

February 15, 1977

Mr. Dallas Blackiston
P. O. Box 1147
Kamuela, HI 96743

Re: Variance Application - Lester Gamble
Tax Map Key: 8-~~3~~-06:9

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The Planning Commission at its duly held public hearing on February 14, 1977, considered your application for a variance to allow the retention of the boat storage area of an existing structure with a 5'-3" front yard setback in lieu of the minimum requirement of 20'-0" as stipulated within the Single Family Residential - 15,000 square foot (RS-15) zoned district at Kahauloa House Lots, Kahauloa 1st, South Kona, Hawaii.

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

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, consisting of 25,240 square feet in size, is level in character and does not contain any topographic or terrain constraints which would inhibit the petitioner's proposed use of the land. A boat storage structure could have easily been constructed on other portions of the land while still meeting the minimum setback requirements. The property is large enough in size that a boat storage structure could have been built on other locations on the property. In light of these circumstances, it is determined that the denial of this particular variance request will not deprive the petitioner 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 subject property. Furthermore, the intent of variances is to allow deviations to accommodate those circumstances

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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 would deprive him of substantial property rights.) The petitioner is not faced with this situation. He was fully aware of the minimum setback requirement as well as the provisions of the nonconforming section of the Zoning Code.

A building permit was granted to the petitioner to remodel and convert portion of an existing boat storage structure into a guest cottage. At the time the permit was obtained, the petitioner was informed that the permit was only for the guest cottage portion of the building, and did not include the remaining boat storage area. However, during the remodeling of the guest cottage, the petitioner did demolish the remainder of the boat shed and reconstructed that portion into a new boat storage area without a building permit. As such, while the guest cottage portion of the building was legally allowed, the petitioner knowingly demolished and reconstructed the boat storage area without obtaining approval from the appropriate governmental agencies. Therefore, it is determined that any hardship created, if any, was solely through the petitioner's own doing.

In light of the foregoing, it is further determined that the granting of this particular variance will be inconsistent with the setback requirements as well as the nonconforming provisions of the County's Zoning Code.

It should be pointed out, however, the guest cottage portion of the structure may be retained at its present location as it was remodeled under approved building plans.

As your request has been denied, you are required to remove or relocate the boat storage structure in conformance with the Building and Zoning Code requirements. The petitioner 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):

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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 had 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.



(Mrs.) Lorraine R. Jitchaku
Chairman, Planning Commission

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cc Lester Gamble
Corporation Counsel
Building, Public Works

PLANNING COMMISSION OF THE PLANNING DEPARTMENT

COUNTY OF HAWAII

In the Matter of the Appeal)
 of)
 DALLAS BLACKISTON)
))
Tax Map Key 8-2-06:9)
_____)

Variance Application
No. 484

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)	
DALLAS BLACKISTON)	Variance Application
)	
Tax Map Key 8-2-06:9)	No. 484
)	

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND
DECISION AND ORDER

The above entitled matter was brought on for a preliminary hearing on the 22nd day of December 1976, and for a public hearing on the 14th day of February 1977, before the Planning Commission of the Planning Department, County of Hawaii, at the State Department of Education Kona Annex Building, Kailua, North Kona, Hawaii, at which hearings Dallas Blackiston 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 for a variance from the minimum front yard setback requirement was received on October 26, 1976.
2. The petition was filed by Dallas Blackiston, a contractor, in behalf of Lester Gamble, the owner of the property.
3. The request was to allow the retention of the boat storage area of an existing structure with a 5'-3" front yard setback in

lieu of the minimum requirement of twenty (20) feet as stipulated within the Single Family Residential - 15,000 square foot zoned district.

4. The property involved, consisting of 25,240 square feet, is located along the west side of Pu'u honu Road in the vicinity of Kealahou Bay, Kahauloa House Lots, Kahauloa 1st, South Kona, Hawaii, Tax Map Key 8-2-06:9.

5. Originally, the existing structure was used solely as a boat shed. It was a nonconforming structure relative to the minimum front yard setback requirement.

6. The remaining portion of the existing structure consisting of approximately 440 square feet, was remodeled to a guest cottage area. A building permit for the remodeling work for the guest cottage area of the structure was approved and issued in May of 1976.

7. While doing the remodeling work for the guest cottage area, the contractor demolished and completely rebuilt the remaining boat storage area of approximately 430 square feet without a building permit.

8. In its memorandum to the Planning Director dated January 5, 1977, the Department of Public Works stated the following:

- a. Building Permit No. 761185 was issued on May 27, 1976, to convert approximately 440 square feet of an existing boat shed (approximately 800 sq. ft. in area), into a guest cottage.
- b. On October 15, 1976, building inspector Allan Asada inspected the premise and noticed that the remaining area (approximately 360 sq. ft.) of the boat shed was being enclosed. Asada notified Dallas Blackiston that a permit was required for the additional work. Knowing that there could be a setback problem, Blackiston was informed by Asada to contact the Planning Department. Asada then referred the matter to the Planning Department to resolve the setback situation.
- c. As mentioned previously, the violation was noticed on October 15, 1976. Blackiston was notified to obtain a building permit for the additional work and in the meantime, to resolve the

setback problem with Planning Department. No written stop work order was issued since Blackiston agreed to comply.

