

October 26, 1973

Mr. Clyde Burgess
3703 21st Avenue
Vernon, B.C. Canada

Re: Variance Application
Tax Map Key 7-7-14:13

The Planning Commission at its preliminary hearing on October 25, 1973 reviewed your application for a variance to allow side setbacks of 8'-3" and 9'-0" in lieu of the 10'-0" requirement and a rear yard setback of 9'-0" in lieu of the 20'-0" requirement for a dwelling and carport located in Laaloa, North Kona, Hawaii.

This is to inform you that the Commission voted to deny your request based on the following considerations:

1. There are no special or unusual circumstances applying to this property as the parcel is able to contain the structures as originally depicted in the building permit plans without hardship. It is found that the owner and/or contractor involved, rearranged the siting of the main dwelling and the original carport to differ substantially from the originally approved building permit plans. In addition, the originally proposed carport was transformed to a guest house. In view of this and the degree of departure from the approved site plan for both structures, the Commission felt that this is a self-imposed situation which does not meet the criteria for a variance application.
2. There is no depriving of the property owner's rights, as the builder is able to fully utilize the property in the manner expressed in the original building permit and as permitted in the Zoning Ordinance, which other lot owners in this subdivision are able to comply with. This subdivision contains numerous lots similarly shaped and sited on the hillside whose dwellings have been able to comply with the standards as adopted in Ordinance No. 63.

As your request has been denied, you are now required to move the subject structures to comply with the required ten (10) foot side

Mr. Clyde Burgess
Page 2
October 26, 1973

yard setback and a rear yard setback of twenty (20) feet for a dwelling and carport (guest house) or appeal the decision of the Planning Commission if you find that the action of the 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.

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



Ed C. Watt, Chairman

lat

cc Fred Fujimoto
Corporation Counsel
Building Dept.

bcc Roy Charles, Sr.

PLANNING COMMISSION OF THE PLANNING DEPARTMENT

COUNTY OF HAWAII

In the Matter of the Appeal
of
CLYDE BURGESS

Tax Map Key 7-7-14:13

Variance Application

No. 361

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)
 CLYDE BURGESS)
))
 Tax Map Key 7-7-14:13)
_____)

Variance Application
No. 361

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND
DECISION AND ORDER

The above-entitled matter was brought on for a preliminary hearing before the Planning Commission of the Planning Department, County of Hawaii, on the 25th day of October, 1973, in the County Council Room, County Building, Hilo, Hawaii. 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 to allow relief from rear and side yard setbacks required for a dwelling and accessory structure in the Kuakini Houselots subdivision, North Kona, Hawaii, Tax Map Key 7-7-14:14 was received on September 24, 1973. More information was needed and the completed application was logged as a properly filed application on October 1, 1973, and the applicant so notified.

2. The property is zoned Single Family Residential 10,000 square feet (RS-10). The lot contains an area of 12,286 square feet. Under this zoning designation, the required setbacks are 20 feet front and rear, and 10 feet, sides. The General Plan land use pattern allocation guide map designates the area as low density urban development.

3. The request asked for relief from the setback requirements of 20 feet front and rear and 10 foot sides to allow the structures to remain with their lesser setbacks which for the main dwelling are 9 feet instead of 20 foot rear, and 8 foot - 3 inches instead of 10 foot sides, and for the accessory building 5 feet instead of the required 10 foot side yard setback.

4. The development was originally reported in its building permit application dated November 16, 1971 as a proposed dwelling unit and carport and approved as such with the required setbacks drawn in to scale on the plot plan.

5. Subsequent inspection of the construction by County building inspectors resulted in the finding that the carport as approved on the building permit application with proper setbacks of 10 foot side yard setback was turned into a guest cottage with a 5 foot side yard setback. The main dwelling was also built so as to result in a setback which differed from the approved site plan. A 9 foot rear setback instead of the originally shown and required 20 foot rear setback resulted, and an 8 foot - 3 inch side yard setback instead of the originally shown and required 10 foot side yard setback.

6. On August 23, 1973, the building inspector wrote Mr. Burgess about the nonconforming situation.

7. On September 17, 1973, the Planning Department staff inspected the site for further confirmation of the discrepancy.

8. On September 24, 1973, the Planning Department received a variance application from Mr. Burgess written on September 18, 1973 which asked for relief from the County's zoning regulations as to the setback requirements to accommodate the basically completed structure. On October 1, 1973, a site plan of the new buildings as they actually appeared on the land was received from Capt. Cook Building Supply and

notice was then sent to Mr. Burgess from the Planning Department that the application was now complete.

