

April 28, 1970

Mr. Frank J. Zuzak
P. O. Box 1011
Kailua-Kona, Hi 96740

Re: Variance from Front and Side Yard Building Setback Requirement
Waiaha 1st, North Kona, Hawaii, Tax Map Key 7-5-18:62

The Planning Commission at its duly held public hearing on April 23, 1970 considered your application for a variance from the zoning regulation to allow a 4 1/2-foot front yard building setback instead of the 20 feet and 1-foot side yard building setback instead of the 10 feet required in the Single Family Residential District. The purpose of the application is for the stucco wall already built and located on the makai side of Alii Drive, approximately 1500 feet south of the Kona Hilton Hotel in Waiaha 1st, North Kona, Hawaii, covered by Tax Map Key 7-5-18:62.

The Commission voted to deny your request because of the following reasons:

1. This situation for which relief from the zoning regulation is being sought was self-imposed as evidenced by the stop work citation, the notice given by the building inspector, and the construction to completion of the wall in question which was done without a building permit.
2. The granting of the variance would be inconsistent with the limitations placed on other properties similarly situated as the front building setback requirement is 20 feet and this unauthorized but already existing structure is 4 1/2 feet tapering to 12 1/2 feet which exceeds the leeway generally given other properties in similar situations.
3. This structure as situated becomes inconsistent with the purpose of the Ordinance and the district plan which attempts to establish and regulate building setback to provide adequate and appropriate space and balance in the use of land.

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4. The granting of this variance would compound and perpetuate a nonconforming situation regarding the building setback to a greater degree than is considered reasonable.

We will be forwarding the official Order as soon as the document is prepared.

You may appeal the decision of the Planning Commission to the Board of Appeals in accordance with Section 36-F of Ordinance No. 63 which reads: "Action of the Planning Commission shall be final but in the case the applicant is dissatisfied with the Commission's decision, he may within fifteen (15) days after such action is taken, appeal said decision in writing to the Board of Appeals.

The Rules of Procedure is available at the office of the Planning Department for 50 cents per set.

Anthony C. Veriato
Chairman

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PLANNING COMMISSION OF THE PLANNING DEPARTMENT

COUNTY OF HAWAII

In the matter of the appeal)
of Frank J. Zuzak from the)
front and side yard setback)
requirement, TMK: 7-5-18:62)
_____)

Variance No. 204

DECISION AND ORDER

AND

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I HEREBY CERTIFY THAT THE WITHIN
DECISION AND ORDER AND FINDINGS OF
FACT AND CONCLUSIONS OF LAW ARE
FULL, TRUE AND CORRECT COPY OF THE
ORIGINAL ON FILE IN THE OFFICE OF
THE PLANNING DEPARTMENT OF THE
COUNTY OF HAWAII, 25 AUPUNI STREET
HILO, HAWAII.

Hilo, Hawaii APR 30 '70

Lei A. Sanji
Secretary, Planning Commission

PLANNING COMMISSION OF THE PLANNING DEPARTMENT
COUNTY OF HAWAII

In the matter of the appeal)
of Frank J. Zuzak from the)
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_____)

Variance No. 204

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came on for hearing on April 23, 1970, Frank J. Zuzak, the applicant, appearing on his own behalf before Anthony C. Veriato, Masayuki Kai, Shigeji Kawasaki, Ed C. Watt and Skippy T. Yasutake, constituting the Planning Commission, with Anthony C. Veriato presiding and said Commission having heard the testimony and having examined the exhibits adduced, and having duly considered the issues and facts of the application, makes the following findings of fact:

1. A stop-work order was issued to the applicant on January 6, 1970, based on the following:
 - a. Building permit is required.
 - b. Approval not obtained from the Planning Department prior to construction of this structure.
2. A building permit (#43580) was issued on January 14, 1970; the wording of the permit being:
"install 1/2 bath in closet storage area,
install shoji doors around lanai and 6 ft.
private fence around patio area and concrete
block wind breaker and sound barrier wall in

front - no structural change. Planning Department signed said permit with the following condition attached - "not including front wall." Similar notation placed on site plan (drawing) accompanying permit.

3. Correction notice was issued to the applicant on February 5, 1970, the wording of the notice being: "permit does not include the front wall. Apply for a variance by the 19th of February, 1970. Legal action will be taken if the application is not submitted to the Planning Commission before February 20, 1970. Job performed without a permit."
4. Application for variance received on February 18, 1970.

CONCLUSIONS OF LAW:

Upon due consideration of the facts and applicable laws, this Commission makes the following conclusions of law:

1. This Commission, pursuant to Section 5-4.3 of the County Charter of the County of Hawaii, has the jurisdiction to hear and determine appeals requesting variances from the subdivision and zoning ordinances.
2. The Commission has found:
 - a. that the situation for which relief from the zoning regulation is being sought was self-imposed as evidenced by the stop-work citation, the notice given by the building inspector, and the construction to completion of the wall in question which was

done without a building permit;

- b. that the granting of the variance would be inconsistent with the limitations placed on other properties similarly situated as the front building setback requirement is 20 feet and this unauthorized but already existing structure is 4 1/2 feet tapering to 12 1/2 feet which exceeds the leeway generally given other properties in similar situations;
- c. that this structure as situated becomes inconsistent with the purpose of the ordinance and the district plan which attempts to establish and regulate building setback to provide adequate and appropriate space and balance in the use of land; and
- d. that the granting of this variance would compound and perpetuate a nonconforming situation regarding the building setback to a greater degree than is considered reasonable.

- 3. The Commission has found that the appeal of Frank J. Zuzak should be dismissed on the merits.

Let a decision and order in accordance herewith be entered.

Dated at Hilo, Hawaii, this 1st day of May
1970.

Anthony L. Terato
Chairman