

June 20, 1977

Mr. Vincent Gazmen
24 Hale Nani Street
Hilo, HI 96720

Dear Mr. Gazmen:

Variance Application
Tax Map Key 2-4-55:3

The Planning Commission at its preliminary hearing on June 16, 1977 considered your application for a variance to allow a 5-foot side yard setback in lieu of the required eight (8) feet as stipulated within the Single Family Residential - 7,500 square foot (RS-7.5) zoned district at Waiakea, South Hilo, Hawaii.

This is to inform you that the Commission voted to deny your request 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 is level in character and does not contain any topographic or terrain constraints which would inhibit the petitioner's proposed use of the land. There are several alternatives available to the petitioner in fulfilling his desire of providing additional living area to the dwelling.

The obvious alternative would be to enclose the existing patio while meeting the minimum side yard setback requirement of eight (8) feet. In doing so, the width of the additional area would be twelve (12) feet. The present length of twenty-four (24) feet will not change; thus, there still will be approximately 288 square feet of floor area added to the present living area of the dwelling.

Other alternatives would be to extend the building addition to the rear of the existing dwelling. Since there is a distance of approximately forty-nine (49) feet from the existing building line to the rear property line, it is

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determined that there are ample land area to the rear of the property to construct any additions for the purpose of expanding the present living area.

Still another alternative would be to construct the addition to the front of the dwelling, adjacent to the carport.

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 actions 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 to show that the petitioner is faced with this situation. At the time the petitioner applied for a building permit to construct the patio addition, he was informed and it so noted on the construction plans that the area within the side yard setback shall not be enclosed. The petitioner was fully aware of the minimum requirement when the addition was originally constructed.

Although the existing carport presently encroaches into the setback area, it was constructed under the old requirements; thus, is considering nonconforming.

Further, if this particular variance request were to be approved, we would be hard-pressed not to grant other similar request whether the structure or addition has already been constructed or is proposed for construction.

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):


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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 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.

Sincerely,


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

NH:sk

cc: Corporation Counsel
Building Department

PLANNING COMMISSION OF THE PLANNING DEPARTMENT
COUNTY OF HAWAII

In the Matter of the Appeal)	
of)	
VINCENT GAZMEN)	Variance Application
Tax Map Key 2-4-55:3)	No. 498
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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)	
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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 May 12, 1977 and June 16, 1977, before the Planning Commission of the Planning Department, County of Hawaii, at which hearings Vincent Gazmen 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 April 1, 1977.
2. The request was to allow the enclosing of an existing patio area with a 5-foot side yard setback in lieu of the required eight (8) feet as stipulated within the Single Family Residential - 7,500 square foot (RS-7.5) zoned district.

3. The property involved, consisting of 7,501 square feet, is located along the north side of Hale Nani Street within the Hualalai Subdivision, Waiakea, South Hilo, Hawaii, Tax Map Key 2-4-55:3.

4. In requesting the variance, the petitioner had stated the following:

"My neighbor does not complain whatever I do with my home. Reasons for requesting variance are:

- 1) Put wall so the rain can't come inside the patio;
- 2) It provides convenience and accomodation for me;
- 3) Put some of my household inside patio."

5. The patio area, consisting of approximately 360 square feet in size, was added to the single family dwelling in August of 1971. At the time the plans were approved, the petitioner was informed that the portion within the setback area shall not be enclosed. A notation to this effect was made on the construction plans.

6. The existing garage wall along the side property line is situated only four (4) feet from the affected side property line. This portion of the dwelling, however, was constructed prior to the adoption of the Zoning Code and the present setback requirements; thus, is considered nonconforming. The affected patio area is located in back of the garage and is structurally attached to it and the dwelling. The proposed wall of the patio will be set back one (1) additional feet from the side property line (five feet from property line). There is about a 3-foot high hollow tile wall where the proposed wall will be constructed.

