

November 16, 1973

Mr. Harvey F. Gerwig
Projects Coordinator
Gentry-Hawaiiana Assoc.
146 Hekili Street
Kailua, HI 96734

Re: Variance Application
Tax Map Key 2-5-49:18 & 19
2-5-50:1, 14 & 26

The Planning Commission at its duly held public hearing on November 13, 1973 considered your application for a variance to allow 15 foot front yard setbacks in lieu of the required 20 foot setbacks for five dwellings proposed within the Hilo Country Club Estates, Kukuau, South Hilo, Hawaii.

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

1. The situation does not contain a special or unusual circumstance applying to the subject property. This is attested to by the other seven corner lots which do not require a lessening of the setback requirements;
2. An unusual circumstance does not exist, because a mere rearrangement of house plans would permit compliance with the 20 foot setback requirement; and
3. Granting this variance request would constitute a personal or special privilege as the other lots similarly sized and situated all with no special terrain features, are able to meet the setback requirements.

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

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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.

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
Paul Tajima

PLANNING COMMISSION OF THE PLANNING DEPARTMENT

COUNTY OF HAWAII

In the Matter of the Appeal)
 of)
GENTRY-HAWAIIANA ASSOCIATES)
)
Tax Map Key 2-5-49:18,19)
2-5-50:1, 14 & 26)
_____)

Variance Application

No. 370

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND
DECISION AND ORDER

COUNTY OF HAWAII

No. 370

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 13th day of November, 1973, at the University of Hawaii Cooperative Extension Service Conference Room, Kainaliu, North Kona, Hawaii, at which hearing Paul Tajima appeared in 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 minimum setback requirements was received on September 21, 1973.
2. A preliminary hearing on the above matter was held on October 25, 1973, after which the matter was then scheduled for a public hearing.
3. A public hearing on the matter was held on November 13, 1973.
4. The requested variance was to allow the construction of five (5) dwellings with fifteen (15) foot front yard setbacks in lieu of the twenty (20) foot requirement.
5. The parcels under consideration are corner lots within the Hilo Country Clubs Estates Subdivision, Kaumana, South Hilo.

6. The applicant intended to construct larger model homes on the properties. The reason is that the smaller homes which would fit into the corner lot with no variance required, have been less popular than the larger units.

7. There are 101 lots within the existing subdivisions of which majority is built upon on building permit obtained.

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

- a. The situation does not contain a special or unusual circumstance applying to the subject property. This is attested to by the other seven corner lots which do not require a lessening of the setback requirements;
- b. An unusual circumstance does not exist, because a mere rearrangement of house plans would permit compliance with the 20 foot setback requirement; and
- c. Granting this variance request would constitute a personal or special privilege as the other lots similarly sized and situated all with no special terrain features, are able to meet the setback requirements.

9. It was moved and seconded that the request be denied. The motion carried by a 5 to 0 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 7, Section 8 of the Zoning Codes (Chapter 8), pertaining to minimum setback requirements, of Tax Map Key 2-5-49:18 & 19, 2-5-50:1, 14 & 26 located within the Hilo Country Club Estates Subdivision, Kaumana, South Hilo, Hawaii, be and is hereby denied on its merits.

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


Arthur W. Martin, Chairman

