

August 9, 1974

Mr. R. Charles Porter
15 Kaapuni Place
Hilo, HI 96720

Re: Variance Application
Tax Map Key 1-3-16:9

The Planning Commission at its duly held public hearing on August 8, 1974 considered your application for a variance to allow the construction of a single-family dwelling with nineteen (19) foot side yard setbacks in lieu of the minimum requirement of twenty (20) feet as stipulated within the Agricultural zoned district in the Leilani Estates Subdivision, Keahialaka, Puna, Hawaii.

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

1. That there are no special or unusual circumstances applying to the subject property or building which do not generally apply to surrounding property or improvements in the same district. The subject property is level in character and does not contain any topographical or terrain constraints which would inhibit the applicant's proposed use of the land. The proposed dwelling which is of prefabricated construction can be reconstructed so as to build the dwelling outside of the side yard setback area. The garage and family room side of the dwelling can be reduced by two (2) feet so as to make the dwelling sixty (60) feet in width. This can be done by shifting the entrance to the garage two (2) feet to the right, while still maintaining the area on the left hand side of the garage for the washer and dryer space. Though the square footage of the garage will be reduced from 488 to 444 square feet, the entrance dimension of sixteen (16) feet will still be maintained. The resultant dimension of the garage will be twenty (20) feet wide and twenty-two (22) feet -- two (2) inches in depth. It is felt that this amount of square footage will adequately satisfy the purposes of a garage. In addition,

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the adjoining family room can be also reduced from the present eighteen (18) feet - six (6) inch length dimension to sixteen (16) feet - six (6) inches without destroying the whole intent of the family room as being a leisure room. The room will be sixteen (16) feet - six (6) inches in length by twelve (12) feet - four (4) inches wide and comprise a total of 202.1 square feet of space. This is felt to be sufficient space for this type of room without inhibiting the type of use anticipated for a room of this nature. In addition, other alternatives for siting the sixty-two (62) foot wide dwelling are available to the applicant. The dwelling can be situated well outside of the side yard setback area by siting it at an angle or siting it with the sixty-two (62) foot width being situated to run with the depth of the subject parcel. The siting of the dwelling in this manner would then accommodate all required setbacks and thus would not require the necessity for a variance. Consequently, as other alternative plans are available, and the fact that there are no special or unusual circumstances related to the subject property or building, there appears to be no evidence that should allow the granting of the variance request; and

2. That the granting of the variance will constitute a grant of a personal privilege inconsistent with the limitations upon other properties under identical district classification. The properties adjacent to the subject parcel are similar in size, shape, and topography and due to the absence of any topographical or terrain constraints on the parcel or adjoining parcels, there appears no evidence peculiar to the condition of the land which should allow the granting of the variance without it being considered a grant of personal privilege. Financial hardship per se is not a legitimate basis for granting of a variance. There must be adverse conditions related to the land or property which justifies a variance. In this request, the staff finds no such conditions which make compliance to the requirements unreasonable.

As your request has been denied, you are now required to comply with the required twenty (20) foot side yard setbacks. 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

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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.

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 9618288.



Arthur W. Martin
Chairman

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cc Corporation Counsel
Building, Public Works

PLANNING COMMISSION OF THE PLANNING DEPARTMENT

COUNTY OF HAWAII

In the Matter of the Appeal)
 of)
ROBERT CHARLES PORTER)
)
Tax Map Key 1-3-16:9)
_____)

Variance Application

No. 414

FINDINGS OF FACT

CONCLUSIONS OF LAW

AND

DECISION AND ORDER

COUNTY OF HAWAII

Variance Application
No. 414

The above-entitled matter was brought on for a public hearing before the Planning Commission of the Planning Department, County of Hawaii, on the 8th day of August 1974, in the Sgt. Rodney J. T. Yano Memorial Hall, Capt. Cook, South Kona, Hawaii, at which hearing Mr. and Mrs. Robert Charles Porter 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.

1. An application requesting a variance from the minimum side-yard setback requirement of twenty (20) feet as required within the Agricultural one acre (A-1a) zoned district was received on June 19, 1974.

2. The subject property which consists of one (1) acre of land is located on Alapai Street in the Leilani Estates Subdivision in Keahialaka, Puna, Hawaii. The Leilani Estates Subdivision which fronts the Kalapana-Pahoa Government Road is located approximately 3.5 miles south of the Pahoa Village.

3. The requested variance was to allow the side yard setback of nineteen (19) feet as a result of the location of the proposed structure on the subject parcel.

4. The subject parcel is 100 feet wide and 435.60 feet long. The proposed dwelling is sixty-two (62) feet wide and with the side-yard setback requirement of twenty (20) feet, a one (1) foot encroachment will result on each side of the proposed structure.

5. The lot adjacent and to the south of the subject property is vacant and still wooded and overgrown with vegetation. The lot adjacent to the north is vacant but has been graded and cleared.

6. A preliminary hearing on the above matter was held on July 17, 1974 in the County Councilroom, County Building, Hilo, Hawaii.