No final inspection was made and therefore, occupancy of the guest house portion was not approved. Supervising building inspector, Colbert Nozaki, will be making a follow-up inspection on this matter. Please note that inspector Asada is no longer with us and we are reporting his actions based on records available.

The Department of Public Works further informed that "There is no setback problem with the Housing or Building Code if located a minimum of 5 feet from the property line."

9. According to Article 1, Section 9.B.1 of Chapter 8 (Zoning Code), Hawaii County Code, as amended, a nonconforming structure can be repaired, maintained, or enlarged provided that any enlargement or addition shall conform in every respect to the regulations (e.g. setback) for the zoned district in which it is located. The Code further states that "If a building is nonconforming because of a particular requirement of the district within which it is located (e.g. parking, yards, heights, distance between buildings, etc.), then the use may be enlarged and the building may be changed or added to, provided such enlargement, change or addition is itself in full compliance with the district regulations." Based on these requirements, since the boat storage area of the structure was demolished and reconstructed at that same location with only a 5'-3" front yard setback, a variance was required.

10. Besides the building in question, there is also a single family dwelling on the subject property. Surrounding land uses include other single family dwellings.

11. Pu'uhonua Road, which fronts the subject property, is a 30-foot roadway with a 10'-6" pavement. The other 20-foot wide roadway from which the affected setback is taken, is unimproved but cleared to a width of about eight (8) feet. There is a 4 to 6-foot high stone wall along this front property line.

12. The subject property is situated within the Kealahou Bay Archaeological and Historical District; thus, all improvements must be reviewed by the State Historic Preservation Officer (HPO). The reconstruction of the boat storage area of the building was not reviewed by the HPO. The plan for the remodeling of the guest cottage area, however, was reviewed and approved by the HPO.

13. In requesting the variance, the petitioner has stated the following:

"The subject structure was situated on the same concrete slab that the original boathouse was on.

Initially only one half of this boathouse was to be renovated to form a guest cottage, however, when work was started on this portion heavy termite infestation was disclosed. As a result of this and inadvertently with no intent to violate the code the building was re-structured, by demolishing and re-building entirely.

At the present time it is complete in the same location as the original boathouse due to the fact that (B - J Construction) we assumed (wrongly) that this location would be satisfactory.

This location does not infringe on any adjacent property, offers no hazards of any nature and will in no way be detrimental to the public welfare.

Therefore, it is respectfully requested that this variance be granted in order to permit final inspection by the Building Department and use as a guest cottage by the owner, Mr. Lester H. Gamble."

14. At the preliminary hearing on December 22, 1976, the staff recommended that the preliminary hearing be continued until further investigation can be made regarding the violation.

15. At that meeting, however, the Planning Commission voted to schedule the variance request for a public hearing.

16. At the public hearing on February 14, 1977, the staff recommended denial of the application 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, consisting of 25,240 square feet in size, is level in character and does not contain any topographic or terrain constraints which would inhibit the petitioner's proposed use of the land. A boat storage structure could have easily been constructed on other portions of the land while still meeting the minimum setback requirements. The property is large enough in size that a boat storage structure could have been built on other locations on the property. In light of these circumstances, it is determined that the denial of this particular variance request will not deprive the petitioner 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 subject property. 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 would deprive him of substantial property rights. The petitioner is not faced with this situation. He was fully aware of the minimum setback requirement as well as the provisions of the nonconforming section of the Zoning Code.

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In light of the foregoing, it is further determined that the granting of this particular variance will be inconsistent with the setback requirements as well as the nonconforming provisions of the County's Zoning Code.

It should be pointed out, however, the guest cottage portion of the structure may be retained at its present location as it was remodeled under approved building plans.

17. 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 six (6) ayes and two (2) 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.

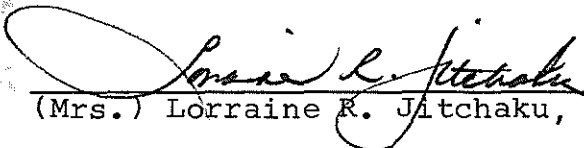
3. Under Section 5-4.3 (g) of the Hawaii County Charter, a variance may not be granted unless there are special or unusual circumstances applying to the subject property which would result in unnecessary hardship if the ordinance were literally enforced,

and the granting of the variance would not be contrary to the public interest.

DECISION AND ORDER

Based upon 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.B of the Zoning Code (Chapter 8) pertaining to the minimum front yard setback requirement of Tax Map Key 8-2-06:9 located in Kahauloa 1st, South Kona, Hawaii, be and is hereby denied.

Dated at Hilo, Hawaii, this 4th day of March, 1977.


(Mrs.) Lorraine R. Jitchaku, Chairman

