

May 6, 1974

Mr. John Perreira
212 Punahale Street
Hilo, HI 96720

Re: Variance Application
Tax Map Key 1-2-04:22

The Planning Commission at its preliminary hearing on May 2, 1974 considered your application for a variance from the minimum lot size requirement within a Residential-Agricultural one-half acre (RA-.5a) zoned district in the Kaimu-Makena Houselots subdivision, Kaimu, Puna, Hawaii.

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

1. That the applicant has not shown that the strict application of the Zoning Code would be confiscatory or would effectively destroy the economic utility of the property. In this case, a mere showing of financial disappointment or of deprivation of the possibility of increased income is not enough. There is no evidence to show that there exists any special or unusual circumstances applying to the subject property which do not generally apply to the surrounding property in the same district. In this instance, there are no topographical terrain constraints which would prohibit the applicant from designing a subdivision plan which can meet the minimum building site area requirements of the zone district;
2. That due to the absence of any physical hardships with respect to the land, it is felt that the applicant could also meet his desired needs to provide homesites for his children with a design which conforms to the minimum building site area requirements of the zone district;

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3. That a deviation of this nature is not weighed upon how small the deviation is but rather if the deviation is related to a special or unusual circumstance applying to the subject property which deprives the applicant from substantial property rights which would otherwise be available. In this case, no evidence has been shown to substantiate such deprivation;
4. That a granting of this variance would constitute a grant of a personal privilege consistent with the limitations placed upon other properties under identical district classifications as there are approximately 21 lots within the Makena Homesteads and surrounding area with a somewhat similar situation; and
5. Because of the loss of the land area necessary for the roadway easement, the net result of the parcels in question is reduced in size to 18,343, 18,429, 17,859 and 21,244 square feet respectively. As a result, the actual buildable land area remaining is not consistent with the minimum lot size requirement of one-half acre or 21,780 square feet as regulated by the Residential-Agricultural one-half acre (RA-.5a) zoned district.

Therefore, in light of the previously mentioned findings, the denial of the application would not be in the manner of an arbitrary or capricious decision as it is clearly evident that there are other design alternatives available to the applicant to accomplish his desired goals with the fact that there exists no physical hardships with respect to the terrain of the land which might prohibit him to do such.

As your request has been denied, you may appeal the decision of the Planning Commission if you feel that 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 ^{thirty} (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;

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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 Norman Hayashi or Royden Yamasato of the Planning Department at 961-8288.



Leon K. Sterling, Jr.
Vice Chairman

For
Arthur W. Martin
Chairman

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cc Corporation Counsel
Chief Engineer, Public Works

PLANNING COMMISSION OF THE PLANNING DEPARTMENT

COUNTY OF HAWAII

In the Matter of the Appeal)
 of)
 JOHN L. PERREIRA)
)
Tax Map Key 1-2-04:22)
_____)

Variance Application

No. 398

FINDINGS OF FACT

CONCLUSIONS OF LAW

AND

DECISION AND ORDER

COUNTY OF HAWAII

Variance Application
No. 398

DECISION AND ORDER

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.

4. The variance results from a proposed subdivision of six (6) lots of which one is only 21, 244 square feet in size and is 536 below the minimum

required building site.

5. The applicant intended to subdivide the parcel equally to give to his two children.

6. The subject property is located within the Kaimu-Makena Houselots Subdivision, Kaimu, Puna, Hawaii.

7. The staff recommended that the variance from the Minimum Building Site Area Requirement be denied based on the following findings:

- a. That the applicant has not shown that the strict application of the Zoning Code would be confiscatory or would effectively destroy the economic utility of the property. In this case, a mere showing of financial disappointment or of deprivation of the possibility of increased income is not enough. There is no evidence to show that there exists any special or unusual circumstances applying to the subject property which do not generally apply to the surrounding property in the same district. In this instance, there are no topographical terrain constraints which would prohibit the applicant from designing a subdivision plan which can meet the minimum building site area requirements of the zone district;
- b. That due to the absence of any physical hardships with respect to the land, it is felt that the applicant could also meet his desired needs to provide homesites for his children with a design which conforms to the minimum building site area requirements of the zone district;
- c. That a deviation of this nature is not weighed upon how small the deviation is but rather if the deviation is related to a special or unusual circumstance applying to the subject property which deprives the applicant from substantial property rights which would otherwise be available. In this case, no evidence has been shown to substantiate such deprivation;
- d. That a granting of this variance would constitute a grant of a

personal privilege consistent with the limitations placed upon other properties under identical district classifications as there are approximately 21 lots within the Makena Homesteads and surrounding area with a somewhat similar situation; and

- e. Because of the loss of the land area necessary for the roadway easement, the net result of the parcels in question is reduced in size to 18,343-18,429-17,859 and 21,244 square feet respectively. As a result, the actual buildable land area remaining is not consistent with the minimum lot size requirement of one-half acre or 21,780 square feet as regulated by the Residential/Agricultural one-half acre (RA-.5a) zoned district.

Therefore, in light of the previously mentioned findings, the denial of the application would not be in the manner of an arbitrary or capricious decision as it is clearly evident that there are other design alternatives available to the applicant to accomplish his desired goals with the fact that there exists no physical hardships with respect to the terrain of the land which might prohibit him to do such.

8. It was moved and seconded that the Minimum Building Site Area Requirement variance request be denied. The motion was carried.

CONCLUSIONS OF LAW

1. Pursuant to Section 5-4.3(g) of the Hawaii 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 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 6, Section 5 of the Zoning Code (Chapter 8), pertaining to Minimum Building Site Area Requirements, of Tax Map Key: 1-2-04:22 located in the Kaimu-Makena Houselots Subdivision, Kaimu, Puna, Hawaii, be and is hereby denied on its merits.

Dated at Hilo, Hawaii, this 28th day of May, 1974.



Leon K. Sterling
Vice-Chairman

for
Arthur W. Martin
Chairman

