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Director

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Planning Department

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CERTIFIED MAIL

November 23, 1992

Robert D. Triantos, Esq.
Carlsmith Ball Wichman Murray
Case Mukai & Ichiki
P. O. Box 1720
Kailua-Kona, Hawaii 96745

Dear Mr. Triantos:

Variance Application (V92-17)
Petitioner: Joseph & Elizabeth Wilson
Variance from Minimum Front and Side Yard Setback
Requirements
Tax Map Key: 7-7-03: 39

After reviewing your application and the information submitted in behalf of it, the Planning Director certifies the approval of your variance request to allow the existing 23.5 foot and 22.5 foot front yard setback for a recreation room and a 14.1 foot and 14.4 foot side yard setback for a garage building in lieu of the minimum 25 foot front yard setback and 15 foot sideyard setback as required by Chapter 25 (Zoning Code), Article 7 (Residential and Agricultural District), Section 25-148 (a)(1)(2) (Minimum Yards)

The subject property is situated on the south side of the Kona Sunshine Estates subdivision road approximately 190 feet from the Ono Road/Kona Sunshine Estates Subdivision Road intersection in the Kona Sunshine Estates Subdivision, North Kona, Hawaii, TMK: 7-7-03: 39.

The Planning Director has concluded that the variance request from the minimum front and side yard setback requirements should be approved, based on the following findings:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances that exist which would warrant or necessitate a waiver from the minimum setback requirements for the existing recreation room and garage building.

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The existing setback problem did not surface until a new survey of the subject property was conducted in 1992 approximately 6 and 18 years after completion of the subject improvements. The original plans for the existing recreation room and garage building were approved by the Planning Department and the Building Permits were issued by the Department of Public Works - Building Division as the plans for both improvements had shown that all required building setbacks were to be complied with.

It should be noted that the present owners had no control over the encroachment problems and are sincerely trying to resolve this long standing problem with respect to the requested variances. Their recognition to resolve these problems to validate the mistakes that were made in 1974 and 1986 is a circumstance which needs to be considered in this application.

The subject property has a moderate east to west slope and has frontages onto the subdivision road to the east and west. There is a difference of approximately 3 to 6 feet in elevation between the subject property and the parcel (parcel 38) to the west. Parcel 38 is of a minor flag lot design. The existing garage building encroachment of .6 and .9 feet into the side yard setback is adjacent to the pole portion of the flag lot which is considered a side property line. The existing recreation room building encroachment of 1.5 and 2.5 feet within the front yard setback area along the two front property lines for this corner lot.

The triangular configuration of the subject property with the sloping topography and the location of the property pins of the subject and adjacent properties reinforces the assumption that the laying of the foundation for both structures was due to a staking error in the field.

It can be readily seen that because of the topography of the property and the location of the pins within this sloped area. In these instances, the horizontal measurement of the setback can be easily mistaken because the measurement is not being done on a horizontal plane. Without the benefit of a surveyor laying out the location of the recreation room and the garage building, it can be seen how the two buildings were mistakenly located. The vertical measurement in relationship to the horizontal measurement when measuring a level plane especially on sloping land can be easily mistaken, if not properly done by survey instruments. It appears that the two

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buildings were not properly located by a surveyor thus creating a greater degree of uncertainty with respect to correct measurements. This is validated by the survey conducted by Wes Thomas on August 3, 1992.

Therefore, considering the foregoing facts, it is determined that there are special or unusual circumstances applying to the subject property which exist either to a degree which deprives the owner or applicant of substantial property rights that would otherwise be available or to a degree which obviously interferes with the best use or manner of development of the subject property.

ALTERNATIVES

There are no reasonable alternatives in resolving the difficulty of the applicant. Alternatives available to the petitioner include a possible consolidation/resubdivision action of the subject property and the adjacent lots, removing the improvements or remodeling the improvements. The consolidation/resubdivision alternative is not a viable alternative due to the location of the driveway to parcel 38 and the two frontages of the property.. The triangular configuration of the subject property in conjunction with the corner lot location and design of the adjacent parcel to the west does not offer any alternatives for a consolidation/resubdivision option. The resiting or remodeling of the improvements is economically unreasonable and would disrupt the design, function and architecture of the existing improvements.

Based on the above cited considerations, there is no reasonable available area for resiting and/or remodeling the improvements without excessive cost and undesirable design changes for the unfortunate staking error that was done. The petitioner is also unable to consider a consolidation/resubdivision alternative. Therefore while these alternatives are available to the petitioner, they are deemed to be unreasonable and would place excessive demands on the petitioner when a more reasonable alternative is available by the granting of this variance application.

INTENT AND PURPOSE

The intent and purpose of requiring buildings setbacks within a subdivision is to assure that adequate air and light circulation is available between structures. The subject recreation room and garage building though not providing the

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necessary setbacks do provide for enough setback to allow for light and air circulation.

The garage building which encroaches .6 and .9 feet into the side yard setback property line is also adjacent to the flag pole driveway access to parcel 38. Therefore, the area adjacent to this side property line will not be utilized for any building purposes and as such will not be seriously affected from the granting of this variance for the garage building structure. In addition, the location of the recreation building adjacent to the two front property lines will not seriously affect any adjacent properties. The existing setbacks though not meeting the minimum requirement will provide adequate light and air circulation between the two front property lines and the recreation building. The existing dwelling on parcel 38 is approximately 75 feet away from the subject area.

Thus, in distance terms, the required setbacks between any two structures on two separate lots are being provided. In addition, the location of the garage building in relationship to the driveway to parcel 38 will lessen the impact of the building encroachment.

In this particular case, the primary impacted property is the parcel located to the west of the subject property which is adjacent to the garage building. While the Zoning Code requires a minimum 25 foot front and 15 foot side yard setback, the 1.5 and 2.5 foot encroachments for the recreation building and .6 and .9 foot encroachments for the garage building in this particular case is only for two corners of the recreation building and two corners of the garage building. The rest of both structures complies with the minimum yard setbacks requirements. The minor degree of the requested setbacks relative to the minimum required was also a consideration in the granting of this variance.

In addition, there were no objections raised to the variance request from any of the property owners within the 300 foot radius of the subject property who were notified of this variance request. The Department of Public Works also had no objections to the proposed variance request.

Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning and Subdivision Codes and the County General Plan; will not be materially detrimental to the

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public's welfare; and will not cause substantial adverse impact to the areas character and to adjoining properties.

This variance request is 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. That all future improvements on the subject property shall be in compliance with all zoning code requirements and no other setback variances shall be considered for any development of this property.

Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Should you have any questions, please feel free to contact Royden Yamasato of our West Hawaii office at 329-4878.

Sincerely,



NORMAN K. HAYASHI
Planning Director

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Enclosure

cc: West Hawaii Office