

October 18, 1974

Mr. Randolph Solomon
P. O. Box 428
Kapaau, HI 96755

Re: Variance Application
Tax Map Key 2-5-24:12

The Planning Commission at its meeting on October 17, 1974 considered your application for a variance to allow the creation of a 13,759 square foot lot in lieu of the minimum building site area requirement of 15,000 square feet as stipulated within a Single Family Residential - 15,000 square foot (RS-15) zoned district in the Ainako Subdivision Series 2, Punahoa 2nd, South Hilo, 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 per se 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 such as terrain or government improvements which do not generally apply to the surrounding property in the same district;

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2. That the granting of the variance would constitute a grant of a special privilege as all other lots along Kapaa Street contain at least the 15,000 square feet required in an area where no lots have significantly differing terrain than is found in the applicant's situation. Furthermore, the granting of the variance would have to ultimately concede a waiver of area requirements to other lots in this area, of which there are five on Kapaa Street which could present a similar situation. In doing so, the problem of inadequate roadway width, and length of the cul-de-sac would be more pronounced, contrary to the intent of the General Plan which seeks to improve and upgrade roadway standards;
3. That the granting of the variance, in this instance, would be furthering the non-conforming situation relative to the subdivision's code requirements of a cul-de-sac being 600 feet in length and serving only 18 lots. Kapaa Street is 960 feet in length and presently serves 24 lots. With the proposed action, the lots to be served would increase to 26 lots, thereby, furthering the non-conformity of the existing situation. Furthermore, Kapaa Street has a right-of-way width of 40 feet with a 16-foot pavement. The Subdivision Code requires a 50-foot right-of-way with a 20-foot pavement. Therefore, the existing roadway is inadequate based on present subdivision requirements;
4. That because of the loss of land area necessary for the roadway easement, the net result of the parcels in question is reduced in size to (12,706), (12,716) and (13,759) square feet respectively. As a result, the actual buildable land area remaining is not consistent with the minimum lot size requirement of 15,000 square feet as regulated by the Single Family Residential - 15,000 square foot (RS-15) zoned district. Also, since the lots along Kapaa Street are between 15,000 square feet to 44,000 square feet in sizes, the creation of the lots below the minimum building site area requirement would be incongruous with the basic character of the surrounding area. Furthermore, since the land is situated within the flood plain zone, the net buildable area would possibly be further reduced; and

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5. 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.

As your request has been denied, you are required to comply with the minimum building site area requirement of 15,000 square feet as stipulated within a Single Family Residential - 15,000 square foot (RS-15) zoned district in the Ainako Subdivision Series 2, Punahoa 2nd, South Hilo, Hawaii. 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.

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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 foregoing, please feel free to contact the Planning Department at 961-8288.

A handwritten signature in cursive script, reading "Arthur W. Martin".

Arthur W. Martin
Chairman

lat:cei

cc Corporation Counsel
Chief Engineer, Public Works

PLANNING COMMISSION OF THE PLANNING DEPARTMENT

COUNTY OF HAWAII

In the Matter of the Appeal)
 of)
 RANDOLPH SOLOMON)
)
Tax Map Key 2-5-24:12)

)

Variance Application

No. 423

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)
 RANDOLPH SOLOMON)
)
Tax Map Key 2-5-24:12)
_____)

Variance Application

No. 423

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND
DECISION AND ORDER

The above-entitled matter was brought on for a preliminary hearing on the 1st day of July 1974 and a public hearing on the 17th day of July 1974, before the Planning Commission of the Planning Department, County of Hawaii, in the County Councilroom, County Building, Hilo, Hawaii, at which hearing Mr. and Mrs. Randolph Solomon appeared in behalf of their application. The application was deferred at the July 17, 1974 and the August 8, 1974 Planning Commission meeting until the Planning Commission members conducted a field trip to the subject site. A field trip was subsequently conducted by the members, and the application was then taken up at the August 22, 1974 meeting in Hilo at which time it was deferred after a motion to approve the application did not receive the necessary five (5) majority votes for approval or disapproval. At the meetings of September 13, 1974, and September 25, 1974, the Commission members again deferred the subject application. A decision was then rendered at the October 17, 1974 meeting held at the Sgt. Yano Memorial Hall, Captain Cook, South Kona, Hawaii.

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 building site requirements of 15,000 square feet as stipulated within the single family residential - 15,000 square foot (RS-15) zoned district, was received on June 10, 1974.

2. The subject property which consists of 43,760 square feet of land is located at the end of Kapaa Street in the Ainako Subdivision Series 2, Punahoa 2nd, South Hilo, Hawaii.

3. The requested variance was to allow the creation of a 13,759 square foot lot within the Single Family Residential - 15,000 square foot (RS-15) zoned district.

4. The variance results from a proposed subdivision of three (3) lots of which one is only 13,759 square feet in size and is 1,241 square feet below the required minimum building site.