7. At this preliminary hearing, after the presentation of the request to the Planning Commission, the staff recommended that the variance to allow sideyard setbacks of nineteen (19) feet in lieu of the required twenty (20) foot sideyard setback be denied based on the following findings:

- a. That there are no special or unusual circumstances applying to the subject property or building which do not generally apply to surrounding property or improvements in the same district. The subject property is level in character and does not contain any topographical or terrain constraints which would inhibit the applicant's proposed use of the land. The proposed dwelling which is of prefabricated construction can be reconstructed so as to build the dwelling outside of the side yard setback area. The garage and family room side of the dwelling can be reduced by two (2) feet so as to make the dwelling sixty (60) feet in width. This can be done by shifting the entrance to the garage two (2) feet to the right, while still maintaining the area on

the left hand side of the garage for the washer and dryer space. Though the square footage of the garage will be reduced from 488 to 444 square feet, the entrance dimension of sixteen (16) feet will still be maintained. The resultant dimension of the garage will be twenty (20) feet wide and twenty-two (22) feet - two (2) inches in depth. It is felt that this amount of square footage will adequately satisfy the purposes of a garage. In addition, the adjoining family room can be also reduced from the present eighteen (18) feet - six (6) inch length dimension to sixteen (16) feet - six (6) inches without destroying the whole intent of the family room as being a leisure room. The room will be sixteen (16) feet - six (6) inches in length by twelve (12) feet - four (4) inches wide and comprise a total of 202.1 square feet of space. This is felt to be sufficient space for this type of room without inhibiting the type of use anticipated for a room of this nature. In addition, other alternatives for siting the sixty-two (62) foot wide dwelling are available to the applicant. The dwelling can be situated well outside of the side yard setback area by siting it at an angle or siting it with the sixty-two (62) foot width being situated to run with the depth of the subject parcel. The siting of the dwelling in this manner would then accommodate all required setbacks and thus would not require the necessity for a variance. Consequently, as other alternative plans are available, and the fact that there are no special or unusual circumstances related to the subject property or building, there appears to be no evidence that should allow the granting of the variance request; and

- b. That the granting of the variance will constitute a grant of a personal privilege inconsistent with the limitations upon other properties under identical district classification. The

properties adjacent to the subject parcel are similar in size, shape, and topography and due to the absence of any topographical or terrain constraints on the parcel or adjoining parcels, there appears no evidence peculiar to the condition of the land which should allow the granting of the variance without it being considered a grant of personal privilege. Financial hardship per se is not a legitimate basis for granting of a variance. There must be adverse conditions related to the land or property which justifies a variance. In this request, the staff finds no such conditions which make compliance to the requirements unreasonable.

8. The Planning Commission after a brief discussion, moved and seconded a motion to schedule the application for a public hearing. Chairman Martin apprised the applicant, Robert Charles Porter, that in the event that the Commission denied his application at the public hearing level, his filing fee of \$100.00 will not be refunded. Mr. Robert Charles Porter acknowledged his awareness of the situation and wanted to pursue his case at the public hearing.

9. A public hearing on the subject matter was held on August 8, 1974 in the Sgt. Rodney J. T. Yano Memorial Hall in Capt. Cook, South Kona, Hawaii.

10. At this public hearing, the staff again presented the request to the Planning Commission after which the staff again recommended that the variance to allow sideyard setbacks of nineteen (19) feet in lieu of the required twenty (20) foot sideyard setbacks be denied based on the following findings:

- a. That there are no special or unusual circumstances applying to the subject property or building which do not generally apply to surrounding property or improvements in the same district. The subject property is level in character and

does not contain any topographical or terrain constraints which would inhibit the applicant's proposed use of the land. The proposed dwelling which is of prefabricated construction can be reconstructed so as to build the dwelling outside of the side yard setback area. The garage and family room side of the dwelling can be reduced by two (2) feet so as to make the dwelling sixty (60) feet in width. This can be done by shifting the entrance to the garage two (2) feet to the right, while still maintaining the area on the left hand side of the garage for the washer and dryer space. Though the square footage of the garage will be reduced from 488 to 444 square feet, the entrance dimension of sixteen (16) feet will still be maintained. The resultant dimension of the garage will be twenty (20) feet wide and twenty-two (22) feet - two (2) inches in depth. It is felt that this amount of square footage will adequately satisfy the purposes of a garage. In addition, the adjoining family room can be also reduced from the present eighteen (18) feet - six (6) inch length dimension to sixteen (16) feet - six (6) inches without destroying the whole intent of the family room as being a leisure room. The room will be sixteen (16) feet - six (6) inches in length by twelve (12) feet - four (4) inches wide and comprise a total of 202.1 square feet of space. This is felt to be sufficient space for this type of room without inhibiting the type of use anticipated for a room of this nature. In addition, other alternatives for siting the sixty-two (62) foot wide dwelling are available to the applicant. The dwelling can be situated well outside of the side yard setback area by siting it at an angle or siting it with the sixty-two (62) foot width being situated to run with the depth of the subject parcel. The siting of

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- b. That the granting of the variance will constitute a grant of a personal privilege inconsistent with the limitations upon other properties under identical district classification. The properties adjacent to the subject parcel are similar in size, shape, and topography and due to the absence of any topographical or terrain constraints on the parcel or adjoining parcels, there appears no evidence peculiar to the condition of the land which should allow the granting of the variance without it being considered a grant of personal privilege. Financial hardship per se is not a legitimate basis for granting of a variance. There must be adverse conditions related to the land or property which justifies a variance. In this request, the staff finds no such conditions which make compliance to the requirements unreasonable.

11. The Planning Commission after hearing testimony by Mr. and Mrs. Robert Charles Porter, moved and seconded that the variance to allow sideyard setbacks of nineteen (19) feet be denied based on the staff findings. The motion was carried.

12. A letter dated August 9, 1974 from the Planning Department was send to the applicant, Robert Charles Porter, informing him of the Planning Commission's denial decision of his variance request and to also inform him of the procedure of appeal of the denial decision.

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 7, Section 7 of the Zoning Code (Chapter 8), pertaining to minimum side yard setback requirements of Tax Map Key 1-3-16:9 located in Keahialaka, Puna, Hawaii, be and is hereby denied on its merits.

Dated at Hilo, Hawaii, this 8th day of August, 1974.



Arthur W. Martin, Chairman

