

March 16, 1977

Mr. Larry Kurihara  
102 Pohakulani Street  
Hilo, HI 96720

Re: Variance Application  
Tax Map Key 2-4-62:72

The Planning Commission at its preliminary hearing on March 14, 1977 considered your application for a variance to allow the retention of a newly constructed single-family dwelling with a 5'-5" side yard setback in lieu of the minimum requirement of 10'-0" as stipulated within the Single Family Residential - 15,000 square foot (RS-15) zoned district at Kawaiilani Place Subdivision, Waiakea, South Hilo, Hawaii.

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

It is found that there are no special or unusual circumstances applying to the subject property or its improvements which do not generally apply to surrounding properties or improvements in the same zoned district. The property in question has been graded and is level in character. It does not contain any topographic or terrain constraints which would have inhibited the petitioner's use of the land or deprived him of substantial property rights.

The intent of variances is to allow reasonable deviations to accommodate these 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. There is no evidence that the petitioner is faced with such a situation.

The purpose of the subject request is to allow the retention of a newly constructed single family dwelling which would encroach 4'-7" into the side yard setback area. The minimum side yard setback requirement for the lot in question is ten

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(10) feet. The Zoning Code also provides that projections beyond the structural building line, such as the eaves, may extend into the setback area. For this particular parcel, the projections may encroach five (5) feet into the side yard setback area, leaving a 5-foot clear space. According to the building plans, the eaves extend 3'-6" beyond the building line. This being the case, there is a clear space distance between the edge of the eave and the side property line of only about two (2) feet. As such, should the adjacent property owner construct his dwelling with a minimum side yard setback of ten (10) foot and a 3'-6" eave, there will only be an 8'-6" clear space distance between the two (2) dwellings. In light of this, it is determined that the granting of this particular variance will be contrary to the intent of the setback law which is to provide for light, air, and circulation between buildings.

It is further determined that any hardship created is self-imposed. The petitioner was fully aware of the minimum setback requirements prior to the construction of the single family dwelling. The building plans as filed by the petitioner and subsequently approved, did reflect an 11-foot setback for the affected side. An on-site inspection did confirm the permanent placement of the property corner markers with steel pipes. It would seem quite apparent that the location of the property markers, the dwelling would have been constructed in its proper location, meeting the minimum side yard setback requirement. As such, it is determined that any hardship created was solely due to the petitioner's own doing. He is charged with the responsibility of verifying the setbacks in accordance with the stipulations in the Zoning Code.

Furthermore, if this particular variance request were to be approved, we would be hard pressed not to grant other similar requests, whether the structure has already been constructed or is proposed to be constructed. Although we are sympathetic of the owner's plight, in reviewing and analyzing the request against the criteria for considering a variance, we find that the request is not justified.

As the request has been denied, you are required to remove a portion of the structure in conformance with the Zoning Code requirement. Another possible alternative would be to acquire the adjacent land and consolidate it with the affected parcel.

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

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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.



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

lat:lgv

cc Mr. Rodney Kawamura  
Corporation Counsel  
Building Division, Public Works

PLANNING COMMISSION OF THE PLANNING DEPARTMENT

COUNTY OF HAWAII

In the Matter of the Appeal     )  
                  of                     )  
      LARRY Y. KURIHARA, INC.        )  
                                      )  
Tax Map Key 2-4-62:72                )  
\_\_\_\_\_

Variance Application

No. 488

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	)	
LARRY Y. KURIHARA, INC.	)	Variance Application
	)	
Tax Map Key 2-4-62:72	)	No. 488
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FINDINGS OF FACT  
CONCLUSIONS OF LAW  
AND  
DECISION AND ORDER

The above entitled matter was brought on for <sup>new</sup> a preliminary hearings on February 3, 1977 and March 14, 1977, before the Planning Commission of the Planning Department, County of Hawaii, at the Councilroom, County Building, South Hilo, Hawaii, at which hearing Mrs. Larry Kurihara 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 side yard setback requirement was received on December 15, 1976.

2. The request was to allow the retention of a newly single family dwelling with a 5'-5.4" side yard setback in lieu of the minimum requirement of ten (10) feet as stipulated within the Single Family Residential - 15,000 square foot (RS-15) zoned district.

3. The property involved, consisting of 15,061 square feet in size, is located along the north side of Kaholo Street within Kawailani Place Subdivision, Waiakea, South Hilo, Tax Map Key 2-4-62:72.

4. The owner of the subject property and dwelling is Rodney Kawamura. Larry Y. Kurihara, Inc. is the contractor who built the dwelling.

5. A building permit for the construction of the dwelling was issued in May of 1976. The plans as approved showed an eleven-foot side yard setback for the affected area. A ten-foot setback was delineated for the other side of the property.

6. The building in question is seventy (70) feet wide. The width of the property is ninety-one (91) feet.

7. Final inspection of the building construction was conducted on December 2, 1976, by the Inspector of the Department of Public Works' Bureau of Building Construction and Inspection. In commenting on the requested variance, the Department of Public Works stated the following:

"a. July 2, 1976: Foundation Inspection. Foreman Umeda informed Inspector Sasaki that distance to boundary was according to plans.

"b. September 27, 1976: Framing inspection - approved.

"c. December 2, 1976: Final inspection - approved.

"Note: The Housing Code allows a minimum sideyard of 5'-0"."

