

May 17, 1976

Ms. Rosemary Ebrie
26 Manulele Street
Hilo, HI 96720

Re: Variance Application
Tax Map Key 2-5-19:58

The Planning Commission at its preliminary hearing on May 13, 1976 considered your application for a variance to allow the construction of an open carport with an 8'-6" projection in lieu of the 6'-0" allowable projection into the front yard setback as stipulated within the Zoning Code at Punahoa, South 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 building which do not generally apply to surrounding properties or improvements in the same zoned district. The property in question is level in character and does not contain any topographic or terrain constraints which would inhibit the petitioner's proposed use of the land. The open carport could have been constructed on the land meeting the minimum setback requirements.

There are several alternatives available to the petitioner. The first of these alternatives is to cut back the roof overhang by 2-1/2 feet, thus, meeting the maximum projection or clear space requirement. In doing so, the carport would become 18-1/2 feet in depth, which would still be able to provide shelter to the car.

The second alternative is to locate the carport on the south side of the existing single family dwelling. The existing dwelling is situated approximately twenty-eight (28) feet

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from the south side property line. That portion of the land is relatively level, and there are no structures at that location which would interfere with the construction of a carport. Under the Single Family Residential - 10,000 square foot (RS-10) zoned district, the minimum side yard setback is ten (10) feet. Consequently, there is eighteen (18) feet of buildable area adjacent to the south side of the dwelling where the carport could be constructed while meeting all the yard and open space requirements of the Zoning Code. Since the carport, as constructed, is only twelve (12) feet in width, there is ample area to construct the carport at this particular location.

Still another alternative would be construct the carport on the north side of the dwelling. There is a distance of 42+ feet between the dwelling and the north side property line. Subtracting the ten (10) feet side yard setback, there would be at least 30 feet of buildable area. As such, there also is ample area to construct the carport in this location. Consequently, as other alternative plans are available, and added to the fact that there are no special or unusual circumstances related to property or building, 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 her of substantial property rights. The petitioner is not faced with this situation. She was fully aware of the minimum building projection or clear space requirement prior to construction of the carport. The building plans as filed by the petitioner and subsequently approved, did reflect the maximum six (6) feet projection; in other words, a maximum of fourteen (14) feet clear space between the eaves line and the front property line. The petitioner, however, knowingly constructed the carport in violation of the minimum projection or clear space requirement. As such, it is determined that any hardship created, if any, was solely through the petitioner's own doing.

As your request has been denied, you are now required to move subject structure to comply with the 14-foot clear space requirement or appeal the decision of the Planning Commission if you feel that the

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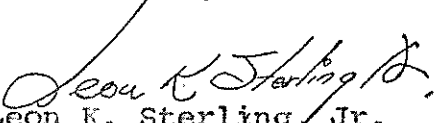
action of the Planning Commission was based on an erroneous finding of a material fact, or that the Commission has acted in an arbitrary or capricious manner, or had manifestly abused its discretion.

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 Planning 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.


Leon K. Sterling, Jr.
Chairman, Planning Commission

lat:sb

cc Corporation Counsel
Building Department

PLANNING COMMISSION OF THE PLANNING DEPARTMENT

COUNTY OF HAWAII

In the Matter of the Appeal)
 of)
 ROSEMARY EBRIE)
Tax Map Key: 2-5-19:58)
_____)

Variance Application
No. 469

FINDINGS OF FACT

CONCLUSIONS OF LAW

AND

DECISION AND ORDER

PLANNING COMMISSION OF THE PLANNING DEPARTMENT

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In the Matter of the Appeal)
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Variance Application
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FINDINGS OF FACT
CONCLUSIONS OF LAW
AND
DECISION AND ORDER

The above-entitled matter was brought on for preliminary hearings on the 11th day of March, 1976, and the 13th day of May, 1976, before the Planning Commission of the Planning Department, County of Hawaii, in the County Councilroom, County Building, Hilo, Hawaii, at which hearings Rosemary Ebrie and James Warren appeared.

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 maximum allowable clear space requirement was received on February 12, 1976.
2. The request was to allow the retention of an open carport which was constructed with an 8'-6" projection in lieu of the 6'-0" maximum allowable projection into the front yard setback as stipulated within the Zoning Code.

3. Under the Single Family Residential - 10,000 square foot (RS-10) zoned district, the minimum front yard setback requirement is twenty (20) feet. The Zoning Code also allows a 6'-0" projection into the front yard setback area. However, any portion of the building which is within the 20-foot setback area cannot be enclosed.

4. The property involved is situated along the west side of Manulele Street, approximately ninety-five (95) feet south of the Manulele Street-Ainako Avenue intersection, Punahoa, South Hilo, Tax Map Key 2-5-19:58.

