

February 12, 1973

Mr. Thomas P. McVeigh
c/o Mr. J. Parazette
P. O. Box 713
Kailua-Kona, HI 96740

Re: Variance Application
Tax Map Key 7-7-12:27

The Planning Commission at its duly held public hearing on February 8, 1973 considered your application for a variance to allow a 6'-0" front setback and resulting 2'-0" clear space between eave and front property line in lieu of the minimum 15'-0" setback and 10'-0" clear space requirement for a proposed dwelling to be located in the Sunset View Terrace Subdivision, Holualoa 4th, North Kona, Hawaii.

This is to inform you that the Commission voted to deny your request as it was found that there exists adequate area in the makai direction upon which the dwelling and carport can be located. No major revisions to the plans as submitted would be required if the structure were relocated to comply with the required setback. Although certain terrain conditions exist, such as the mentioned bank, these conditions do not exist to a degree which would render the property undevelopable or to a degree which would cause unreasonable hardships.

As your request has been denied, you may appeal the decision of the Planning Commission if you find 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):

FEB 13 1973

Mr. Thomas P. McVeigh

Page 2

February 12, 1973

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.

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

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cc Corporation Counsel
Building Department

PLANNING COMMISSION OF THE PLANNING DEPARTMENT

COUNTY OF HAWAII

In the Matter of the Appeal of)
Thomas P. Mcveigh)
Tax Map Key 7-7-12:27)
_____)

Variance Application

No. 322

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)
Thomas P. McVeigh)
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_____)

Variance Application

No. 322

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND
DECISION AND ORDER

The above-entitled matter was brought on for hearing before the Planning Commission of the County of Hawaii, on the 8th day of February 1973, in the County Council Room, County Building, Hilo, Hawaii, at which hearing John Parazette appeared on behalf of the applicant. 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 required front building setback for a proposed dwelling to be located in the Sunset View Terrace Subdivision, Holualoa 4th, North Kona, was received on November 22, 1972.

2. A preliminary hearing concerning the above matter was held on December 14, 1972 after which the matter was then scheduled for a public hearing.

3. A public hearing on the matter was held on February 6, 1973.

4. The request was to allow a six (6) foot front setback and resulting two (2) feet clear space between eave and front property

line in lieu of the minimum fifteen (15) foot setback and ten (10) foot clear space requirement.

5. The actual building line or wall of the dwelling is adequately setback. The carport section, however, is proposed to be located within the setback area. The area, where the carport is to be located, has a slope of approximately thirty-six (36) degrees (72 per cent slope) while the area where the dwelling is to be located has a slope of approximately eight (8) degrees (13 per cent slope).

6. The subject property fronts Kilohana Street and is presently vacant.

7. The applicant has contended that (1) fill area under adjacent roadbed encroaches onto lot by some twenty-two feet and forms a steep bank; (2) the mentioned bank imposes difficulty in attaining required off-street parking. Proposed parking structure would be keyed to existing slope at street side for desirable lateral stability; (3) this problem is unique to the area as to degree of slope and the applicant desires only to construct a dwelling of the relative dimensions as those in the area; and (4) the intention is to maintain existing street and landscape features and develop property as reasonably as possible against existing bank. Since the slope continues on the opposite side of the street, there is no possibility that the proposed structure will block view from adjacent properties.

8. The staff recommended the request be denied as it appeared that there exists adequate area in the makai direction upon which the dwelling and carport can be located. No major revisions to the plans as submitted would be required if the structure was relocated to comply with the required setback. Although certain terrain conditions exist, these conditions do not exist to a degree which would render the property undevelopable or to a degree which would cause unreasonable hardships.

9. After considering the staff's recommendation, it was

moved and seconded that the request be denied. The motion carried by a four to zero vote.

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 of Zoning Ordinance No. 63, pertaining to allowable front yard setback, of Tax Map Key 7-7-12:27 located in the Sunset View Terrace Subdivision, Holualoa 4th, North Kona, Hawaii, be and is hereby denied on its merits.

Dated at Hilo, Hawaii, this 6th day of April

1973.

APPROVED
AS TO FORM
<i>Clifford W. F. F.</i>
CLIFFORD W. F. F.
COUNTY OF HAWAII
Date: <u>4/3/73</u>

Ed C. Watt

Ed C. Watt
Chairman