

May 23, 1975

Mr. Samuel Alameda
561 Alawaena Road
Hilo, HI 96720

Re: Variance Application
Waiakea Homesteads, 2nd Series, Waiakea, South Hilo, Hawaii
Tax Map Key 2-4-34:6

The Planning Commission at its regular meeting on May 21, 1975 reconsidered your application for a variance to allow the creation of two 1-acre lots in lieu of the 3-acre minimum building site area requirement as stipulated in the Agricultural 3-acre (A-3a) zone. Also requested was a variance to allow the creation of two lots with average width of 109+ feet in lieu of the minimum building site average width of 120 feet.

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

1. That the applicant has not shown that the strict application or enforcement of the Zoning Code would be confiscatory or would effectively destroy the economic utility of the property. There is no evidence to show that there exists any special or unusual circumstances applying to the subject property, such as adverse topographic conditions, which do not generally apply to the surrounding properties in the same district. Furthermore, it is determined that there are no unusual circumstances that exist either to a degree which deprives the applicant of substantial property rights which would otherwise be available, or to a degree which obviously interferes with the best use or manner of development of the property.
2. That should the variance be granted, in essence, it would constitute a grant of special privilege inconsistent with the limitations placed upon other surrounding properties under the identical district classification. Within the immediate vicinity, there are eleven (11) other lots with similar physical characteristics. They are approximately two (2) acres in size and also

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do not meet the minimum building site average width requirement. Therefore, the granting of the requested variances under these circumstances may make the two (2) one-acre lots incongruous with the basic character of the surrounding area. This action may also ultimately concede a waiver of the minimum building site area requirement of three (3) acres and the minimum building site average width requirement to these other eleven (11) lots. Furthermore, there are a number of other lots in the immediate area which are presently below the 3-acre lot size minimum requirement. In granting the variance request, the problem of inadequate building site average width and site area would be more pronounced, as well as further contribute the present non-conformity situations. It is therefore determined that the requested variances are contrary to the general intent and purpose of the Zoning Code.

3. That because of the loss of land area necessary for the roadway easement, the net result of the proposed front lot will be reduced in size to approximately 39,085 square feet. As a result, the actual buildable area, which will be less than one (1) acre in essence, would be contrary to the State Land Use Regulations which states that the minimum lot size within the SLU Agricultural District shall be at least one (1) acre.
4. That although the General Plan land use pattern allocation guide map designates the area for Low Density Urban Development, it is felt that, at this time, urban development should be contained below Kupulau Street. One-acre lots, when properly subdivided and improved, are looked upon as having more of an urban rather than an agricultural character. It is undenyng that approval of this request may unnecessarily foster the premature urbanization of that area above Kupulau Street. This would then tend to have the undesirable effect of generating undue economic pressures for the premature conversion of other agricultural lands in the area into urban uses. Approval of this request would have the effect of randomly scattering instead of deliberately concentrating residential development in the area.

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

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(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 the Planning Department at 961-8288.


Arthur W. Martin
Chairman

lat:sk

cc: Corporation Counsel
Chief Engineer, Public Works

PLANNING COMMISSION

Planning Department
County of Hawaii
Hilo, Hawaii

In the Matter of the Appeal)
 of)
 SAMUEL ALAMEDA)
)
Tax Map Key 2-4-34:6)
_____)

Variance Application

No. 439

FINDINGS OF FACT

CONCLUSIONS OF LAW

AND

DECISION AND ORDER

Planning Department
County of Hawaii
Hilo, Hawaii

In the Matter of the Appeal)
 of)
 SAMUEL ALAMEDA)
)
Tax Map Key 2-4-34:6)
)

Variance Application
No. 439

DECISION AND ORDER

The above-entitled matter was brought on for a preliminary hearing on the 19th day of December 1974, and public hearings on the 30th day of January, 1975 and the 6th day of March 1975, before the Planning Commission of the Planning Department, County of Hawaii, in the County Council Room, County Building, Hilo, Hawaii, at which hearings Mrs. Samuel Alameda appeared in behalf of the application.

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 variances from the minimum building site area and average width requirements was received on November 8, 1974.

2. The first variance request was to allow the creation of two (2) 1-acre lots in lieu of the 3-acre minimum building site area requirement as stipulated in the Agriculture 3-acre (A-3a) zoned district.

The second request was to allow the creation of the two (2) lots with average widths of 109+ feet in lieu of the minimum building site average width of 120 feet.

3. The property which consists of two (2) acres of land is located along the south side of Ainaola Drive, approximately 350 feet east of the Ainaola Drive - Hoaka Road junction, Waiakea Homesteads, 2nd Series, Waiakea, South Hilo, Hawaii.

4. The applicant intended to convey title of the two (2) lots to his children.

5. The General Plan land use pattern allocation guide map designates the area for Low Density Urban Development. Such a designation may allow single family residential uses at a maximum density of four (4) units per acre. The State Land Use District classification is Agricultural.

