

October 3, 1975

Mr. Roy Blackshear
Vice President
W. H. Shipman, Ltd.
P. O. Box 950
Keaau, HI 96749

Re: Variance Application
Tax Map Key 1-6-141:Portion of 15

The Planning Commission at its preliminary hearing on October 2, 1975 considered your application for a variance to allow the creation of a 1.005-acre lot in lieu of the minimum building site area requirement of twenty (20) acres as stipulated within the Agricultural 20-acre (A-20a) zoned district and also a variance to allow relief from the roadway pavement requirement of twenty (20) feet at Keaau, Puna, Hawaii.

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

That there are no special or unusual circumstances applying to the subject property and use which do not generally apply to surrounding properties or improvements in the same district. It has been found that the area under consideration has no special or unusual topographic or similar features which would render the land unusable to the owner or which would interfere with the best use or manner of development of the subject property. There are no unusual or special circumstances evident on the subject property which deprive the owner of substantial property rights which would otherwise be available.

The ultimate purpose of the variance request is to allow the applicant, W. H. Shipman, Ltd., to provide a residential lot to a present lessee. At the present time the lessee,

Mr. Gunji Nakamura, leases residential property from the applicant in Keaau Village. The applicant has been asked by the Hawaii Housing Authority to make available a parcel of land in Keaau Village for the purpose of constructing a Federally subsidized home for the elderly. The area which is proposed for the elderly housing would affect Mr. Nakamura's present homesite. The applicant is proposing to make available the area under consideration to Mr. Nakamura for his home. The applicant has, in the past, provided land to employees and other persons in the general vicinity of the subject property. While the generosity of the applicant is recognized as being socially commendable, such gestures do not justify the granting of a variance. The intent of variances is to provide flexibility to accommodate those circumstances in which, through no previous action of the applicant, the strict and literal enforcement of the law would cause undue hardship to the applicant and deprive him of substantial property rights. In this instance, the strict and literal enforcement of the law would not cause undue hardship to the applicant nor would it be confiscatory or deprive him of substantial property rights, but would prevent him from attaining his own goals.

Because there are no special or unusual circumstances applying to the subject property and use, the granting of the subject variance request would constitute a grant of special privilege which would be inconsistent with limitations upon other properties which are identically zoned. Other property owners with lands having similar characteristics would be required to comply with the requirements of the Zoning and Subdivision Codes.

In addition, the immediate area is characterized by residential-agricultural parcels of varying areas and by larger vacant parcels. Between the Volcano Highway and the loop road coming off of the Slaughter House Road, there are eleven (11) parcels which range in size from one acre to 5.68 acres. Of these eleven lots, nine are approximately two acres in size or larger. These lots are either vacant or are used for residential-agricultural activities.

Surrounding the subject parcel to the north and south are eight (8) existing properties which are greater than 2.3 acres in size. The larger of these range from 5.4 acres to 90.603 acres in size. Four of these parcels are owned by parties other than the applicant. The four other lots are owned by the applicant and with the parcel for which the

variance is requested totals 186.063 acres. Approval of the subject variance request would ultimately concede a waiver of the minimum building site area requirement of 20 acres for these other parcels in the area. Such a waiver could create a situation wherein the other lands in the immediate area would be in a vulnerable position for similar action.

The approval of the subject request would, in addition, be inconsistent with the general purpose of the zone, and the intent and purpose of the Subdivision and Zoning Codes. The intent of the Agricultural 20-acre zoning designation is to provide lots of adequate and sufficient areas for certain agricultural activities. This minimum lot size designation is based on factors such as suitability of land for agricultural productivity, the types of commodities produced, and the economic unit of farms for commercial agriculture. Such factors need to be analyzed relative to the intent of the owner's potential use of the lands. In this case, if the land is not suited to large scale agricultural activities on a commercial basis but is suitable for small scale residential-agricultural uses, the owner should analyze his overall intended use of the area and should seek the appropriate zoning classification. If the land is suitable for residential-agricultural activities, the zoning designation which allows such uses should be sought. To use the variance provision to attain such uses is in conflict with the intent and purpose of the Zoning Code as well as the variance process.

Further, the applicant has not shown that there are any special or unusual circumstances which would justify granting relief from the roadway pavement requirement. The purpose of the pavement requirement is to assure that accesses to properties are of a passable quality and to promote the safety of roadways. The subdivision of lots creates an increase in traffic and as traffic increases, however slight, the need for roads to meet standards is generated. Unless the standards set forth for roadways are determined to be unrelated to the actual circumstances, relief from such standards are unwarranted. In this case, both aspects of the variance request must be related to the overall characteristics of the vicinity and the potential for increased density which would arise if the request were approved. It is undeniable that approval of the minimum building site area variance request would generate an increase in density and subsequently generated traffic. The potential for other lands in the vicinity to be subdivided would further aggravate the roadway situation and would increase the hazard on what is presently determined to be a substandard road.