7. There is a single family dwelling situated on the adjacent property along the affected side property line. This dwelling is about 10 to 15 feet from the side property line.

8. There is a grove of banana trees on the rear portion of the existing dwelling. Between the existing building line and the rear property line, there is a distance of approximately forty-nine (49) feet. The minimum rear yard setback requirement is fifteen (15) feet.

9. The dimensions of the existing patio area is twenty-four (24) feet by fifteen (15) feet. If the patio were to conform to the minimum setback requirement, the width of that area would be reduced to twelve (12) feet; thus, the floor area would be 288 square feet.

10. The Department of Public Works informs that the setback requested does not violate the Housing Code requirements. The minimum side yard setback for a single-story residence under the Housing Code is five (5) feet.

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

12. At the preliminary hearing on May 12, 1977, the Planning Department 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 zone 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. There are several alternatives available to the petitioner in fulfilling his desire of providing additional living area to the dwelling.

"The obvious alternative would be to enclose the existing patio while meeting the minimum side yard setback requirement of eight (8) feet. In doing so, the width of the additional area

would be twelve (12) feet. The present length of twenty-four (24) feet will not change; thus, there still will be approximately 288 square feet of floor area added to the present living area of the dwelling.

"Other alternatives would be to extend the building addition to the rear of the existing dwelling. Since there is a distance of approximately forty-nine (49) feet from the existing building line to the rear property line, it is determined that there is ample land area to the rear of the property to construct any additions for the purpose of expanding the present living area.

"Still another alternative would be to construct the addition to the front of the dwelling, adjacent to the carport.

"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 not previous actions 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 to show that the petitioner is faced with this situation. At the time the petitioner applied for a building permit to construct the patio addition, he was informed and it so noted on the construction plans that the area within the sideyard setback shall not be enclosed. The petitioner was fully aware of the minimum requirement when the addition was originally constructed.

"Although the existing carport presently encroaches into the setback area, it was constructed under the old requirements; thus, is considered nonconforming.

"Further, if this particular variance request were to be approved, we would be hard-pressed not to grant other similar request whether the structure or addition has already been constructed or is proposed for construction.

13. At that meeting, the Commission voted to defer action so that an interpreter can be in attendance at the next meeting to more fully explain the recommendation which was presented by the staff.

14. The preliminary hearing was continued on June 16, 1977, at which time the staff again recommended denial of the request for the reasons as stated under item no. 13.

15. At that meeting, the Planning Commission voted to deny the variance request for the reasons as outline by the staff. The vote to deny was recorded as five (5) 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.

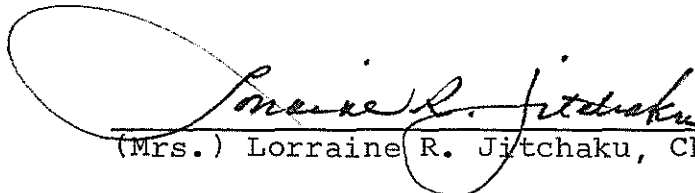
3. Under Section 5-4.3 (g) of the Hawaii County Charter, a variance may not be granted unless there are special or unusual circumstances applying to the subject property which would result

in unnecessary hardship if the ordinance were literally enforced, and the granting of the variance would not be contrary to the public interest.

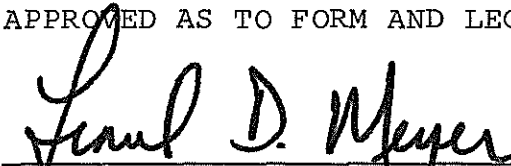
DECISION AND ORDER

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 2-4-55:3 located at Waiakea, South Hilo, Hawaii, be and is hereby denied.

Dated at Hilo, Hawaii, this 12th day of July, 1977.


(Mrs.) Lorraine R. Jitchaku, Chairman

APPROVED AS TO FORM AND LEGALITY:


DEPUTY Corporation Counsel
County of Hawaii

Date: JUL 6 1977