6. A single family dwelling and a guest house are situated on the front portion of the property while the remaining area to the rear is vacant. Surrounding lands are primarily residential-agricultural in character. There are eleven (11) lots in the immediate vicinity along the same side of Ainaola Drive which are approximately two (2) acres in sizes. Majority of these lots are also non-conforming in regards to the minimum building site area and average width requirements. The zoning for these areas are also Agriculture 3-acre (A-3a).

7. All essential utilities, including an 8-inch water line, are available to the area. Ainaola Drive, which provides access to the property, is presently a 50-foot right-of-way and is proposed to be widened to eighty (80) feet.

8. A petition signed by eight (8) individuals supporting the variance requests was submitted. Eleven (11) other individuals submitted petitions in opposition to the requests.

9. The staff recommended denial of the application at the preliminary hearing on December 19, 1974, based on the following findings:

- a. The applicant has not shown that the strict application or enforcement of the Zoning Code would be confiscatory or would effectively destroy the economic utility of the property. There is no evidence to show that there exists any special or unusual circumstances applying to the subject property, such as adverse topographic conditions, which do not generally apply to the surrounding properties in the same district. Furthermore, it is determined that there are no unusual circumstances that exist either to a degree which deprives the applicant of substantial property rights which would otherwise be available, or to a degree which obviously interferes with the best use or manner of development of the property.
- b. Should the variance be granted, in essence, it would constitute a grant of special privilege inconsistent with the limitations placed upon other surrounding properties under the identical district classification. Within the immediate vicinity, there are eleven (11) other lots with similar physical characteristics. They are approximately two (2) acres in size and also do not meet the minimum building site average width requirement. Therefore, the granting of the requested variances under these circumstances may make the two (2) one-acre lots incongruous with the basic character of the surrounding area. This action may also ultimately concede a waiver of the minimum building site area requirement of three (3) acres and the minimum building site average width requirement to these other

eleven (11) lots. Furthermore, there are a number of other lots in the immediate area which are presently below the 3-acre lot size minimum requirement. In granting the variance requests, the problem of inadequate building site average width and site area would be more pronounced, as well as further contribute the present non-conforming situation. It is therefore determined that the requested variances are contrary to the general intent and purpose of the Zoning Code.

- c. Because of the loss of land area necessary for the roadway easement, the net result of the proposed front lot will be reduced in size to approximately 39,085 square feet. As a result, the actual buildable area, which will be less than one (1) acre, in essence, would be contrary to the State Land Use Regulations which states that the minimum lot size within the SLU Agricultural District shall be at least one (1) acre.
- d. Although the General Plan land use pattern allocation guide map designates the area for Low Density Urban Development, it is felt that, at this time, urban development should be contained below Kupulau Street. One-acre lots, when properly subdivided and improved, are looked upon as having more of an urban rather than an agricultural character. It is undenyng that approval of this request may unnecessarily foster the premature urbanization of that area above Kupulau Street. This would then tend to have the undesirable effect of generating undue economic pressures for the premature conversion of other agricultural lands in the area into urban uses. Approval of this request would have the effect of

randomly scattering instead of deliberately concentrating residential development in the area.

10. The Planning Commission at its meeting of December 19, 1974, scheduled the application for a public hearing although the staff recommended that it be denied.

11. The Planning Commission held a duly advertised public hearing on the application on January 30, 1975. The staff again recommended denial of the application as per findings presented at the preliminary hearing. The Commission voted to continue the public hearing at its next Hilo meeting.

12. Continuation of the public hearing was held on March 6, 1975 by the Planning Commission. The staff again recommended denial of the application. The Commission voted to close the public hearing. It was moved and seconded that the application be approved. Motion was defeated as there were three (3) ayes against five (5) noes. A motion to defer the application was carried with six (6) ayes and two (2) noes.

13. At its March 21, 1975, meeting, the Planning Commission again voted to defer the application. Motion was carried.

14. At the Planning Commission meeting on April 8, 1975, it was moved and seconded that the application be approved. Votes were recorded as two (2) ayes and three (3) noes, thus, motion was not carried. A subsequent motion was made and seconded to deny the request. Votes were recorded as three (3) ayes and two (2) noes. Since five (5) affirmative votes were needed the motion to deny was not carried. Motion to defer the application was carried.

15. At the Planning Commission meeting on April 22, 1975, it was moved and seconded that the application be denied. The votes was four (4) ayes and two (2) noes. Motion was defeated since five (5) affirmative votes required. It was moved and seconded that the

application be deferred. The vote was two (2) ayes and four (4) noes. Inasmuch as the vote to defer did not have the majority votes, the Chairman ruled that the application was dead.

16. At its meeting of May 21, 1975, the Planning Commission voted to reconsider the application. Motion to reconsider was carried. It was moved and seconded that the application be denied. Motion carried with a vote of five (5) ayes, two (2) noes, and one (1) abstention.

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.

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 7, Sections 5 and 6 of the Zoning Code (Chapter 8), pertaining to the minimum building site area and average width requirements, of Tax Map Key 2-4-34:6

located at Waiakea Homesteads, 2nd Series, Waiakea, South Hilo,
Hawaii, be and is hereby denied.

Dated at Hilo, Hawaii, this 12th day of J u n e,
1975.

Arthur W. Martin
Arthur W. Martin, Chairman

