

V505
approval

May 10, 1993

Mr. Brad Hosmer
74-5049 "A" Palani Road
Kailua-Kona, HI 96740

Dear Mr. Hosmer:

Variance Application (V 93-11)
Applicant: Brad Hosmer
Request: Fence Height
Tax Map Key: 7-4-9:3; North Kona

You request to construct a solid wooden fence, 8 ft. high along the south and west boundaries of your property to shield your home activities from being viewed by your neighbor to the south (on parcel 67), the Wong Yuen's. It would be a temporary structure.

The code requirement for such a fence along the boundary is "not to exceed 6 ft. in height."

The main reason for requesting an 8 ft. height is to block your home from view of the Wong Yuen's daughter, who has for years been yelling and shouting obscenities and invective at you and your family. The insulting phrases are shouted at you whenever she sees you or your family and friends. The police have on more than a number of occasions attempted to bring the shouting and invective to a halt. You have even gone to court in May 1993, and have obtained a court order (restraining order) against the parents which may partially restrain the daughter although it has not worked with another complainant.

You have therefore concluded that by erecting a barrier which will prevent the daughter from seeing your house and yard and your activities and will therefore make it futile for her to yell, as she would only see a blank wall when looking toward your home. The 8 ft. height of the wall would suffice to block her line of sight of any activity on your property.

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Furthermore, your request is temporary. You would remove the excess height of the wall or the entire wall itself should the daughter permanently move.

Having reviewed your application and the information submitted in its behalf, the Director has concluded that the application should be approved, for the following reasons:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special or unusual circumstances applying to the subject real 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 that property.

The property does not lend itself to the resolving of a problem caused by the neighbor because of the two properties' close proximity to each other. While police powers can often be utilized to protect people from this kind of abuse, the laws of Hawaii prevent the police from physically removing the offender from where she currently performs her verbal abuse. The current Zoning Code does not sufficiently allow the blocking of Ms. Wong Yuen's line of sight onto the Hosmer's property, and thus she continues to ply her verbal tirade against them. A tape recording sent with the application plus a staff conversation with Lt. Shiroma of the Kona Police Department have helped in verifying this situation.

ALTERNATIVES

The police are not able to force Ms. Wong Yuen to keep quiet; it would mean a 24 hour watch. Therefore, preventing Ms. Wong Yuen from seeing the applicant's family appears to be the only way to stop the verbal abuse - by blocking her line of sight into the adjacent property.

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To effectively block her view, an 8 ft. high wall is needed and the applicant requests permission to do so. There is no other passive alternative than to block Ms. Wong Yuen's visibility of the applicant's activities.

INTENT AND PURPOSE

The intent and purpose of the height restriction of fences or on structures within the building setback areas is to both permit view planes and still afford a moderate amount of privacy for the owner. "See through" strand material fences may go up to 8 ft., but not solid walls; therefore to prevent "see through" visibility, visual siting, an 8 ft. solid wall must be requested. There is no other passive alternative available.

In this case, the situation is indeed special and unusual in that the property does not lend itself to blocking one's view of an adjacent one; the circumstances are also unusual, and the attempted solution is requested only after all reasonable alternatives have been tried -- even police intervention -- to protect one's property rights. The variance request is, furthermore, only for a limited time -- the applicant will gladly remove it if the adversarial person permanently moves away.

Based on the foregoing findings, the variance request would be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning Code and County General Plan; will not be materially detrimental to the public's welfare; and will not cause substantial adverse impact to the area's character and adjoining properties.

Therefore, the Planning Director has concluded that this request be approved subject to the following conditions:

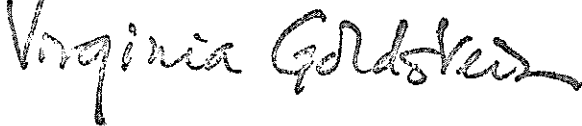
1. The petitioner his assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. The construction within the building setback area shall be limited to an approximately 185 ft. length of 8 ft. high boarded fence as shown on drawings submitted with the application.
3. A building permit for the fence must be secured within one year of the effective date of this variance and shall be completed within two years thereafter.

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4. This variance permit shall remain in effect until Ms. Wong Yuen, the offending neighbor, has permanently moved away from this home on parcel 67; thereafter, the applicant or subsequent owner of parcel 3 shall remove or conform the fence to Zoning Code standards.

Should any of the foregoing conditions not be met, the Director may proceed to declare the variance null and void.

Sincerely,



VIRGINIA GOLDSTEIN
Planning Director

DT:mjs
8967D

xc: West Hawaii Office
Public Works