9. A preliminary hearing was duly held on October 25, 1973 in the County Council Room. Notice of the preliminary hearing was sent to the applicant on October 16, 1973.

10. It was recommended by the staff at the preliminary hearing that the request be denied as it was found that:

- a. There are no special or unusual circumstances applying to this property as the parcel is able to contain the structures as originally depicted in the building permit plans without hardship. It is found that the owner and/or contractor involved, rearranged the siting of the main dwelling and the original carport to differ substantially from the originally approved building permit plans. In addition, the originally proposed carport was transformed to a guest house. In view of this and the degree of departure from the approved site plan for both structures, the Commission felt that this is a self-imposed situation which does not meet the criteria for a variance application.
- b. There is no depriving of the property owner's rights, as the builder is able to fully utilize the property in the manner expressed in the original building permit and as permitted in the County Zoning Code, which other lot owners in this subdivision are able to comply with. This subdivision contains numerous lots similarly shaped and sited on the hillside whose dwellings have been able to comply with the standards as adopted in the County Zoning Code.

11. As a result of the discussion on the application, it was moved and seconded that the request be denied. The motion was carried.

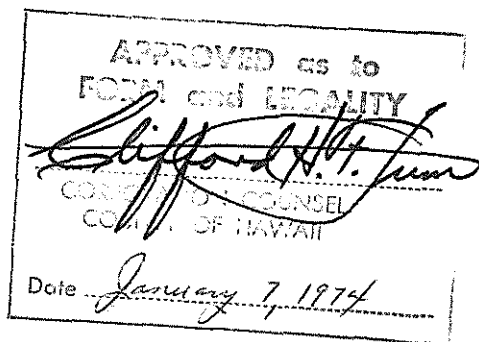
CONCLUSIONS OF LAW

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 County Subdivision Control and Zoning Codes.
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 7 of Chapter 8 (Zoning Code), Article 3, Hawaii County Code, pertaining to minimum yards, of Tax Map Key 7-7-14:13 located in Laaloa, North Kona, Hawaii, be and is hereby denied on its merits.

Dated at Hilo, Hawaii, this 7th day of January
1974.



Ed C. Watt
Ed C. Watt, Chairman

COPY

FROM THE OFFICE OF THE
CORPORATION COUNSEL
COUNTY OF HAWAII
HILO, HAWAII 96720

November 26, 1974

Mr. Robert Carlsmith
Carlsmith, Carlsmith, Wichman & Case
121 Waiianuenue Avenue
Hilo, Hawaii 96720

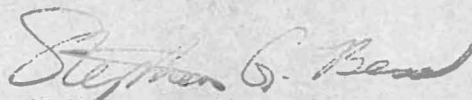
Dear Mr. Carlsmith:

Re: Zoning Variance Request of Clyde Burgess

Enclosed is the Certification of the Director of Planning certifying the approval of the variance application of Clyde Burgess with respect to setback requirements for Lot 16, Kuakini Heights, Tax Map Key: 7-7-14:13.

As you indicated in our meeting of November 13, 1974, you understand that the Director's approval of the variance request due to a procedural technicality does not preclude the County of Hawaii from proceeding against Mr. Burgess for any building permit or building code violations.

Very truly yours,



STEPHEN G. BESS
Assistant Corporation Counsel

SGB:mnk
Enc.

CERTIFIED APPROVAL OF VARIANCE APPLICATION

VARIANCE APPLICATION NO. 361
CLYDE BURGESS
TMK: 7-7-14:13

Contrary to the requirements of Section 36D of Ordinance No. 63, the Planning Commission of the County of Hawaii failed, within forty-five (45) days after the filing of Variance Application No. 361, to hold a public hearing on the application and render a decision on said application.

Upon the advice of the Office of the Corporation Counsel, County of Hawaii, and pursuant to the mandate of Section 36E, Ordinance No. 63, Chapter 8, Article 1, Section 7.04B, Hawaii County Code, I, RAYMOND SUEFUJI, Director of Planning, County of Hawaii, hereby certify Variance Application No. 361 as approved.

Dated at Hilo, Hawaii, this 26th day of November, 1974.

(sgd) Raymond Suefuji
RAYMOND SUEFUJI
Director of Planning