

February 12, 1973

Mr. Frank Zuzak
P. O. Box 1596
Kailua-Kona, HI 96740

Re: Variance Application
Tax Map Key 7-5-18:62

The Planning Commission at its preliminary hearing on February 8, 1973 considered your application for a variance to allow a four and one-half ($4\frac{1}{2}$) foot front and a one (1) foot side yard setback in lieu of the fifteen (15) foot front and eight (8) foot side requirement for an addition to a dwelling located in Waiaha 1st, North Kona, Hawaii.

This is to inform you that the Commission voted to deny your request for deferment and subsequently voted to deny your request as it has been determined that no substantial change of circumstances has occurred which would justify a change of the Commission's past action. The Commission's past action was based on considerations which still apply to the applicant's request. These include:

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. This unauthorized but already existing structure is set back $4\frac{1}{2}$ to $12\frac{1}{2}$ 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

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to establish and regulate building setbacks to provide adequate space and balance in the use of land.

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.

As your request has been denied, you are now required to adhere to the 6-foot maximum height regulations for walls or appeal the decision of the Planning Commission if you find that the action of the Planning Commission was based on an erroneous finding of a material fact, or that the Commission has acted in an arbitrary or capricious manner, or had manifestly abused its discretion.

Should you decide to appeal the decision of the Commission in the denial of your variance request, a petition setting forth the following shall be submitted to the Board of Appeals within fifteen (15) days from the date of action and accompanied by a filing fee of ten dollars (\$10.00):

1. Name, mailing address and telephone number;
2. Identification of the property and interest therein;
3. The particular provision of the Zoning Ordinance or Subdivision Ordinance or regulation in question;
4. All pertinent facts;
5. The action of the Commission; and
6. Reasons for the appeal, including a statement as to why the appellant believes that the Commission's action was based on an erroneous finding of a material fact, or that the Commission has acted in an arbitrary or capricious manner, or had manifestly abused its discretion.

Inasmuch as no public hearing will be held on this matter, we will be returning your filing fee as soon as the refund is processed. We will be forwarding you a certified copy of the Order as soon as the document is prepared.

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Should you have any questions regarding the above, please feel free to contact Glenn Miyao or Norman Hayashi of the Planning Department at 935-5721, extension 221.



Ed C. Watt
Chairman

lat

cc Corporation Counsel
Building Department
Prosecuting Attorney

PLANNING COMMISSION OF THE PLANNING DEPARTMENT
COUNTY OF HAWAII

In the Matter of the Appeal)
 of)
 Frank J. Zuzak)
 Tax Map Key 7-5-18:62)
_____)

Variance Application
No. 320

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND
DECISION AND ORDER

PLANNING COMMISSION OF THE PLANNING DEPARTMENT
COUNTY OF HAWAII

In the Matter of the Appeal)
 of)
 Frank J. Zuzak)
 Tax Map Key 7-5-18:62)
_____)

Variance Application
No. 320

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND
DECISION AND ORDER

The above-entitled matter was brought on for preliminary hearing before the Planning Commission of the Planning Department, County of Hawaii, on the 11th day of January, 1973 and 8th day of February, 1973. The Planning Commission having heard the testimony and having examined the exhibits does hereby declare its Findings of Fact, Conclusions of Law, and Decision and Order.

FINDINGS OF FACT

1. An application requesting a variance from the minimum front and side yard building setback requirements as regulated by the single family residential (RS-10) zoned district was received on November 30, 1972.

2. The variance requested was to allow a front yard setback of four and one-half (4.5) feet and a side yard setback of one (1.0) foot in lieu of the required fifteen (15) foot front and eight (8) foot side yard requirements.

3. The structure in question was a wall addition to a dwelling located on the makai side of Alii Drive, Waiaha 1st, North Kona, approximately 500 feet north of Yama's Specialty Store located at the corner of Alii Drive and Lunapule Road.

4. The subject structure is located on a 9,496 square foot parcel.

5. In determining setbacks, the Zoning Ordinance requires that all walls, fences, and similar structures over six (6) feet in height be considered as accessory structures which are subject to setback requirements. The wall in question is ten (10) feet in height.

6. In February, 1970, an application requesting a similar variance was received. After a duly held preliminary hearing on April 2, 1970 and public hearing on April 23, 1970, the request was denied.

7. The applicant appealed the Commission's decision to the Board of Appeals; and after considering the appeal, the Board denied said request on August 13, 1970.

8. The applicant was subsequently informed to comply with the maximum height limit of six (6) feet or to remove the wall in question.

9. A preliminary hearing on the above matter was held on January 11, 1973. Action on the request was deferred pending disposition of possible litigation presently before the court on the applicant's failure to comply with the denial of a similar variance in April 1970 which was subsequently upheld by the Board of Appeals in August 1970.

10. On the advice of the offices of the Prosecuting Attorney and Corporation Counsel, the Planning Commission was advised to consider the application before the case is taken to court.

11. The application was again scheduled for a preliminary hearing on February 8, 1973.

12. Per letter dated January 28, 1973, the applicant requested a deferral of the matter as he was unable to attend the meeting of February 8, 1973.

13. At its meeting of February 8, 1973, the Commission voted to deny the request for deferment and subsequently voted to deny the request as it has been determined that no substantial change of circumstances has occurred which would justify a change of the Commission's

past action. The Commission's past action was based on considerations which still apply to the applicant's present request. These include (1) 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; (2) the granting of the variance would be inconsistent with the limitations placed on other properties similarly situated. This unauthorized but already existing structure is set back four and one-half (4-1/2) to twelve and one-half (12-1/2) feet which exceeds the leeway generally given other properties in similar situations; (3) the structure as situated becomes inconsistent with the purpose of the Ordinance and the district plan which attempts to establish and regulate building setbacks to provide adequate space and balance in the use of the land; and (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.

CONCLUSIONS OF LAW

1. The Planning Commission has jurisdiction to hear and determine appeals requesting variances from the Subdivision and Zoning Ordinances.

2. All procedural requirements as prescribed by law have been complied with.

3. Under Section 5-4.3(g) of the Hawaii County Charter, a variance may not be granted unless there are special or unusual circumstances applying to the subject property which would result in unnecessary hardship if the ordinance were literally enforced, and the granting of the variance would not be contrary to the public interest.

4. The requirements for the granting of a variance have not been met.

DECISION AND ORDER

Based upon the testimony and exhibits introduced at the hearing and the foregoing Findings of Fact and Conclusions of Law, it is the decision of the Planning Commission and it is hereby ordered that a variance from the requirements of Section 9-F of Zoning Ordinance No. 63, pertaining to allowable setbacks of Tax Map Key 7-5-18:62 located in Waiaha 1st, North Kona, Hawaii, be and is hereby denied on its merits.

Dated at Hilo, Hawaii, this 28th day of March 1973.


ED C. WATT, CHAIRMAN

