

March 12, 1976

Mr. Mike Steele  
P. O. Box 30  
Laupahoehoe, HI 96764

Re: Variance Application  
Tax Map Key 3-6-10:12

The Planning Commission at its preliminary hearing on March 11, 1976 considered your application for a variance to allow the construction of an addition to the existing single-family dwelling with a front yard setback of 12'-0" in lieu of the required twenty (20) feet. Also requested is a variance to allow a side yard setback of 7'-6" in lieu of the required ten (10) feet. The property involved is situated at Manowaiopae Homesteads, Laupahoehoe, North Hilo, 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 or the proposed addition which do not generally apply to surrounding properties or improvements in the same zoned district. Although the property is triangular in shape, by redesigning the proposed addition, there would be sufficient buildable area to construct the addition meeting the required setbacks. The width of the buildable area immediately adjacent to and to the rear of the existing single family dwelling is 32+ feet. By constructing a rectangular addition length-wise from the dwelling towards the apex or point of the triangle, the petitioner could construct a comparable sized addition, in terms of floor area without encroaching into the setback areas. According to our calculations, the petitioner could construct a 48 feet by 20 feet rectangular addition within the buildable area. This would amount to an additional 960 square feet of floor area.

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According to the preliminary plans submitted within the variance application, the proposed addition will be 1,100 square feet in size. As such, it is quite evident that the petitioner could meet his objectives in constructing an addition to the existing dwelling. Inasmuch as there are alternatives available, and added to the fact that there are no special or unusual circumstances related to the property or proposed addition, it is determined that there appears to be no concrete evidence that the variance should be granted. Furthermore, the intent of variances is to allow deviations to accommodate those circumstances in which, through no previous action of the petitioner, the strict and literal enforcement of the law would cause undue hardship to the petitioner and deprive him of substantial property rights. The petitioner is not faced with this situation.

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.

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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

lat:sb

cc Corporation Counsel  
Building Department  
Helen Baptiste

PLANNING COMMISSION OF THE PLANNING DEPARTMENT

COUNTY OF HAWAII

In the Matter of the Appeal )  
                  of )  
                  MIKE STEELE )  
Tax Map Key: 3-6-10:12 )  
\_\_\_\_\_ )

Variance Application

No. 464

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 )  
                  MIKE STEELE )  
Tax Map Key: 3-6-10:12 )  
\_\_\_\_\_ )

Variance Application  
No. 464

FINDINGS OF FACT  
CONCLUSIONS OF LAW  
AND  
DECISION AND ORDER

The above-entitled matter was brought on for a preliminary hearing on the 11th day of March, 1976, before the Planning Commission of the Planning Department, County of Hawaii, in the Councilroom, County Building, Hilo, Hawaii, at which hearing Helen Baptiste appeared in behalf of the petitioner.

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 front and side yard setback requirements as stipulated within the Single Family Residential-10,000 square foot (RS-10) zoned district was received on February 2, 1976.

2. The request was to allow the construction of an addition to the existing single family dwelling with a front yard setback of twelve (12) feet in lieu of the required twenty (20) feet. Also requested was a variance to allow a side yard setback of 7'-6" in lieu of the required ten (10) feet.

3. The property involved is situated along the makai side of the Old Mamalahoa Highway, at the Old Mamalahoa Highway - Hawaii

Belt Highway Intersection, Manowaiopae Homesteads, Laupahoehoe, North Hilo, TMK: 3-6-10:12.

4. The petitioner intends to construct a 1,100 square foot hexagonal shaped addition to the existing dwelling on the triangular shaped 10,336 square foot lot.

5. The buildable area of the property when all yard setback requirements are met, is approximately 3,058 square feet in size, or less than one-third ( $1/3$ ) of the total area of the lot.

6. The existing dwelling is non-conforming relative to the minimum setback requirements as portions of the dwelling are located within the front and side yard setback areas. The existing building encroaches approximately five (5) feet and four (4) feet into the side and front yard setback areas respectively.

7. Surrounding land uses include the Laupahoehoe Village Commercial area and the residential area of the Manowaiopae Homesteads. A single family dwelling is situated on the adjacent lot to the west of the property in question. The makai or side portion of the property is bordered by the crest of the Hamakua Coast Pali. This pali (cliff) is approximately 320 feet in height at this point.

8. Access to the subject area is from the Old Mamalahoa Highway which has a 40-foot right-of-way.

9. None of the cooperating agencies had comments on or objections to the subject request.

10. In request of the variances, the petitioner had stated the following:

"Reasons for request of variance for a reduced front and back yard footage.

"1. Triangular shape of the lot creates a problem prohibiting a standard type structured addition to our home. Further, to get the optimum square footage needed, a hexagon (a new pre-fab) affords the best type of addition to our home

for this odd shaped lot. (See unusual shape of lot in plan submitted.)

"If a structure were to be in keeping with the 20 feet set back on this triangular type of lot, it would have to be a long, thin, pointed building and not altogether functional.

"2. Special circumstance or use:

The owner plans to use the building as a place in which to do art.

The 5 non-attached sides of the hexagon addition will afford a large amount of natural light needed which is so essential to an artist.

Also, with this natural light afforded by a hexagon building, much less energy is needed.

"3. Granting this variance will not be inconsistent with the general purpose of the district or the intent and purpose of the subdivision and/or Zoning Codes. In fact it will enhance the general purpose of the district as the planned addition has the flavor architecturally of the old Hawaii plus the advantages of contemporary structuring and design. (See enclosed illustration of the hexagon design.)"

11. 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 March 11, 1976, based on the following findings:

That there are no special or unusual circumstances applying to the subject property or the proposed addition which do not generally apply to surrounding properties or improvements in the same zoned district. Although the property is triangular in shape, by redesigning the proposed addition, there would be sufficient buildable area to construct the addition meeting the required setbacks. The width of the buildable area immediately adjacent to and

to the rear of the existing single family dwelling is 32± feet. By constructing a rectangular addition length-wise from the dwelling towards the apex or point of the triangle, the petitioner could construct a comparable sized addition, in terms of floor area without encroaching into the setback areas. According to our calculations, the petitioner could construct a 48 feet by 20 feet rectangular addition within the buildable area. This would amount to an additional 960 square feet of floor area.

According to the preliminary plans submitted within the variance application, the proposed addition will be 1,100 square feet in size. As such, it is quite evident that the petitioner could meet his objectives in constructing an addition to the existing dwelling. Inasmuch as there are alternatives available, and added to the fact that there are no special or unusual circumstances related to the property or proposed addition, it is determined that there appears to be no concrete evidence that the variance should be granted. Furthermore, the intent of variances is to allow deviations to accommodate those circumstances in which, through no previous action of the petitioner, the strict and literal enforcement of the law would cause undue hardship to the petitioner and deprive him of substantial property rights. The petitioner is not faced with this situation.

12. At the 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 seven (7) ayes and zero (0) 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 the 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 7 of the Zoning Code (Chapter 8) pertaining to the minimum setback requirements of Tax Map Key 3-6-10:12 located in Laupahoehoe, North Hilo, Hawaii be and is hereby denied.

Dated at Hilo, Hawaii, this 11<sup>th</sup> day of March, 1976.

Leon K. Sterling, Jr., Chairman

