

January 9, 1976

Mrs. Ayako Kagawa
308 Kamehameha Ave.
Hilo, HI 96720

Re: Variance Application
Tax Map Key 2-4-21:29

The Planning Commission at its preliminary hearing on January 8, 1976 considered your application for a variance to allow the creation of two (2) lots below the minimum building site area requirement of 15,000 square feet as stipulated within the Single Family Residential - 15,000 square foot (RS-15) zoned district at Waiakea Homesteads 1st Series, Waiakea, South Hilo, Hawaii.

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

1. That there is no evidence to show that there exists any special or unusual circumstances applying to the subject property, such as adverse topographical conditions, which do not generally apply to the surrounding properties in the same district. According to the applicant, the ultimate purpose of the variance request is to allow the creation of the lots to convey title to her grandchildren. 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 allow deviations 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 her of substantial property rights. The applicant is not faced with this situation. She can still provide the lots for two (2) of her grandchildren by subdividing the property into two (2) conforming-sized lots. As such, it is determined that no unusual circumstances exist either to a degree which would deprive 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.

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2. That should this particular variance be granted, in essence it would constitute a grant of special privilege inconsistent with limitations placed upon other properties which are identically zoned. Other property owners with lands having similar characteristics are obliged to comply with the requirements of the Zoning and Subdivision Codes. However, the granting of this variance could possibly create a situation wherein the other lands in the immediate area of similar lot sizes would be in a vulnerable position for similar action. In fact, the 40,490 square-foot parcel immediately adjacent to the area in question is quite similar in size. It is probable that a similar variance request would be sought for this adjacent property should this particular variance request be granted.
3. That the proposed road widening of Haihai Street and to the portion of Likeke Street fronting the subject property would further reduce the size of the proposed lots. Both lots under consideration will be reduced by 365 square feet, while the 15,000 square feet on Lot A will be reduced by approximately 2,135 square feet. By the proposed road widening actions, Lot A will become approximately 12,865 square feet in size. As such, the end result would be three (3) 12,000+ square-foot lots within an RS-15 zoned district. The granting of a variance under these circumstances would, therefore, violate the spirit and intent of the minimum building site area requirements as stipulated within the Zoning Code.

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;

Mrs. Ayako Kagawa

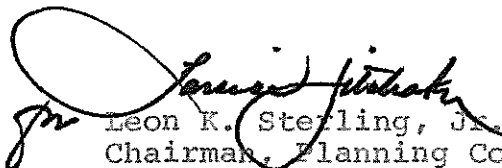
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3. The particular provision of the Zoning Ordinance or Subdivision Ordinance or regulation in question;
4. All pertinent facts;
5. The action of the Commission; and
6. Reasons for the appeal, including a statement as to why the appellant believes that 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.



Leon K. Sterling, Jr.
Chairman, Planning Commission

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cc Corporation Counsel
Chief Engineer, Public Works

PLANNING COMMISSION OF THE PLANNING DEPARTMENT
COUNTY OF HAWAII

In the Matter of the Appeal)
 of)
 Ayako Kagawa)
Tax Map Key 2-4-21:29)
_____)

Variance Application
No. 456

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND
DECISION AND ORDER

PLANNING COMMISSION OF THE PLANNING DEPARTMENT

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Variance Application
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FINDINGS OF FACT
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AND
DECISION AND ORDER

The above-entitled matter was brought on for a preliminary hearing on the 8th day of January 1976, before the Planning Commission of the Planning Department, County of Hawaii, in the County Council Room, County Building, Hilo, Hawaii, at which hearing Eileen Ahu and Dennis Kagawa appeared in 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 variance from the minimum building site area requirement was received on December 9, 1975.

2. The request was to allow the creation of two (2) lots, consisting of 12,935 square feet and 12,937 square feet, below the minimum building site area requirement of 15,000 square feet as stipulated within the Single-Family Residential - 15,000 square foot (RS-15) zoned district. These lots would have been 2,063 square feet and 2,065 square feet below the minimum requirement.

3. The property involved is located at the southwest corner of Likeke Street and Haihai Street, adjacent to the AJA Veteran's Hall, Waiakea Homesteads 1st Series, Waiakea, South Hilo, Hawaii, Tax Map Key 2-4-21:29.

4. The applicant had intended to subdivide a 40,872 square feet parcel into three (3) lots. One (1) of the lots proposed would have been 15,000 square feet; thus, meeting the minimum building site area requirement.

5. In request of the variance, the applicant had stated the following:

- "a. Mrs. Ayako Kagawa, owner, has no intentions to build rental units or in any other manner provide a source of income for herself, rather she would like to subdivide this parcel into three lots, enabling her to give her three grandchildren an equal portion of property to start a home for their families.
- "b. Eileen Ahu, one of the above-mentioned three, has the intentions and hope of building a home on a section of land there in the very near future. There is a large possibility of another grandchild building some time soon, and after the third builds enough equity and capital, he too would be willing to establish a home in that vicinity since the three are established residents of Hilo and intend to remain so.
- "c. None of the three grandchildren own any land of their own nor has the capital or means needed to buy a piece of property, much less build a home while paying for the land within ten years at least.
- "d. I do realize that this is asking for special consideration but this request, if accepted, would be in accordance with

the County General Plan in providing land for the residents for the building of homes.

