

CERTIFIED MAIL

February 10, 1981

Mr. Warren Fenske
P. O. Box 3096
Kailua-Kona, Hawaii 96740

Dear Mr. Fenske:

Variance Application (V80-38)
Minimum Setback Requirement
Tax Map Key: 7-3-47:43

We regret to inform you that after reviewing your application and the information presented at the administrative public hearing on January 6, 1981, the Planning Director is hereby denying your variance request. The reasons for the denial are as follows:

There are no special or unusual circumstances applying to the subject property and proposed improvement which do not generally apply to surrounding properties or improvements in the same zoned district.

The subject property has a land area of 44,000 square feet; thus, there is ample land area in which the tennis court could be constructed meeting the minimum side yard setback requirement and the 10-foot separation requirement between the tennis court and the existing single family dwelling. Rather than construct the 120' x 60' tennis court in an east-west direction, by orienting it in a northeast-southwest direction, the minimum requirements could be adhered to. In doing so, the tennis court would meet the 20-foot side yard setback requirement as well as the structural separation requirement of ten (10) feet. By re-siting the tennis court in a northeast-southwest direction, it will be setback about 50+ feet from the dwelling and about 20+ feet from the existing swimming pool, although a 10-foot separation is not required between the tennis court and swimming pool.

Further, since a tennis court with a fence of not more than six (6) feet is permitted without meeting the minimum side yard

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Mr. Warren Fenske
Page 2
February 10, 1981

setback and structural separation requirements, as a alternative, the petitioner could construct the tennis court in accordance with the approved Building Permit.

Based on the above, the petitioner has not shown that special or unusual circumstances exist to a degree which would deprive him of substantial property rights which would otherwise be available or to a degree which obviously interferes with the best use or manner of development of the subject property.

The granting of this particular request would constitute a grant of personal or special privilege inconsistent with the limitations placed upon other properties under identical zoning classification. Other lots in the Kona Heavens Subdivision, which also have land areas of more than one (1) acre, must comply with the minimum setback requirements. It is determined that the subject property does not have severe topographical constraints to warrant the setback and structural separation requirements.

Since the tennis court will be located only four (4) feet from the side property line, it is felt that the granting of the request would be materially detrimental and injurious to improvements or property rights related to the property situated adjacent to the affected side property line. As such, the granting of this particular request would be inconsistent with the intent and purpose of the setback requirements as stipulated in the Zoning Code.

Please be informed that the final denial order will be forthcoming under separate cover.

The Director's decision is final, except that within ten (10) working 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 (\$100.00);
2. Ten (10) copies of a statement that clearly sets forth the legal and substantive bases for the appeal and that specifies the grounds which would support a finding that the Director's decision was in error; and
3. Any other plans or information required by the Planning Commission.

Upon receipt of the appeal, the Planning Commission shall conduct a public hearing within a period of ninety (90) calendar

Mr. Warren Fenske
Page 3
February 10, 1981

days, unless the time is waived by the appellant. 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 action from which the appeal was taken.

Should you have any questions on the matter, please feel free to contact us.

Sincerely,



SIDNEY FUKU
Planning Director

BN:lkt

cc: Department of Public Works
Kona Services Office - Colbert Nozaki

bcc: Masa, et al