

PLANNING COMMISSION

Planning Department
County of Hawaii
Hilo, Hawaii

Application for VARIANCE)
by)
WENDELL K. S. FOO)
from) Variance No. 433
SHORELINE SETBACK RULES AND)
REGULATIONS)
in)
Kahului 2nd, North Kona, Hawaii)
_____)

VARIANCE PERMIT

The County Planning Commission at a duly held public hearing on February 13, 1975 considered the application of WENDELL K. S. FOO for a variance from Rule 8, Shoreline Setback Rules and Regulations, Section 8.7.2, Chapter 205, Hawaii Revised Statutes, as Amended, more specifically to allow the construction of a 34-inch rock wall surrounding the existing wading pool which is situated within the shoreline setback area. The improvements will be construction on property located in Kahului 2nd, North Kona, Hawaii, Tax Map Key 7-5-19:16.

The Commission has found:

1. That the variance request would not be inconsistent with the intent and purpose of the Shoreline Setback Rules and Regulations. It is also determined that the proposed improvement would be in the best public interest and will not be materially detrimental to the public welfare nor will it be injurious to improvements or property rights related to property in the near vicinity. The proposed 34-inch rock wall will be constructed surrounding the existing wading pool within the exterior lines of the existing building. Inasmuch as the building and pool are situated along the shoreline, they are often subjected to high surf. The pool area is often times unusable especially during high surf. The primary purpose for the construction of the rock wall surrounding the pool is to protect the pool area from the high surf and accordingly, makes the pool more usable. Therefore, the proposed improvement within the Shoreline Setback area would, in essence, provide for the health, safety, and welfare of the occupants of the building.
2. That certain unusual circumstances exist to a degree which somewhat deprives the applicant of substantial property rights which would otherwise be available and also to a degree which obviously interferes with the best use or manner of development of the subject property. The

existing building, including the pool area, is situated on a property which is only 2,850 square feet in size according to the State Department of Taxation records. However, the shoreline of this particular property has been determined to be at the base or foundation of the pool and building. In light of this interpretation, the land area of this property has been substantially reduced. In applying all of the applicable minimum setback requirements in this peculiar situation, the net buildable area is almost nil. This particular 2,850 square foot ocean-front property was subdivided sometime in the 1940's and the building was constructed in 1963. Such size today would severely restrict any dwelling or similar construction from being built under the present codes and regulations. The present minimum building area requirement for a property within a Resort-Hotel zoned district at present is 15,000 square feet.

Based on these unusual circumstances, the applicant could not reasonably, if at all, use his property for its intended use if he had to comply with the present setback requirements. As a result, hardship will be caused to the applicant if the proposed improvement is not allowed on that portion of the land within the shoreline setback area.

Therefore, the Commission hereby grants to the applicant a variance to allow the construction of a 34-inch rock wall surrounding the existing wading pool which is situated within the shoreline setback area, pursuant to the authority vested in it by Section 8.9 of said Rules and Regulations, subject to the following conditions:

1. That construction of the proposed rockwall commence within one (1) year from the date of approval of the variance request.
2. That no portion of the proposed improvement shall encroach or extend beyond the shoreline, in this case, the foundation of the existing building.
3. That all applicable rules and regulations, including the "Plan Approval" process, be complied with.

Should these conditions not be met, the variance shall be deemed null and void.

The effective date of this permit shall be from February 13, 1975.

Dated at Hilo, Hawaii, this 1st day of March, 1975.

APPROVED as to FORM and LEGALITY
<i>Clifford W. F. Jones</i>
COMMISSIONER, COUNSEL COUNTY OF HAWAII
Date <u>3/4/75</u>

Arthur W. Martin
Arthur W. Martin, Chairman