

PLANNING DEPARTMENT
County of Hawaii
Hilo, Hawaii

APPLICATION FOR ADMINISTRATIVE VARIANCE)
by)
PAUL HOWARD) ADMINISTRATIVE
from) VARIANCE NO. 34
MINIMUM HEIGHT AND NUMBER OF STORIES)
in)
KALAMAKUMU 1st, SOUTH KONA, HAWAII)
_____)

ADMINISTRATIVE VARIANCE PERMIT

An administrative public hearing was held by the Planning Director of the County of Hawaii Planning Department on October 9, 1980, on the application of PAUL HOWARD for a variance from the minimum height and number of stories, more specifically, to allow the retention of a nearly completed single family dwelling at a height of three stories and 35'6" in lieu of the maximum height limit of 2 1/2 stories and 35 feet as stipulated within the Single Family Residential (RS) zoned district at Kalamakumu 1st, South Kona, Hawaii, Tax Map Key 8-2-05:18.

After hearing the case, the Planning Director has found:

Although a similar height variance request for the adjacent property was recently denied, it is felt that in this particular case, there are unusual circumstances applying to the nearly completed single family dwelling which would not apply to surrounding properties or improvements in the same zoned district. The zoning for this property is Single Family Residential - 7,500 square foot (RS-7.5). Within this zoned district, the maximum allowable height limit is 2 1/2 stories but not higher than thirty-five (35) feet.

In May of 1980, the petitioner applied for a Building Permit for the construction of the subject dwelling. The plans submitted reflected an 8 1/2 foot high open area between the finished grade and the first finished floor level. Under the Building Code requirement, if that area between the finished grade and the first finished floor level is in excess of six (6) feet, that area is then considered to be a story or floor. The plans submitted for a Building Permit noted that the height of the dwelling would be 35'-6"; thus, exceeding the maximum allowable height by six (6) inches.

The Building Permit was issued and the construction plans for the dwelling as described above was approved on May 5, 1980. Therefore, government had made an error by not checking the plans thoroughly and approving the construction of the dwelling at a height which exceeds the maximum requirement as stipulated in the Zoning Code.

Subsequent to receiving the approved Building Permit, the petitioner immediately proceeded to construct the dwelling which

is almost complete. The violation and error made by government was only discovered recently when the adjacent property owner came for a similar height variance request. Subsequently, a stop work order was issued to the petitioner.

Since government contributed to the violation by signing the construction plans and issuing the Building Permit, it is determined that unusual circumstances exist to a degree which obviously deprives the petitioner of substantial property rights which would otherwise be available, and also to a degree which obviously interferes with the manner of development of the property.

That the granting of the variance request will not constitute a grant of personal or special privilege inconsistent with the limitations upon other properties under identical district classification. The unusual circumstances described previously adequately distinguishes this request from others which may be submitted.

That the granting of the variance will not be inconsistent with the general purpose of the district or the intent and purpose of the Zoning Code. Furthermore, the granting of the variance will not militate against the County General Plan or will it be materially detrimental to the public welfare or injurious to improvements or property rights. The height limit of 35 feet is established to limit the visual impact of a structure to surrounding properties. Given the existing topography of the area in question the subject dwelling will not be visually obtrusive to its neighbors.

Therefore, the Planning Director hereby grants to the applicant a variance to allow the retention of a nearly completed single family dwelling at a height of three stories and 35'6" in lieu of the maximum height limit of 2 1/2 stories and 35 feet as stipulated within the Single Family Residential (RS) zoned district at Kalamakumu 1st, South Kona, Hawaii, Tax Map Key 8-2-05:18, pursuant to the authority vested in him by the County Charter, subject to the following conditions:

1. That the construction of the dwelling shall be completed within one (1) year from the date of approval of the Permit.
2. That the first floor shall be left opened and shall not be enclosed. Further, this first floor area shall not be converted to a livable or habitable area.
3. That all other applicable rules, regulations and requirements be complied with.

Should any of the foregoing conditions not be met, the Variance Permit may be deemed null and void.

The effective date of this permit shall be from October 15, 1980.

Dated at Hilo, Hawaii, this 24th day of July, 1981.

Sidney M. Fuke
SIDNEY M. FUCE, Director
Planning Department

APPROVED AS TO FORM AND LEGALITY:

Robert T. Kahan
Deputy Corporation Counsel
County of Hawaii
Date: 10 July 81

October 15, 1980

Mr. Paul Howard
31272 Pedro Street
South Laguna, CA 92677

Dear Mr. Howard:

Paul Howard Variance Application (V80-26)
Minimum Height and Number of Stories
Tax Map Key 8-2-05:18

After review of your application and the information presented at the administrative public hearing on October 9, 1980, the Planning Director is hereby certifying the approval of the variance to allow the retention of a nearly completed single family dwelling at a height of three stories and 35' 6" in lieu of the maximum height limit of 2 1/2 stories and 35 feet as stipulated within the Single Family Residential (RS) zoned district.

Approval of this request is based on the following findings:

Although a similar height variance request for the adjacent property was recently denied, it is felt that in this particular case, there are unusual circumstances applying to the nearly completed single family dwelling which would not apply to surrounding properties or improvements in the same zoned district. The zoning for this property is Single Family Residential - 7,500 square foot (RS-7.5). Within this zoned district, the maximum allowable height limit is 2 1/2 stories but not higher than thirty-five (35) feet.

In May of 1980, the petitioner applied for a Building Permit for the construction of the subject dwelling. The plans submitted reflected an 8 1/2 foot high open area between the finished grade and the first finished floor level. Under the Building Code requirement, if that area between the finished grade and the first finished floor level is in excess of six (6) feet, that area is then considered to be a story or floor. The plans submitted for a Building Permit noted that the height of the dwelling would be 35'-6"; thus, exceeding the maximum allowable height by six (6) inches.

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The Building Permit was issued and the construction plans for the dwelling as described above was approved on May 5, 1980. Therefore, government had made an error by not checking the plans thoroughly and approving the construction of the dwelling at a height which exceeds the maximum requirement as stipulated in the Zoning Code.

Subsequent to receiving the approved Building Permit, the petitioner immediately proceeded to construct the dwelling which is almost complete. The violation and error made by government was only discovered recently when the adjacent property owner came for a similar height variance request. Subsequently, a stop work order was issued to the petitioner.

Since government contributed to the violation by signing the construction plans and issuing the Building Permit, it is determined that unusual circumstances exist to a degree which obviously deprives the petitioner of substantial property rights which would otherwise be available, and also to a degree which obviously interferes with the manner of development of the property.

The granting of this particular variance request will not constitute a grant of special privilege inconsistent with the limitations placed upon other properties. The special and unusual circumstances described above adequately distinguishes this request from others which may be submitted.

It was further determined that the granting of the variance will not be inconsistent with the intent and purpose of the Zoning Code.

The conditions of approval are as follows:

1. That the construction of the dwelling shall be completed within one (1) year from the date of approval of the Permit.
2. That the first floor shall be left opened and shall not be enclosed.

Further, this first floor area shall not be converted to a livable or habitable area.

3. That all other applicable rules, regulations and requirements be complied with.

Should any of the foregoing conditions not be met, the Variance Permit may be deemed null and void.

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Please be informed that the official Variance Permit will be forthcoming under separate cover.

Should you have any questions in the meantime, please feel free to contact us.

Sincerely,



SIDNEY M. FUKU
Planning Director

BN:wkm

cc: Planning Commission
Building Division, Department of Public Works
Kona Services Office

bcc: Masa's Section