

PLANNING COMMISSION

Planning Department
County of Hawaii
Hilo, Hawaii

Application for VARIANCE)	
by)	
PAUL T. MATSUMOTO)	
from)	
MINIMUM FRONT YARD)	VARIANCE NO. 505
SETBACK REQUIREMENT)	
in)	
Waiakea Homesteads, 2nd Series,)	
Waiakea, South Hilo, Hawaii)	

VARIANCE PERMIT

The County of Hawaii Planning Commission at a duly held public hearing on September 8, 1977, considered the application of PAUL T. MATSUMOTO for a variance from Chapter 8 (Zoning Code), Article 25, Section 4B of the Hawaii County Code, as amended, more specifically, to allow the construction of an apartment building with a zero (0) setback from the future right-of-way line along Ainaola Drive and to allow the construction of two (2) parking stalls within the future right-of-way at Waiakea Homesteads, 2nd Series, Waiakea, South Hilo, Hawaii, Tax Map Key 2-4-20:32, 34 and 35.

The Commission has found:

That the granting of the request to allow the two (2) parking stalls within the right-of-way will not be detrimental nor injurious to the public welfare or to surrounding property rights. Under present zoning restrictions, parking stalls are allowable within setback areas as no verticle structures are involved. These are readily removable, hence will not substantially affect the acquisition of a right-of-way at some future date.

That there are special and unusual circumstances that exist and to a degree which deprive the owner of substantial property rights which would otherwise be available. Based on the total square footage (23,899 square feet) of the three parcels, the applicant would have been allowed a maximum density of 18 units; he is proposing eight (8) units which is ten less than the maximum. If all applicable building and zoning setbacks were enforced, the applicant will have a total of 7,800 square feet of buildable area. Under this circumstance and given other requirements, such as parking and height limitations, the applicant would be able to construct a building with two or three less units than he is now proposing.

Further, although the future right-of-way line has been established along Ainaola Drive, at present there are no funds with which to acquire the fifteen (15) foot strip of land and to make improvements to that thoroughfare. Based on indications by the Department of Public Works, it is unlikely in the near foreseeable future that funds will become available for these purposes. Under these circumstances, it is determined that a strict enforcement of the zoning provisions would deny the applicant of reasonable and beneficial use of the property, which would thus amount to a confiscation of the land.

That while the applicant has the alternative of situating the apartment with a zero (0) foot side yard setback provided that the building be constructed with a firewall, the applicant would not be able to meet the minimum setback of fifteen (15) feet from the future right-of-way line. The building would encroach approximately 3 feet into the setback area. However, in weighing air and light circulation and possible noise considerations for the adjacent single-family dwelling under this alternative, the zero (0) foot setback from the future right-of-way line is less detrimental and injurious to surrounding property owners.

Further, in the granting of the 1970 variance request for the existing store and single-family dwelling under similar circumstances, a precedent had been set. To now deny this variance may be construed as arbitrary and capricious on the part of the Planning Director and Planning Commission.

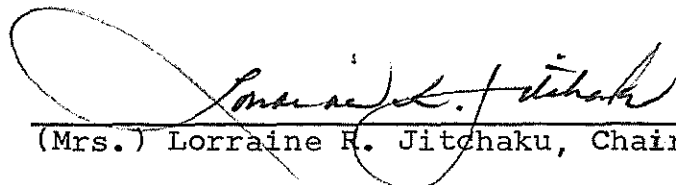
Therefore, the Commission hereby grants to the applicant a variance to allow the construction of an apartment building with a zero (0) setback from the future right-of-way line along Ainaola Drive and to allow the construction of two (2) parking stalls within the future right-of-way at Waiakea Homesteads, 2nd Series, Waiakea, South Hilo, Hawaii, pursuant to the authority vested in it by Article 1, Section 7 of said Code, subject to the following conditions:

1. That the proposed construction shall conform substantially to the plans/representations submitted with this variance application.
2. That the applicant shall secure a consolidation of the three parcels (TMK: 2-4-20:32, 34 and 35).
3. That construction shall commence within one year of the effective date of the Variance Permit and shall be completed within two (2) years thereafter.
4. That the petitioner shall comply with all other applicable rules and regulations including the Plan Approval process.

Should any of the foregoing conditions not be met, the Variance Permit may be deemed null and void by the Planning Commission.

The effective date of this permit shall be from September 8, 1977.

Dated at Hilo, Hawaii, this 3rd day of October, 1977.


(Mrs.) Lorraine R. Jitchaku, Chairman