5. Kapaa Street is an existing non-conforming cul-de-sac. Under the present Subdivision Code, a cul-de-sac shall be no more than 600 feet in length and provide access to no more than 18 lots. Kapaa Street is 960 feet long and provides direct access to 24 lots. Kapaa Street is presently a 40-foot right-of-way with a 16-foot pavement.

6. This subdivision is characterized by sloping terrain with small gulches and a few continuous and intermittent streams and the subject property lies directly within the potential flood hazard area. A drainage culvert three (3) feet in diameter goes under Koula Street at a point which lies directly mauka of the subject area.

7. The subject property is overgrown with vegetation and vacant of any structures.

8. All essential utilities are available to the subject property.

9. The staff recommended at the Preliminary Hearing on July 1, 1974 and at the Public Hearing on July 17, 1974, 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 per se 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 such as terrain or government improvements which do not generally apply to the surrounding property in the same district;
- b. That the granting of the variance would constitute a grant of a special privilege as all other lots along Kapaa Street contain at least the 15,000 square feet required in an area where no lots have significantly differing terrain than is found in the applicant's situation. Furthermore, the granting of the variance would have to ultimately concede a waiver of area requirements to other lots in this area, of which there are five on Kapaa Street which could present a similar situation. In doing so, the problem of inadequate roadway width, and length of the cul-de-sac would be more pronounced, contrary to the intent of the General Plan which seeks to improve and upgrade roadway standards;

- c. That the granting of the variance, in this instance, would be furthering the non-conforming situation relative to the subdivision's code requirements of a cul-de-sac being 600 feet in length and serving only 18 lots. Kapaa Street is 960 feet in length and presently serves 24 lots. With the proposed action, the lots to be served would increase to 26 lots, thereby, furthering the non-conformity of the existing situation. Furthermore, Kapaa Street has a right-of-way width of 40 feet with a 16-foot pavement. The Subdivision Code requires a 50-foot right-of-way with a 20-foot pavement. Therefore, the existing roadway is inadequate based on present subdivision requirements;
- d. That because of the loss of land area necessary for the roadway easement, the net result of the parcels in question is reduced in size to (12,706), (12,716) and (13,759) square feet respectively. As a result, the actual buildable land area remaining is not consistent with the minimum lot size requirement of 15,000 square feet as regulated by the Single Family Residential - 15,000 square foot (RS-15) zoned district. Also, since the lots along Kapaa Street are between 15,000 square feet to 44,000 square feet in sizes, the creation of the lots below the minimum building site area requirement would be incongruous with the basic character of the surrounding area. Furthermore, since the land is situated within the flood plain zone, the net buildable area would possibly be further reduced; and

e. 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.

10. The Planning Commission at its July 1, 1974 meeting scheduled the application for a public hearing, although the staff had recommended that the application be denied.

11. At the Public Hearing held on July 17, 1974, the Planning Commission voted to defer the application until the Commission members could conduct a field trip to the subject site.

12. At the subsequent Commission meeting held on August 8, 1974, the Commission again deferred the application pending the on-site inspection of the subject property.

13. On August 22, 1974, an on-site check was conducted by the Commission members, and at its meeting which was scheduled for the same day, the Commission voted to defer the matter to their next scheduled meeting after a motion to approve or disapprove the request did not receive the necessary five (5) affirmative votes.

14. At its September 13, 1974 meeting, the Commission voted again to defer the application.

15. The Commission again voted to defer the application at its September 25, 1974 meeting.

16. At the Planning Commission meeting on October 17, 1974, it was moved and seconded that the variance request from the minimum building site area requirement 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.

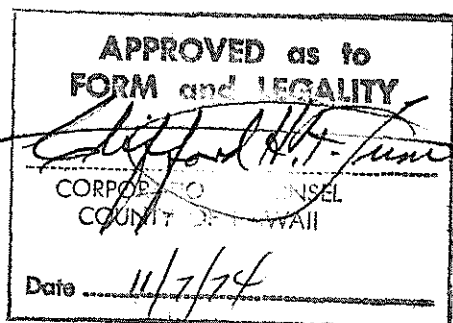
3. Under Section 5-4.3(g) of the Hawaii County Charter, a variance may not be granted unless there are special or unusual circumstances applying to the subject property which would result in unnecessary hardship if the ordinance were literally enforced, and the granting of the variance would not be contrary to the public interest.

4. The requirements for granting of a variance have not been met.

DECISION AND ORDER

Based upon testimony and exhibits introduced at the hearings 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 3, Section 6 of the Zoning Code (Chapter 8), pertaining to minimum building site area requirements, of Tax Map Key 2-5-24:12 located in the Ainako Subdivision Series 2, Punahoa 2nd, South Hilo, Hawaii, be and is hereby denied.

Dated at Hilo, Hawaii, this 1st day of November, 1974.



Arthur W. Martin
Arthur W. Martin, Chairman