8. That portion of the building which encroaches into the side yard setback area consists of two (2) bedrooms, of which,

one (1) is the master bedroom. If the building were to be cut back to meet the minimum ten-foot setback requirement, the master bedroom would be able to meet the minimum housing code requirement (bedroom - 80 square feet and 7 feet wide). The other bedroom, however, will not be able to meet this requirement.

9. The Zoning Code provides that projections beyond the structural building line, such as eaves, may extend into the setback area. For this particular lot, the projections may encroach five (5) feet into the side yard setback area, leaving a five-foot clear space. According to the approved building plans, the eaves extend 3'-6" beyond the building line. This being the case, there is a clear space distance between the edge of the eave and the side property line of only about two (2) feet.

10. The adjacent lot on the affected side of the subject property is also 15,061 square feet in size with a width of 91 feet. There are no structures on this lot.

11. When the Kawaihewa Place Subdivision came in for subdivision approval, the developer of that subdivision was required to submit a certification that the property markers were permanently in place. The developer did certify in writing that the corners of the lots were permanently marked. An on-site inspection by the Planning Department staff on January 28, 1977, verified the permanent placement of the corner markers.

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

13. In support of the request, the petitioner stated the following:

"The building as it is presently situated is such that a portion of the house is approximately 5.45 ft. from the existing boundary line. The building was erroneously layed at this distance because of the contractor's employee having mistakingly determined the boundary line. The mistake in set back was not discovered until the owner questioned the distance after the house has been completed. The error was not committed intentionally and to require the owner to move the present building to meet the setback requirement would create extreme hardship to the owner and contractor. The granting of this request will not seriously effect the adjoining property owner adversely."

14. At the preliminary hearing on February 3, 1977, the Planning Department staff recommended that the preliminary hearing be continued in order to allow them more time to fully review and analyze the various request. In accordance with the staff's request, the Planning Commission voted to continue the preliminary hearing.

15. The preliminary hearing was continued on March 14, 1977, at which time the staff recommended denial of the application based on the following findings:

"It is found that there are no special or unusual circumstances applying to the subject property or its improvements which do not generally apply to



surrounding properties or improvements in the same zoned district. The property in question has been graded and is level in character. It does not contain any topographic or terrain constraints which would have inhibited the petitioner's use of the land or deprived him of substantial property rights.

"The intent of variances is to allow reasonable deviations to accommodate these 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. There is no evidence that the petitioner is faced with such a situation.

"The purpose of the subject request is to allow the retention of a newly constructed single family dwelling which would encroach 4'-7" into the side yard setback area. The minimum side yard setback requirement for the lot in question is ten (10) feet. The Zoning Code also provides that projections beyond the structural building line, such as the eaves, may extend into the setback area. For this particular parcel, the projections may encroach five (5) feet into the side yard setback area, leaving a 5-foot clear space. According to the building plans, the eaves extend 3'-6" beyond the building line. This

being the case, there is a clear space distance between the edge of the eave and the side property line of only about two (2) feet. As such, should the adjacent property owner construct his dwelling with a minimum side yard setback of ten (10) foot and a 3'-6" eave, there will only be an 8'-6" clear space distance between the two (2) dwellings. In light of this, it is determined that the granting of this particular variance will be contrary to the intent of the setback law which is to provide for light, air, and circulation between buildings.

"It is further determined that any hardship created is self-imposed. The petitioner was fully aware of the minimum setback requirements prior to the construction of the single family dwelling. The building plans as filed by the petitioner and subsequently approved, did reflect an 11-foot setback for the affected side. An on-site inspection did confirm the permanent placement of the property corner markers with steel pipes. It would seem quite apparent that the location of the property markers was not verified by the petitioner. It is felt that if the petitioner had verified the placement of the property markers, the dwelling would have been constructed in its proper location, meeting the minimum side yard setback requirement. As such, it is determined that any hardship created was solely due

to the petitioner's own doing. He is charged with the responsibility of verifying the setbacks in accordance with the stipulations in the Zoning Code.

"Furthermore, if this particular variance request were to be approved, we would be hard-pressed not to grant other similar requests, whether the structure has already been constructed or is proposed to be constructed. Although we are sympathetic of the owner's plight, in reviewing and analyzing the request against the criteria for considering a variance, we find that the request is not justified."

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 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.

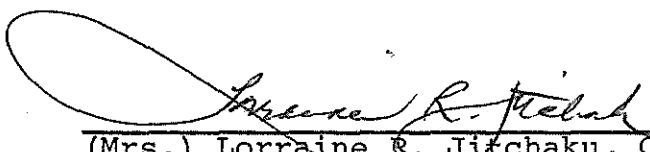
3. Under Section 5-4.3 (g) of the Hawaii County Charter, a variance may not be granted unless there are special or unusual circumstances applying to the subject property which

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.

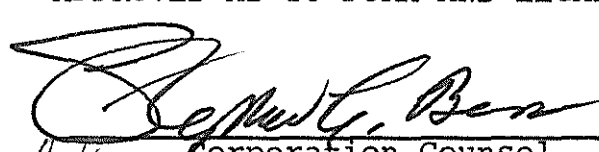
DECISION AND ORDER

Based upon 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 side yard setback requirement of Tax Map Key 2-4-62:72 located at Waiakea, South Hilo, Hawaii, be and is hereby denied.

Dated at Hilo, Hawaii, this 14th day of April, 1977.

  
(Mrs.) Lorraine R. Jitchaku, Chairman

APPROVED AS TO FORM AND LEGALITY:

  
Acting Corporation Counsel  
County of Hawaii

Date: 4/5/77