

September 12, 1977

Mr. John Beardsley
2282 Kanoelehua Avenue
Hilo, Hawaii 96720

Dear Mr. Beardsley:

Variance Application
Tax Map Key 2-2-41:114

The Planning Commission at its preliminary hearing on September 8, 1977 considered your application for a variance to waive the minimum parking requirements of five (5) stalls for the Trinity Community Church at Waiakea Homestead House Lots, Waiakea, South Hilo, Hawaii.

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

That there is no evidence to show that there exist any special or unusual circumstances applying to the subject property and use which do not generally apply to surrounding properties or improvements in the same zoned district. The purpose of the subject request is to waive the minimum parking requirements for a church use. The petitioner has not shown that there are unusual conditions that are peculiar to the subject property and use which would warrant the granting of a variance. The intent of the variance provision of the Zoning Code is to allow reasonable deviations to accomodate those circumstances in which the strict and literal enforcement of the law would cause undue hardship and deprive the petitioner of substantial property rights. Undue hardship does not include economic or financial considerations.

In addition, if this particular request were to be granted, it would essentially constitute a grant of special privilege

SEP 14 1977

Defendant's check mailed 11-9-77

September 12, 1977

inconsistent with limitations placed upon surrounding properties and improvements in the same zoned district. Other parties with the intent of establishing similar uses and with lands having similar characteristics are obliged to comply with the Zoning Code requirements. Approval of this particular request could create a situation wherein other requests for similar concessions could be made. Further, there is adequate area on the subject property for the provision of parking. There are no extenuating circumstances which would make it prohibitive to provide parking.

The purpose of the off-street parking requirements of the Zoning Code is to assure that adequate parking is provided for the safety as well as convenience of the public and so that traffic movement on the public highway will not be impeded. The subject property fronts on Kanoelehua Avenue which is one of the primary traffic arterials for the Hilo area. It is a high speed roadway and provides the major access into and out of Hilo for the Puna district. Due to the nature and functions of Kanoelehua Avenue, it is imperative that off-street parking be provided for uses established along this roadway.

Based on the above, it is determined that the granting of this particular variance request would be contrary to the purpose and intent of the Zoning Code. It would also be materially detrimental to the public welfare and would be injurious to improvements and property rights related to properties in the near vicinity.

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 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;

Mr. John Beardsley
Page 3

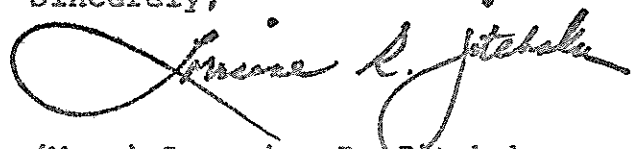
September 12, 1977

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,

A handwritten signature in cursive script, appearing to read "Lorraine R. Jitchaku".

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

lgv

cc Corporation Counsel

PLANNING COMMISSION OF THE PLANNING DEPARTMENT

COUNTY OF HAWAII

In the Matter of the Appeal)
 of)
 JOHN BEARDSLEY)
Tax Map Key 2-2-41:114)

VARIANCE APPLICATION

No. 502

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)
 JOHN BEARDSLEY)
Tax Map Key 2-2-41:114)
_____)

VARIANCE APPLICATION
No. 502

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND
DECISION AND ORDER

The above-entitled matter was brought on for a preliminary hearing on September 8, 1977 before the Planning Commission of the Planning Department, County of Hawaii, at the Councilroom, County Building, South Hilo, Hawaii, at which hearing John Beardsley 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 parking requirement was received on August 8, 1977.
2. The request was to waive the requirement that five (5) parking stalls with all-weather, dust-free surface be provided for a proposed church.
3. The property involved is located along the west of Kanoelehua Avenue, approximately 720 feet north of the intersection of Kanoelehua Avenue and Kawailani Street in the Waiakea Homestead House Lots, Waiakea, South Hilo, Hawaii, Tax Map Key 2-2-41:114.

4. The property is owned by John Rodrigues and the petitioner presently rents the single family dwelling on the lot which is proposed to be used as a church.

5. The subject property consists of 1.2 acres and is zoned Single Family Residential with a minimum lot size of 10,000 square feet (RS-10). According to the Zoning Code, churches are permitted uses within this zoned district provided that the lots on which they are located have a minimum land area of one (1) acre.

6. In response to a complaint of a possible Zoning Code violation, the Planning Department conducted a field investigation and found that the church use was in operation without receiving approval from the Department through the Plan Approval process. The Zoning Code requires that use conversions must be processed through Plan Approval prior to the establishment of the proposed use.

7. The existing dwelling is a two-story structure. The petitioner proposed to utilize the first story as a church and to continue to reside in the second story.

8. Upon submission of the plans for the conversion, the Department per letter dated July 1, 1977 informed the petitioner that:

"In the establishment of a church...there are...parking and landscaping requirements which must be complied with. The parking requirement for churches is one (1) stall per six seats or one (1) stall per 200 square feet of gross floor area, whichever is higher.

"It is our understanding that there would be 30 seats, as such, a total of five (5) parking stalls would be required. The minimum stall size is 9 feet wide and 18 feet in length with a minimum 24 feet back up aisle space for 90 degree parking.