- "e. The current zoning in that district does in fact allow for two large lots of approximately 20,000 square feet each so, in essence, all that is requested is the formation of one more lot.
- "f. This would in no way tax the water lines, or utilities, nor greatly affect the density of the district. The proposed subdivision would in fact ease the traffic entering onto Haihai from private driveways as the street entrance would be on Likeke.
- "g. The minimum lot size for the homes on Lauila Road, only one block above the parcel up for consideration, is 10,000 sq. ft. and the proposed three lots are larger than 10,000 sq. ft., (15,000, 12,937, and 12,935 respectively).
- "h. The area surrounding the parcel is fairly well developed; therefore, in my opinion, the potentiality of others requesting a variance in order to subdivide into smaller lots in the same area is minimal if not nil."

6. The 10,000 square foot lots along the mauka side of Lauila Road which the applicant made mention of are part of the State's residential subdivision development created in 1971 for those families in the so-called "Gap Group." The area was developed under the Cluster Plan Development (CPD) concept. Although those lands are also zoned RS-15, under the CPD concept, the lots may be reduced in land area, in that particular case, to 10,000 square feet; provided that the overall density allowed under the RS-15 zoning designation is not exceeded. The purpose of CPD is to provide exceptions to the provisions of the Single-Family Residential zoned district so that permitted density of dwelling units contemplated by the minimum lot size require-

ments is maintained in single-family districts on an overall basis and desirable open space, tree cover, recreational areas or scenic vistas are preserved. The minimum area required under a CPD is at least two (2) acres.

7. The lots along the makai side of Laula Road are slightly over 12,000 square feet in sizes. These non-conforming sized lots were created prior to the adoption of the Zoning Code. The lots within the Lahikina Subdivision, situated immediately adjacent to the property in question, are all over 15,000 square feet in sizes. The remaining lots in the general vicinity are 15,000 square feet or greater. There is a 40,490 square foot parcel immediately adjacent to the property in question.

8. Haihai Street is presently a 40-foot road which is proposed to be widened to sixty (60) feet; thus, affecting ten (10) feet of the property in question. Likeke Street is a 50-foot roadway with the exception of that portion fronting the subject property which is forty (40) feet wide. In light of this, the Department of Public Works recommended that should the request be approved, a five (5) foot frontage of the property along Likeke Street be turned over to the County. The Department of Public Works and the Police Department also recommended that accesses to the individual lots be confined to Likeke Street.

9. Other comments offered by the Department of Public Works are as follows:

"a. County General Plan calls for future 60-foot right-of-way on Haihai Street which would probably entail reducing the proposed Lot A (15,000 square foot lot) width by ten (10) feet (from 87.23 to 75.23 feet).

"b. The AJA parking lot, which is mauka and adjacent to the lots, drains into Lots B and C at the rear property lines."

10. The Department of Water Supply had the following comments:
"We have no adverse objections to the applicant's variance request. For your information, water is available from the ten (10) inch and six (6) inch water lines along Haihai Street and Likeke Street, respectively. Please be informed that the applicant shall comply with the water requirements as stipulated in the Subdivision Code and our Rules and Regulations at the time of subsequent subdivision processing."

11. All other cooperating agencies had no comments on or objections to the subject request.

12. Upon reviewing the request against the guidelines for considering a variance from the Zoning Code, the staff recommended denial of the application at the preliminary hearing on January 8, 1976, based on the following findings:

- a. That there is no evidence to show that there exists any special or unusual circumstances applying to the subject property, such as adverse topographical conditions, which do not generally apply to the surrounding properties in the same district. According to the applicant, the ultimate purpose of the variance request is to allow the creation of the lots to convey title to her grandchildren. 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 allow deviations 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 her of substantial property rights. The applicant is not faced with this situation. She can still provide the lots for two (2) of her grandchildren by subdividing the property into

13. At that preliminary hearing, the Planning Commission voted to deny the variance request for the reasons as outlined by the staff. The vote to deny was recorded as six (6) ayes and one (1) no.

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.

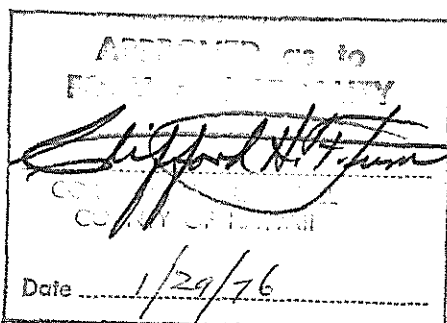
2. All procedural requirements as prescribed by law have been complied with.

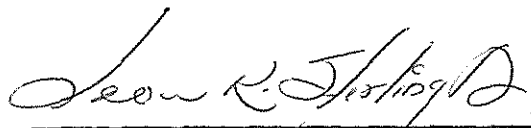
3. Under Section 5-4.3(g) of the Hawaii County Charter, a variance may not be granted unless there are special or unusual circumstances applying to the subject property which would result in unnecessary hardship if the ordinance were literally enforced, and the granting of the variance would not be contrary 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 the variance from the requirements of Article 3, Section 5 pertaining to the minimum building site area requirement of Tax Map Key 2-4-21:29 located in Waiakea, South Hilo, Hawaii be and is hereby denied.

Dated at Hilo, Hawaii, this 5th day of February, 1976.




Leon K. Sterling, Jr., Chairman