

PLANNING DEPARTMENT
County of Hawaii
Hilo, Hawaii

APPLICATION FOR ADMINISTRATIVE VARIANCE)
by)
DONALD ITO) ADMINISTRATIVE
from) VARIANCE NO. 46
MINIMUM SIDE YARD SETBACK REQUIREMENT)
in)
WAIAKEA, SOUTH HILO, HAWAII)
_____)

ADMINISTRATIVE VARIANCE PERMIT

An administrative public hearing was held by the Planning Director of the County of Hawaii Planning Department on November 7 and December 10, 1980, on the application of DONALD ITO for a variance from the minimum side yard setback requirement, more specifically, to allow the retention of a fence with a sideyard setback of 5+ feet in lieu of the minimum requirement of ten (10) feet at Waiakea, South Hilo, Hawaii, Tax Map Key 2-4-61:31.

After hearing the case, the Planning Director has found:

1. That there are special or unusual circumstances applying to the subject property and structure which do not generally apply to surrounding properties or improvements in the same zoned district. The petitioner has constructed a 7'-4" high wooden fence, approximately 33+ feet in length which is structurally attached to the existing single family dwelling. This fence was constructed without a Building Permit at an angle along the south side property line. About 11+ feet of this fence has been constructed within the side yard setback area. The remaining area, however, adequately meets the minimum setback requirement of ten (10) feet. The fence was constructed for privacy and protection of the dwelling from heavy winds and rain.

A dwelling constructed on the adjacent property has been situated in such an angle and manner that one corner of the dwelling is situated in close proximity to the affected portion of the petitioner's residence. In addition, the adjoining property has a finished grade elevation which is approximately 2-1/2 to 3 feet higher than the petitioner's property. As such, the need for a physical separation in the affected area is warranted.

The petitioner's dwelling in the area of the subject request is two (2) stories in height. Because of the height and the orientation of the dwelling, this portion of the residence is likely to receive added exposure from the wind and rain. The fence was constructed to improve the safety and welfare of this portion of the dwelling after it had experienced damages from heavy rain and high winds. Although this entire portion of the dwelling is subject to the same exposure, approximately 22 feet of the existing

fence adequately meet the minimum setback requirements. The remaining 11 feet, which is the subject of the petitioner's request, is a justifiable extension for reasonable protection of property improvements and structures.

2. That should this variance be denied, the special circumstances described above exists to a degree which would obviously interfere with the best manner of development of the subject property. The affected portion of the fence protects the dwelling from flooding and high winds improving both the safety and welfare of the structure. Although the fence was constructed without a Building Permit and in violation of the minimum setback requirements, the denial of the subject request would detract from the safety and welfare of the dwelling.
3. That the granting of the variance will not constitute a grant of personal or special privilege inconsistent with limitations placed upon other properties under identical district classification. The special circumstances described previously will adequately distinguish this application from others which may be submitted.
4. That the granting of the variance will not be materially inconsistent with the general purpose of the Single Family Residential District or the intent and purpose of the Zoning Code. Furthermore, the Variance will not be materially detrimental to the public welfare of injurious to improvements or property rights.

The affected portion of the fence is approximately 11 feet long and 1 foot 4 inches above what is permitted without a permit. The closest distance between the adjacent residence and the fence is approximately 15+ feet. Furthermore, the adjacent dwelling is sited in such an angle and manner that only one corner of the dwelling is situated in close proximity to the fence. Thus, it is felt that the granting of this particular variance request will not violate the spirit and intent of the minimum setback requirements which are to provide for light, air, and circulation.

Therefore, the Planning Director hereby grants to the applicant a variance to allow the retention of a fence with a side yard setback of 5+ feet in lieu of the minimum requirement of ten (10) feet at Waiākea, South Hilo, Hawaii, TMK: 2-4-61:31, pursuant to the authority vested in him by the County Charter, subject to the following conditions:

1. That no portion of the fence, within ten (10) feet of the side property line, shall be enclosed.
2. That no other setback variance shall be granted for future improvements. This condition shall be stipulated in the deed of the property and recorded with the Bureau of Conveyances.
3. That all applicable rules, regulations and requirements shall 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 January 12, 1981.