"Your plans do not reflect any area for parking; thus, should you decide to proceed with this proposal without any parking, a variance must be secured from the County Planning Commission."

9. In support of the request, the petitioner had stated the following:

"Trinity Community Church is a new church in the City and has been meeting at the residence of the Pastor at 2282 Kanoelehua Avenue. Since we are renting at present and have been unable to locate a proper facility, we are most reluctant to invest money in a temporary parking area.

"We are presently looking for property and do anticipate building as soon as it can be feasible, but meanwhile we do request lenience in the matter of parking and would be grateful for a variance from the minimum parking requirement. It is our desire to comply with regulations and we hope this can be accomplished in due time. Right now our situation seems to require a variance from the norm."

10. The petitioner also verbally informed the Department that church members will meet from 9:00 a.m. to 12:00 noon on Sundays, 7:00 p.m. to 8:30 p.m. on Sunday and Wednesday evenings and twice a month on Friday evenings.

11. The surrounding properties are either in residential use or are vacant.

12. The General Plan Land Use Pattern Allocation Guide Map designates the area for Low Density Urban Development which may allow single family residential uses at a maximum density of four (4) units per acre. This designation may also allow other ancillary and community and public uses. The Hilo Community Development Plan recommends that the area be retained in its present RS-10 zoning classification.

13. Access to the subject property is directly off of Kanoelehua Avenue. All essential utilities and services are available.

14. Upon review of the request, the State Department of Transportation, Land Transportation Facilities Division offered the following comments:

"1. No parking within the State Highway rights-of-way will be allowed.

"2. Should the facility use continue, the access shall meet the Land Transportation Facilities Division minimum commercial access requirements of 22 feet wide pavement with 20 feet radii."

15. None of the other cooperating agencies had any comments on or objections to the subject request.

16. At the preliminary hearing on September 8, 1977, the Planning Department staff recommended denial of the application based on the following findings:

That there is no evidence to show that there exist any special or unusual circumstances applying to the subject property and use which do not generally apply to surrounding properties or improvements in the same zoned district. The purpose of the subject request is to waive the minimum parking requirements for a church use. The petitioner has not shown that there are unusual conditions that are peculiar to the subject property and use which would warrant the granting of a variance. The intent of the variance provision of the Zoning Code is to allow reasonable deviations to accommodate those circumstances in which the strict and literal enforcement of the law would cause undue hardship and deprive the petitioner of substantial property rights. Undue hardship does not include economic or financial considerations.

In addition, if this particular request were to be granted, it would essentially constitute a grant of special privilege inconsistent with limitations placed upon surrounding properties and improvements in the same zoned district. Other parties with the intent of establishing similar uses and with lands having similar characteristics are obliged to comply with the Zoning Code requirements.

Approval of this particular request could create a situation wherein other requests for similar concessions could be made. Further, there is adequate area on the subject property for the provision of parking. There are no extenuating circumstances which would make it prohibitive to provide parking.

The purpose of the off-street parking requirements of the Zoning Code is to assure that adequate parking is provided for the safety as well as convenience of the public and so that traffic movement on the public highway will not be impeded. The subject property fronts on Kanoelehua Avenue which is one of the primary traffic arterials for the Hilo area. It is a high speed roadway and provides the major access into and out of Hilo for the Puna district. Due to the nature and functions of Kanoelehua Avenue, it is imperative that off-street parking be provided for uses established along this roadway.

Based on the above, it is determined that the granting of this particular variance request would be contrary to the purpose and intent of the Zoning Code. It would also be materially detrimental to the public welfare and would be injurious to improvements and property rights related to properties in the near vicinity.

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 one (1) no.

CONCLUSIONS OF LAW

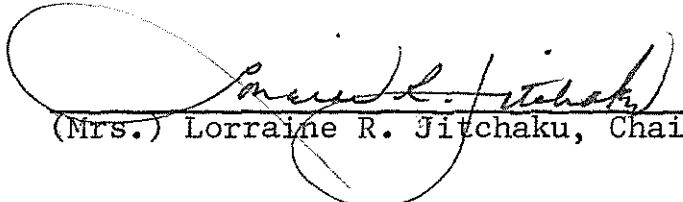
1. Pursuant to Section 5-4.3 (g) of the Hawaii County Charter, the Planning Commission has jurisdiction to hear and determine appeals requesting variances from the Subdivision and Zoning Codes.
2. All procedural requirements as prescribed by law have been complied with.
3. Under Section 5-4.3 (g) of 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 Chapter 8 (Zoning Code), Article 26, Section 6.B. and D.4. pertaining to the minimum parking requirement of Tax Map Key 2-2-41:114 located at Waiakea Homestead House Lots, Waiakea, South Hilo, Hawaii, be and is hereby denied.

Dated at Hilo, Hawaii, this 27th day of October, 1977.

APPROVED AS TO FORM
AND LEGALITY:


(Mrs.) Lorraine R. Fitchaku, Chairman

ASSISTANT Roxanna Garcia
Corporation Counsel, County of Hawaii

Date: OCT 24 1977