5. On February 4, 1976, a building permit was taken out for the construction of the open carport, which would be structurally attached to the existing dwelling. The approved permit did show a 6'-0" projection; in other words, a 14'-0" clear space between the eaves line and the front property line. The petitioner, however, constructed the carport with a projection of 8'-6" instead of the maximum requirement of 6'-0"; thus, encroaching an additional 2'-6" into the clear space area.

6. The carport, as constructed, is twelve (12) feet wide by twenty-one (21) feet long, or 252 square feet in size.

7. The distance between the south side property line and the existing dwelling is approximately twenty-eight (28) feet. That portion of the property has no structures and is relatively level. There is a distance of 42+ feet between the dwelling and the north side property line. That portion of the property also has no structures. Under the RS-10 zoning, the minimum side yard setback is ten (10) feet.

8. Manulele Street, which fronts the property, has a 50-foot right-of-way with a 20-foot pavement.

9. All cooperating agencies had no comments on or objections to the requested variance.

10. In support of the request, the petitioner has stated the following:

- "1. When the house was built 30 years ago, the need for a carport was not in evidence, nor did the owners think that a wider road would be built later and there would be new setback laws.
- "2. At present there is a vital need for a carport and present setback lacks 3 feet for a legal setback so variance is needed to remove all doubt.
- "3. Carport is necessary for:
 - a. Safe handling of my mother, who is blind;
 - b. Safe handling of a friend who lives with me and is in a wheelchair; and
 - c. Our car needs protection from rain, etc."

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 February 9, 1976, based on the following findings:

That there are no special or unusual circumstances applying to the subject property or building which do not generally apply to surrounding properties or improvements in the same zoned district. The property in question is level in character and does not contain any topographic or terrain constraints which would inhibit the petitioner's proposed use of the land. The open carport could have been constructed on the land meeting the minimum setback requirements.

There are several alternatives available to the petitioner. The first of these alternatives is to cut back the roof overhang by 2-1/2 feet, thus, meeting the maximum projection or

clear space requirement. In doing so, the carport would become 18-1/2 feet in depth, which would still be able to provide shelter to the car.

The second alternative is to locate the carport on the south side of the existing single family dwelling. The existing dwelling is situated approximately twenty-eight (28) feet from the south side property line. That portion of the land is relatively level, and there are no structures at that location which would interfere with the construction of a carport. Under the Single Family Residential - 10,000 square foot (RS-10) zoned district, the minimum side yard setback is ten (10) feet. Consequently, there is eighteen (18) feet of buildable area adjacent to the south side of the dwelling where the carport could be constructed while meeting all the yard and open space requirements of the Zoning Code. Since the carport, as constructed, is only twelve (12) feet in width, there is ample area to construct the carport at this particular location.

Still another alternative would be construct the carport on the north side of the dwelling. There is a distance of 42+ feet between the dwelling and the north side property line. Subtracting the ten (10) feet side yard setback, there would be at least 30 feet of buildable area. As such, there also is ample area to construct the carport in this location. Consequently, as other alternative plans are available, and added to the fact that there are no special or unusual circumstances related to property or building, 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 her of substantial property rights. The petitioner is not faced with this situation. She was fully aware of the minimum building projection or clear space requirement prior to construction of the carport. The building plans as filed by the petitioner and subsequently approved, did reflect the maximum six (6) feet projection; in other words, a maximum of fourteen (14) feet clear space between the eaves line and the front property line. The petitioner, however, knowingly constructed the carport in violation of the minimum projection or clear space requirement. As such, it is determined that any hardship created, if any, was solely through the petitioner's own doing.

12. At that meeting, the Planning Commission voted to continue the preliminary hearing until such time that more information is received from the building inspector of the Department of Public Works regarding the inspection, and until the Commissioners have had an opportunity for an on-site inspection of the property.

13. The Planning Commission conducted an on-site inspection of the property on Monday, March 29, 1976.

14. Per memorandum dated April 30th, the County Department of Public Works stated that "Mrs. Ebrie was informed that the carport addition to her dwelling did not conform to the setback requirements of the Zoning Code. The addition being near completion at the time of inspection, we permitted her to complete the construction on a condition that corrections be made should the variance be

denied. Please be apprised that the carport is constructed in such a way that correction can be made without difficulty."

15. The preliminary hearing was continued on May 13, 1976, at which time the staff again recommended denial of the request for the reasons as outlined under No. 11.

16. At that meeting, 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 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 the variance from the requirements of Article 26,

Section 4.H of the Zoning Code (Chapter 8) pertaining to the maximum allowable clear space requirement of Tax Map Key 2-5-19:58 located in Punahoa, South Hilo, Hawaii be and is hereby denied.

Dated at Hilo, Hawaii, this 7th day of June, 1976.


Leon K. Sterling, Jr., Chairman

