standard amount of open space, air, light, circulation and related spatial considerations between properties. The side yard standard has long been established at 10 ft. for lots of this size, which also means buildings on adjacent properties would be separated by 20 ft. of space. In this case, however, the builder placed the building only 3.2 ft. away from the boundary. If the applicant's variance were granted, the neighbor would still have to build 10 ft. from her mutual side boundary and the applicant would have the advantage over the neighbor, at the neighbor's own expense of being crowded and not of her own volition.

The applicant also conveys the reason that the dwelling site was asked to be moved from its originally intended positioning by the Waikoloa Village Association Design Committee. The letter, however, is vague and says only "Mr. Loo . . . was willing to make the changes . . . ." Whether it was changed or not, however, the County's Building Code specifically states that " . . . approved plans and specifications shall not be changed, modified or altered without authorization from the building official and all work shall be done in accordance with the approved plans." The approved plans and specifications specifically state "10 ft." as the distance to the nearest (in this case, the side) boundary. No varying from this without building official authorization is permitted.

Based on the above findings, The Planning Director has determined that the subject variance request be denied.

The Director's decision is final, except that within thirty days after receipt of this letter, you may appeal the decision in writing to the Planning Commission in accordance with the following procedures:

1. Non-refundable filing fee of one hundred dollars ($100); and

2. Ten copies of a statement of the specific grounds for the appeal.

Should you decide to appeal, the Planning Commission shall conduct a public hearing within a period of ninety (90) days from the date of receipt of a properly filed appeal. Within sixty (60) days after the close of the public hearing or within such longer period as may be agreed to by the appellant, the Planning Commission shall affirm, modify or reverse the Director's action. A decision to affirm, modify or reverse the Director's action shall require a majority vote of the total membership of the Planning Commission. A decision to defer action on the appeal shall require a majority vote of the Planning Commission members present at the time of the motion for deferral. If the Planning Commission fails to render a decision to affirm, modify, or reverse the Director's action within the prescribed period, the Director's action shall be considered as having been affirmed.

All actions of the Planning Commission are final except that, within thirty (30) days after notice of action, the applicant or an interested party as defined in Section 25-27.2 of this article in the proceeding before the Planning Commission may appeal such action to the Board of Appeals in accordance with its rules.

All actions of the Board of Appeals are final except that they are appealable to the Third Circuit Court in accordance with Chapter 91 of the Hawaii Revised Statutes.

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

Sincerely,

NORMAN K. HAYASHI
Planning Director

DT:smo
2516D

cc: Mr. Edmund Loo
Robert D. Triantos, Esq.
DPW - Building Division
West Hawaii Office (w/Encl)