

December 15, 1972

Mr. Leonard T. Wadsley
Kurtistown
Hawaii 96760

Re: Variance Application
Tax Map Key 1-6-59:58

The Planning Commission at its preliminary hearing on December 14, 1972 reviewed your application for a variance to allow a 16'-0" front setback in lieu of the required 30'-0" setback for a water tank located in the Hawaiian Acres Subdivision, Puna, Hawaii.

This is to inform you that the Commission voted to deny your request based on the following considerations:

1. It has been found that no special conditions exist with respect to the land which would result in unnecessary hardship if the ordinance were literally enforced. There are no adverse terrain features which would hinder the location of the subject structure while respecting all required setbacks.
2. Any hardships resulting from this action would be self-imposed inasmuch as the structure was not constructed according to the plans submitted and approved for a building permit.

As your request has been denied, you are now required to move the subject structure to comply with the required thirty (30) foot setback or appeal the decision of the Planning Commission if you find that the action of the Planning Commission was based on an erroneous finding of a material fact, or that the Commission has acted in an arbitrary or capricious manner, or had manifestly abused its discretion.

Should you decide to appeal the decision of the Commission in the denial of your variance request, a petition setting forth the following shall be submitted to the Board of Appeals within fifteen (15) days from the date of action and accompanied by a filing fee of ten dollars (\$10.00):


DEC 18 '72

Mr. Leonard T. Wadsley
Page 2
December 15, 1972

1. Name, mailing address and telephone number;
2. Identification of the property and interest therein;
3. The particular provision of the Zoning Ordinance or Subdivision Ordinance or regulation in question;
4. All pertinent facts;
5. The action of the Commission;
6. Reasons for the appeal, including a statement as to why the appellant believes that the Commission's action was based on an erroneous finding of a material fact, or that the Commission has acted in an arbitrary or capricious manner, or had manifestly abused its discretion.

Inasmuch as no public hearing will be held on this matter, we will be returning your filing fee as soon as the refund is processed. We will be forwarding you a certified copy of the Order as soon as the document is prepared.

Should you have any questions regarding the above, please feel free to contact Glenn Miyao or Sidney Fuke of the Planning Department at 935-5721, extension 221.



Mauricio Valera, Jr.
Chairman

lat

cc Building Dept.

PLANNING COMMISSION OF THE PLANNING DEPARTMENT

COUNTY OF HAWAII

In the Matter of the Appeal of)
Leonard Wadsley)
Tax Map Key 1-6-59:58)
_____)

Variance Application

No. 319

FINDINGS OF FACT

CONCLUSIONS OF LAW

AND

DECISION AND ORDER

PLANNING COMMISSION OF THE PLANNING DEPARTMENT

COUNTY OF HAWAII

In the Matter of the Appeal of)
Leonard Wadsley)
Tax Map Key 1-6-59:58)
_____)

Variance Application
No. 319

FINDINGS OF FACT

CONCLUSIONS OF LAW

AND

DECISION AND ORDER

The above-entitled matter was brought on for a preliminary hearing before the Planning Commission of the Planning Department, County of Hawaii, on the 14th day of December, 1972, in the Planning Department's Conference Room, County Building, Hilo, Hawaii, at which hearing Leonard Wadsley, the applicant, appeared. The Planning Commission having heard the testimony and having examined the exhibits does hereby declare its Findings of Fact, Conclusions of Law, and Decision and Order.

FINDINGS OF FACT

1. An application requesting a variance from the minimum front yard building setback as regulated by the agricultural (A-3a) zoned district was received on November 13, 1972.
2. A preliminary hearing on the above matter was held on December 14, 1972.
3. The application requested a front yard setback for a water tank of 16'-0" in lieu of the required 30'-0" setback.
4. The property under consideration is a 3.0 acre parcel located within the Hawaiian Acres subdivision, Puna.
5. A building permit (#52873) for a dwelling was issued in June 1972 and the dwelling was subsequently constructed.
6. A building permit (#53115) for the subject water tank was issued in July 1972.
7. Both plans designated a minimum front setback of 30'-0" for the dwelling and tank. The tank was proposed to be structurally attached to the dwelling. However, the tank was constructed to the front of the dwelling, 16'-0" from the front property line.
8. According to the applicants, they are unable to relocate the tank because:

- a. Present location is on solid rock foundation and on the highest point available for gravity flow.
- b. Area surrounding dwelling is low and will not provide a firm foundation.
- c. During heavy rains, portion of surrounding land is under water.

9. It was recommended by staff that the request be denied as it was found that no special conditions exist with respect to the land which would result in unnecessary hardship if the ordinance were literally enforced. There are no adverse terrain features which would unreasonably hinder the location of the subject structure while respecting all required setbacks. Any hardships resulting from this action would be self-imposed inasmuch as the structure was not constructed according to the plans submitted and approved for a building permit.

10. It was moved and seconded that the request be denied. The motion carried by a four to zero vote.

CONCLUSIONS OF LAW

1. The Planning Commission has jurisdiction to hear and determine appeals requesting variances from the Subdivision and Zoning Ordinances.

2. All procedural requirements as prescribed by law have been complied with.

3. Under Section 5-4.3(g) of the Hawaii County Charter, a variance may not be granted unless there are special or unusual circumstances applying to the subject property which would result in unnecessary hardship if the ordinance were literally enforced, and the granting of the variance would not be contrary to the public interest.

4. The requirements for the granting of a variance have not been met.

DECISION AND ORDER

Based upon the testimony and exhibits introduced at the hearing and the foregoing Findings of Fact and Conclusions of Law, it is the decision of the Planning Commission and it is hereby ordered that a variance from the requirements of Section 13 of Zoning Ordinance No. 63, pertaining to minimum front yard building setback, of Tax Map Key 1-6-59:58 located in the Hawaiian Acres Subdivision, Puna, Hawaii, be and is hereby denied on its merits.

Dated at Hilo, Hawaii, this 27th day of February, 1973.


Ed C. Watt, Chairman