

October 26, 1973

Mr. A. L. Draeger
P. O. Box 433
Kailua-Kona, HI 96740

Re: Variance Application
Tax Map Key 7-5-09:21 & 24

The Planning Commission at its duly held public hearing on October 25, 1973 considered your application for a variance from the maximum height requirement for an apartment complex located in Puua 1st, North Kona, Hawaii.

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

1. That the additional height would render the subject buildings conspicuous to a degree considered unreasonable in relation to surrounding areas and developments. Recent developments near the subject property have all complied with the present height limit requirements; and
2. That there are no severe topographic or geographic conditions such as unstable soils, terrain features, inundation problems, etc. applicable to the subject property which for safety reasons would dictate the need for the additional height. The subject property having an average slope of 7.5 per cent has no unusual conditions or major differences when compared to surrounding properties which would prevent compliance to applicable regulations.

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

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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.

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

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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)
 A.L. DRAEGER)
))
Tax Map Key 7-5-09:21 &)
 24)
_____)

Variance Application

No. 363

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)
 A.L. DRAEGER)
)
Tax Map Key 7-5-09:21 &)
 24)
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Variance Application

No. 363

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND
DECISION AND ORDER

The above-entitled matter was brought on for a public 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, at which hearing A.L. Draeger 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 the maximum height requirement within the multiple residential (RM) zoned district was received on August 31, 1973.
2. A preliminary hearing on the above matter was held on September 27, 1973, after which the matter was then scheduled for a public hearing.
3. A public hearing on the matter was held on October 25, 1973.
4. The applicant proposed to construct three (3) apartment buildings at heights of four (4) stories and fifty-one (51) feet. The height limitation within the multiple residential (RM) zoned district for Kailua-Kona is three (3) stories but not higher than forty-five (45) feet.
5. The property under consideration is located between Alii Drive and

Kuakini Highway across from the Kona Hilton Hotel, Puaa 1st, Kailua, Kona North Kona, Hawaii.

6. The property under consideration has an average slope of 7.5 per cent. The portion fronting Alii Drive has an average elevation of fifty-five (55) feet and extends mauka to Kuakini Highway an approximate distance of 530 feet. The portion fronting Kuakini Highway has an average elevation of ninety-five (95) feet.

7. It was recommended by staff at the preliminary and public hearings that the request be denied based on the following considerations:

- a. That the additional height would render the subject buildings conspicuous to a degree considered unreasonable in relation to surrounding areas and developments. Recent developments near the subject property have all complied with the present height limit requirements; and
- b. That there are no severe topographic or geographic conditions such as unstable soils, terrain features, inundation problems, etc. applicable to the subject property which for safety reasons would dictate the need for the additional height. The subject property having an average slope of 7.5 per cent has no unusual conditions or major differences when compared to surrounding properties which would prevent compliance to applicable regulations.

8. It was moved and seconded that the request be approved. The motion to approve the request was defeated by a two to five 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 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 Article 5, Section 4 of the Zoning Code (Chapter 8), pertaining to Maximum height limits, of Tax Map Key 7-5-09:21 & 24, located in Puaa 1st, Kailua, Kona, North Kona, Hawaii, be and is hereby denied on its merits.

Dated at Hilo, Hawaii, this 9th day of February, 1974.


Arthur W. Martin, Chairman

