

April 9, 1973

Dr. Hubert V. Everly
999 Wilder Ave., Apt. 1704
Honolulu, HI 96822

Re: Variance Application
Tax Map Key 4-6-10:1

The Planning Commission at its meeting of April 6, 1973 again considered your application for a variance to allow relief from improving an existing 0.9+ mile access (Homestead Road) in conjunction with a proposed 6-lot subdivision located in Ahualoa Homesteads, Hamakua, Hawaii.

This is to inform you that the Commission voted to deny your request as it has been determined that there are no special conditions or circumstances which are not general conditions or circumstances affecting other similarly situated properties. The allowance of variances is designed to allow deviations from the literal enforcement of ordinances which, if strictly applied, would deny a property owner all beneficial use of the land and thus amount to confiscation of the property. This is not the situation facing the applicant. The mere fact that the property can be put to a more profitable use by allowing its subdivision through the granting of a variance from roadway requirements is not of itself enough to justify the requested variance. Other similarly situated properties are also faced with this condition therefore there are no special conditions or circumstances applicable only to the subject property.

Financial hardship alone to construct a roadway meeting applicable regulations is not enough to constitute unnecessary hardship.

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.

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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.

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
Public Works - 2100-1000

PLANNING COMMISSION OF THE PLANNING DEPARTMENT

COUNTY OF HAWAII

In the Matter of the Appeal)
 of)
 Hubert V. Everly)
)
 Tax Map Key 4-6-10:1)
)
)
_____)

Variance Application

No. 328

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)	
Hubert V. Everly)	Variance Application
)	
Tax Map Key 4-6-10:1)	No. 328
)	

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND
DECISION AND ORDER

The above-entitled matter was brought on for public hearing before the Planning Commission of the County of Hawaii on the 8th day of February, 1973, on the 23rd day of February, 1973, the 15th day of March, 1973, and the 6th day of April, 1973, at which hearings Hubert V. Everly, the applicant, appeared. 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 Section 9-C(2) and Section 10-C of Ordinance Number 62 for total relief from improving an existing 0.9+ mile access (Homestead Road) in conjunction with a proposed 6-lot subdivision located in Ahualoa Homesteads, Hamakua, Hawaii was received on December 5, 1972.

2. A preliminary hearing on the above matter was held on January 11, 1973, after which the matter was then scheduled for a public hearing.

3. A public hearing on the matter was held on February 8, 1973.

4. The request was for total relief from improvements to the existing road in lieu of the required 20-foot pavement meeting County dedicable standards.

5. The applicant has contended that since the subject roadway is about a mile in length, the applicants could not afford the cost of improvements which would cost far more than the subject property itself.

6. At the February 8 hearing, the Commission voted to defer action and to continue the public hearing at a later date in order that alternate solutions could be discussed.

7. The public hearing was continued on February 23, 1973. It was again deferred to allow the applicant an opportunity to discuss road maintenance problems with Honokaa Sugar Company officials.

8. The public hearing was continued on March 15, 1973, at which time the applicant submitted a letter dated March 15, 1973, which stated the following: a) We, the three purchasers of the property, release the County of Hawaii from any responsibility for any accidents which may occur to us on the road in question while it remains in substandard condition; b) furthermore, we will fill, grade, gravel-fill, oil-treat, and help maintain the road in question, and c) we will also be willing to help defray future expenses for further improvement of the road by being assessed, on a road-frontage basis, for additional paving and/or upkeep. The hearing was deferred in order to study the new proposal presented by the applicant.

9. On March 16, 1973, the applicant withdrew his offer of March 15, 1973 to grade, gravel-fill, oil-treat and help maintain the Ahualoa Homestead Road.

10. The public hearing was continued on April 6, 1973.

11. The staff recommended that the request be denied as it has been determined that there are no special conditions or circumstances which are not general conditions or circumstances affecting other similarly situated properties. The allowance of variances is designed to allow deviations from the literal enforcement of ordinances which, if strictly applied, would deny a property owner all beneficial use of the land and thus amount to confiscation of the property. This is not the situation facing the applicant. The mere fact that the property can be put to a more profitable use by allowing its subdivision through the granting of a variance from roadway requirements is not of itself enough to justify the requested variance. Other similarly situated properties are also faced with this condition; therefore, there are no special conditions or circumstances applicable only to the subject property. Financial hardship alone to construct a roadway meeting applicable regulations is not enough to constitute unnecessary hardship.

12. After considering the staff's recommendation, it was moved and seconded that the request be denied. The motion carried by a six to one vote.

CONCLUSIONS OF LAW

1. Pursuant to Section 5-4.3(g) of the County Charter, 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.

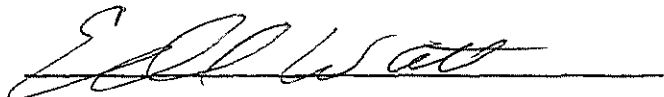
3. Under Section 5-4.3(g) of the Hawaii County Charter, a variance may not be granted unless there are special or unusual circumstances applying to the subject property which would result in unnecessary hardship if the ordinance were literally enforced, and the granting of the variance would not be contrary 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 hearings 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 roadway standards, of Tax Map Key 4-6-10:1 located in Ahualoa Homesteads, Hamakua, Hawaii, be and is hereby denied on its merits.

Dated in Hilo, Hawaii, on this 19th day of July, 1973.



Ed. C. Watt
Chairman