October 3, 1975

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



Arthur W. Martin
Chairman

lat:sb

cc Corporation Counsel
Chief Engineer, Public Works

PLANNING COMMISSION OF THE PLANNING DEPARTMENT

COUNTY OF HAWAII

In the Matter of the Appeal)
 of)
 W. H. SHIPMAN, LTD.)
)
Tax Map Key 1-6-141:portion of 15)

)

Variance Application

No. 447

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)	
W. H. SHIPMAN, LTD.)	Variance Application
)	
Tax Map Key 1-6-141:portion of 15)	No. 447
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FINDINGS OF FACT
CONCLUSIONS OF LAW
AND
DECISION AND ORDER

The above-entitled matter was brought on for a preliminary hearing on the 2nd day of October 1975, before the Planning Commission of the Planning Department, County of Hawaii, in the County Council Room, County Building, Hilo, Hawaii, at which hearing Roy Blackshear 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 roadway pavement requirements was received on September 5, 1975.
2. The first variance request was to allow the creation of a 1.005-acre lot in lieu of the minimum building site area requirement of twenty (20) acres as stipulated in the Agricultural 20-acre (A-20a) zoned district. The second request was for relief from a 20-foot roadway pavement requirement which would apply for the subdivision of the proposed 1.005-acre lot.
3. The proposed 1.005-acre lot is a portion of a 36.268-acre parcel located along the east side of an existing private gravel road, approximately 400 feet north of the Slaughter House Road in Keaau, Puna, Hawaii, Tax Map Key: 1-6-141: portion of 15.

4. The applicant intended to convey title of the 1.005-acre lot to a Mr. Gunji Nakamura.

5. The General Plan Land Use Pattern Allocation Guide Map designates the area for Orchard uses. This designation applies to those lands which though rocky in character and content can support productive macadamia nuts, papaya, citrus and other similar agricultural products. The State Land Use District classification is Agricultural.

6. The 36+-acre parcel contains some diversified agriculture, however, the proposed 1-acre portion is presently vacant and overgrown. Surrounding land uses include scattered residential to the west toward the Volcano Highway, the Slaughter House complex to the south, residential-agricultural activities, and vacant lands.

7. The area consists of Papai extremely stony muck soils. These are well-drained, thin, extremely stony organic soils over fragmental a'a lava. The surface layer is very dark brown extremely stony muck about eight (8) inches thick. The slope of the land is about three (3) to fifteen (15) percent. Permeability is rapid, runoff is slow, and the erosion hazard is slight. Papai soils are mostly used for woodland, with small areas being used for pasture, orchards and truck crops. The capability class of these soils is VII; that is soils which have very severe limitations that make them unsuited to cultivation and that restrict their use largely to pasture or range, woodland, or wildlife. Rainfall in the area is about 150 inches a year.

8. The Slaughter House Road which provides access from the Volcano Highway has a 50-foot right-of-way with a 20-foot pavement. The roadway fronting the property has a 40-foot right-of-way. It is a gravel road which is thirteen (13) feet wide and shoulders varying from one (1) to four (4) feet in width. A condition of tentative approval for the proposed 1.005-acre subdivision would be that this gravel road be improved with a 20-foot wide pavement for a distance of approximately 515 feet.

9. All other essential utilities are available to the area.

10. In request of the variances, the applicant has stated the following:

"W. H. Shipman, Ltd. presently leases residential property to Mr. Gunji Nakamura in Keaau Village. The State of Hawaii, Hawaii Housing Authority has asked W. H. Shipman, Ltd. for a 2.3 acre parcel of land in Keaau Village on which to build a Federally subsidized home for the elderly. The requested area is in the rear of the new Puna Federal Credit Union building in Keaau. (TMK 1-6-143-18 portion). Since this request will affect Mr. Gunji Nakamura's homesite, W. H. Shipman, Ltd. requests that a variance be granted on the subject lot 1092-E so that it can be made available to Mr. Nakamura for his home.

- a) The granting of this variance will not create a traffic hazard;
- b) The property is to be used for a single family dwelling and for agricultural use (avocados and citrus fruits); c) The character of the land will not be changed other than what is necessary for agricultural purposes. (clearing leveling, etc.); d) The granting of this variance will not make demands on existing utilities since water, telephone and electricity are available; e) Since this area is zoned for agriculture, W. H. Shipman, Ltd. encourages diversified agriculture of those who live in the area.

