

May 23, 1974

Mrs. Alana K. Kailianu  
176 Apapane Road  
Hilo, Hawaii 96720

Re: Variance Application  
Tax Map Key 2-1-14:2

At its meeting of May 2, 1974, the Planning Commission voted to deny your variance request to allow the expansion of a nonconforming structure relative to the minimum front yard setback requirement. However, they also stated at that meeting that they would reconsider the request if you attend the subsequent meeting which was held on May 22, 1974 in Kona. Since you were not present at that meeting, the Planning Commission's decision of May 2, 1974 to deny the application is still in force.

Please be informed that the Commission's decision to deny is based on the following considerations:

1. That there are no special or unusual circumstances applying to the subject property, building or proposed area which do not generally apply to surrounding properties or improvements in the same district. There appears no adverse topographic features which would dictate the construction of the carport addition within the front yard setback area. Since the average depth of the lot is approximately 195 feet, there is ample room to the rear of the property to construct the proposed addition without interfering to a great extent with the existing layout or adversely affecting circulation within the existing dwelling.
2. That the granting of the variance would militate against the intent of the Zoning Code. The intent of the code is to eventually amortize nonconforming structures and uses, or eventually make them conforming. Therefore, the granting of this request would further the nonconformity of the existing situation in relationship to the minimum front yard setback requirement.
3. That Kalaniana'ole Street will eventually become a 120-foot roadway which affects 35 feet of the applicant's property. By

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granting the variance to allow the proposed carport to be constructed within the future roadway area would definitely cause relocation of the building in the future. Therefore, the granting of the variance would, in essence, interfere with the future road widening improvements to Kalaniana'ole Street.

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 thirty (30) 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

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the above, please feel free to contact Norman Hayashi or Royden Yamasato of the Planning Department at 961-8288.

A handwritten signature in cursive script, appearing to read "Arthur W. Martin".

Arthur W. Martin

Chairman

lat

cc Isaac Tolentino  
Corporation Counsel  
Building, Public Works

PLANNING COMMISSION OF THE PLANNING DEPARTMENT  
COUNTY OF HAWAII

In the Matter of the Appeal )  
                  of )  
      ALANA K. KAILIANU )  
                          ) )  
Tax Map Key 2-1-14:2 )  
\_\_\_\_\_ )

Variance Application  
No. 399

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 )  
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\_\_\_\_\_ )

Variance Application

No. 399

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 2nd day of May 1974, in the County Council Room, County Building, Hilo, Hawaii, at which hearing no one appeared on 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 to allow the expansion of a non-conforming structure relative to the minimum front yard setback requirement of a Resort-Hotel (V-S.75) zoned district was received on March 5, 1974.

2. The subject property which consists of 19,377 square feet of land is located in Keaukaha, South Hilo, Hawaii. More specifically, it is situated adjacent to the Alii Kai Apartments approximately 300 feet Hilo side of the entrance to Onekahakaha Beach Park on the makai side of Kalaniana'ole Avenue.

3. A preliminary hearing on the above matter was held on May 2, 1974.

4. The requested variance was to allow the construction of a carport addition to an existing dwelling which is non-conforming relative to the front yard setback requirement.

5. The applicant is required to setback fifty-five (55) feet from the front property line. The fifty-five (55) foot setback requirement is a result of the proposed 120 foot right-of-way for Kalaniana'ole Avenue which will extend thirty-five (35) feet into the subject property. With the Resort zoned district front yard setback requirement of twenty (20) feet, a total setback of fifty-five (55) feet is thus required.

6. The staff recommended that the variance to allow the construction of the carport addition to an existing dwelling which is non-conforming relative to the front yard setback be denied based on the following findings:

- a. That there are no special or unusual circumstances applying to the subject property, building or proposed area which do not generally apply to surrounding properties or improvements in the same district. There appears no adverse topographic features which would dictate the construction of the carport addition within the front yard setback area. Since the average depth of the lot is approximately 195 feet, there is ample room to the rear of the property to construct the proposed addition without interfering to a great extent with the existing layout or adversely affecting circulation within the existing dwelling.
- b. That the granting of the variance would militate against the intent of the Zoning Code. The intent of the code is to

eventually amortize non-conforming structures and uses, or eventually make them conforming. Therefore, the granting of this request would further the nonconformity of the existing situation in relationship to the minimum front yard setback requirement.

- c. That Kalanianaʻole Avenue will eventually become a 120-foot roadway which affects 35 feet of the applicant's property. By granting the variance to allow the proposed carport to be constructed within the future roadway area would definitely cause relocation of the building in the future. Therefore, the granting of the variance would, in essence, interfere with the future road widening improvements to Kalanianaʻole Avenue.

7. It was moved and seconded that the variance to allow the expansion of a non-conforming structure relative to the minimum front yard setback be denied. The motion was carried.

8. The Planning Commission also stated at the meeting that they would reconsider the request if a representative for the application would attend the subsequent meeting which was held on May 22, 1974 in Kona.

9. A letter dated May 7, 1974 from the Planning Department informing of the Commission's action was sent to the applicant and, since no representative was present at that meeting the Planning Commission's decision of May 2, 1974 to deny the application was still in force.

#### 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 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 1, Section 9A1 and Article 25, Section 4B of the Zoning Code (Chapter 8), pertaining to non-conforming structures and future width lines relative to setback of Tax Map Key 2-1-14:2 located in Keaukaha, South Hilo, Hawaii, be and is hereby denied on its merits.

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

  
Arthur W. Martin, Chairman