Dated at Hilo, Hawaii, this 21st day of January, 1981.



SIDNEY M. FUCE, Director
Planning Department

APPROVED AS TO FORM AND LEGALITY:

R. Ben Takazaki
Deputy Corporation Counsel
County of Hawaii

Date: 19 Jan 81

January 12, 1981

Mr. Donald Ito
1635 Maunakai Street
Hilo, Hawaii 96720

Dear Mr. Ito:

After review of your application and the information presented at the administrative public hearings on November 7, 1980 and December 10, 1980, the Planning Director is hereby certifying the approval of the variance to allow the retention of a fence with a side yard setback of 5+ feet in lieu of the minimum requirement of ten (10) feet.

Approval of this request is based on the following findings:

1. That there are special or unusual circumstances applying to the subject property and structure which do not generally apply to surrounding properties or improvements in the same zoned district. The petitioner has constructed a 7'-4" high wooden fence, approximately 33+ feet in length which is structurally attached to the existing single family dwelling. This fence was constructed without a Building Permit at an angle along the south side property line. About 11+ feet of this fence has been constructed within the side yard setback area. The remaining area, however, adequately meets the minimum setback requirement of ten (10) feet. The fence was constructed for privacy and protection of the dwelling from heavy winds and rain.

A dwelling constructed on the adjacent property has been situated in such an angle and manner that one corner of the dwelling is situated in close proximity to the affected portion of the petitioner's residence. In addition, the adjoining property has a finished grade elevation which is approximately 2-1/2 to 3 feet higher than the petitioner's property. As such, the need for a physical separation in the affected area is warranted.

The petitioner's dwelling in the area of the subject request two (2) stories in height. Because of the height and the orientation of the dwelling, this portion of the residence is likely to receive added exposure from the wind

and rain. The fence was constructed to improve the safety and welfare of this portion of the dwelling after it had experienced damages from heavy rain and high winds. Although this entire portion of the dwelling is subject to the same exposure, approximately 22 feet of the existing fence adequately meet the minimum setback requirements. The remaining 11 feet, which is the subject of the petitioner's request, is a justifiable extension for reasonable protection of property improvements and structures.

2. That should this variance be denied, the special circumstances described above exists to a degree which would obviously interfere with the best manner of development of the subject property. The affected portion of fence protects the dwelling from flooding and high winds improving both the safety and welfare of the structure. Although the fence was constructed without a Building Permit and in violation of the minimum setback requirements, the denial of the subject request would detract from the safety and welfare of the dwelling.
3. That the granting of the variance will not constitute a grant of personal or special privilege inconsistent with limitations placed upon other properties under identical district classification. The special circumstances described previously will adequately distinguish this application from others which may be submitted.
4. That the granting of the variance will not be materially inconsistent with the general purpose of the Single Family Residential District or the intent and purpose of the Zoning Code. Furthermore, the Variance will not be materially detrimental to the public welfare of injurious to improvements or property rights.

The affected portion of the fence is approximately 11 feet long and 1 foot 4 inches above what is permitted without a permit. The closest distance between the adjacent residence and the fence is approximately 15+ feet. Furthermore, the adjacent dwelling is sited in such an angle and manner that only one corner of the dwelling is situated in close proximity to the fence. Thus, it is felt that the granting of this particular variance request will not violate the spirit and intent of the minimum setback requirements which are to provide for light, air, and circulation.

Mr. Donald Ito
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The conditions of approval are as follows:

1. That no portion of the fence, within ten (10) feet of the side property line, shall be enclosed.
2. That no other setback variance shall be granted for future improvements. This condition shall be stipulated in the deed of the property and recorded with the Bureau of Conveyances.
3. That all applicable rules, regulations and requirements shall be complied with.

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

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 FUKU
Planning Director

BN/DK:lkt

cc: Masa's Section (PA)
Department of Public Works - Bldg. Dept.