11. The Department of Agriculture made the following comments: "Although this agency is on record in opposition to 1-acre subdivisions in this general area, because of the circumstances necessitating this application, we have no objections."

12. The Department of Water Supply commented that "Inasmuch as the existing lot has been serviced through our 2-inch water meter since 1964 and that the subdivider will provide water service to the additional lot through this line, we have no objection to this proposed subdivision. However, further subdividing may require a water system in accordance with the requirements of the Subdivision Ordinance."

13. The staff recommended denial of the application at the preliminary hearing on October 2, 1975, based on the following findings:

That there are no special or unusual circumstances applying to the subject property and use which do not generally apply to surrounding properties or improvements in the same district. It has been found that the area under consideration has no special or unusual topographic or similar features which would render the land unusable to the owner or which would interfere with the best use or manner of development of the subject property. There are no unusual or special circumstances evident on the subject property which deprive the owner of substantial property rights which would otherwise be available.

The ultimate purpose of the variance request is to allow the applicant, W. H. Shipman, Ltd., to provide a residential lot to a present lessee. At the present time the lessee, Mr. Gunji Nakamura, leases residential property from the applicant in Keaau Village. The applicant has been asked by the Hawaii Housing Authority to make available a parcel of land in Keaau Village for the purpose of constructing a Federally subsidized home for the elderly. The area which is proposed for the elderly housing would affect Mr. Nakamura's present homesite. The applicant is proposing to make available the area under consideration to Mr. Nakamura for his home. The applicant has, in the past, provided land to employees and other persons in the general vicinity of the subject property. While the generosity of the applicant is recognized as being socially commendable, such gestures do not justify the granting of a variance. The intent of variances is to provide flexibility to accommodate those circumstances in which, through no previous action of the applicant, the strict and literal enforcement of the law would cause undue hardship to the applicant and deprive him of substantial property rights. In this instance, the strict and literal enforcement of the law would not cause undue hardship to the applicant nor would it be confiscatory or deprive him of substantial property rights, but would prevent him from attaining his own goals.

Because there are no special or unusual circumstances applying to the subject property and use, the granting of the subject variance request would constitute a grant of special privilege which would be inconsistent with limitations upon other properties which are identically zoned. Other property owners with lands having similar characteristics would be required to comply with the requirements of the Zoning and Subdivision Codes.

In addition, the immediate area is characterized by residential-agricultural parcels of varying areas and by larger vacant parcels. Between the Volcano Highway and the loop road coming off of the Slaughter House Road, there are eleven (11) parcels which range in size from one acre to 5.68 acres. Of these eleven lots, nine are approximately two acres in size or larger. These lots are either vacant or are used for residential-agricultural activities.

Surrounding the subject parcel to the north and south are eight (8) existing properties which are greater than 2.3 acres in size. The larger of these range from 5.4 acres to 90.603 acres in size. Four of these parcels are owned by parties other than the applicant. The four other lots are owned by the applicant and with the parcel for which the variance is requested totals 186.063 acres. Approval of the subject variance request would ultimately concede a waiver of the minimum building site area requirement of 20 acres for these other parcels in the area. Such a waiver could create a situation wherein the other lands in the immediate area would be in a vulnerable position for similar action.

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agriculture. Such factors need to be analyzed relative to the intent of the owner's potential use of the lands. In this case, if the land is not suited to large scale agricultural activities on a commercial basis but is suitable for small scale residential-agricultural uses, the owner should analyze his overall intended use of the area and should seek the appropriate zoning classification. If the land is suitable for residential-agricultural activities, the zoning designation which allows such uses should be sought. To use the variance provision to attain such uses is in conflict with the intent and purpose of the Zoning Code as well as the variance process.

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14. At that preliminary hearing, the Planning Commission voted to deny the variance requests for the reasons as outlined by the staff. The vote to deny was recorded as six (6) ayes and zero (0) noes.

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 preliminary 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 variances from the requirements of Article 7, Section 5 of the Zoning Code (Chapter 8), and Article 2, Section 4.03 of the Subdivision Code (Chapter 9), pertaining to the minimum building site area and roadway pavement requirements respectively, of Tax Map Key 1-6-141:portion of 15 located at Keaau, Puna, Hawaii, be and is hereby denied.

Dated at Hilo, Hawaii, this 6th day of September, 1975.

Arthur W. Martin
Arthur W. Martin, Chairman

