

March 31, 1978

Mr. Mitsuo Enomoto
68 Mamo Street
Hilo, Hawaii 96720

Dear Mr. Enomoto:

Variance Application
Tax Map Key 2-4-24:44

The Planning Commission at its regular meeting of March 22, 1978 considered your application for a variance to allow the construction of a second dwelling on a 19,326-square foot lot situated within the Single Family Residential - 10,000 square foot (RS-10) 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:

1. That there are no special conditions which apply to the subject property which do not generally apply to the surrounding properties within the same zoned district. The petitioner has not shown that there are topographical or non-conforming conditions which particularly differentiate this parcel from others in the area.
2. That although the 674 square feet of deficiency represents a 6% deviation from the standard 10,000 square feet; and that this deviation, may, in isolation, be construed as a reasonable one; land use considerations should include not solely effects to this parcel alone but to the surrounding area. There are approximately 75 lots along Mohouli Street which are nearly similar in size and topographic conditions. Should this request be approved, the possibility does exist that other requests for a similar type of variance will be made. Moreover, should this request be approved, the Commission would be hardpressed not to deny other similar requests, lest it be construed as an arbitrary and capricious decision. Thus the approval of this request would represent a potential of greatly increasing the density along Mohouli

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Street. While Mohouli Street has a right-of-way of sixty (60) feet, the pavement width is twenty (20) feet or four feet below the standard required for collector streets. No further improvements have been scheduled for Mohouli Street in the near future. It is therefore determined that the granting of the variance request would be materially detrimental to the public welfare.

3. That the granting of this particular variance would be contrary and inconsistent with the spirit and intent of the Zoning Code. In this case, the petitioner is requesting a waiver of what is essentially a density requirement. Particularly in view of the potential cumulative impact to surrounding areas, the variance procedure is not the appropriate vehicle to resolve this matter. The proper procedure would be to request a zone change to a lesser minimum lot size designation. It should be pointed out that although the change of zone route to accomplish the intent of this request is being suggested, this does not necessarily mean that the Planning Director is sanctioning such a zone change. We are merely pointing out the proper procedure which should have been utilized.

While we can empathize with the petitioner's reason for the variance request, nevertheless in reviewing and analyzing the subject application against the criteria for considering a variance, we find that the request is not justified.

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):

1. Name, mailing address and telephone number;
2. Identification of the property and interest therein;
3. The particular provision of the Zoning Ordinance of Subdivision Ordinance or regulation in question;
4. All pertinent facts;
5. That action of the Commission; and

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6. Reasons for the appeal, including a statement as to why
the appellant believes that the Commission's action was
1 based on an erroneous findings of a material fact, or that
the Commission has 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.

Sincerely,



William F. Mielcke
Chairman, Planning Commission

lgv

cc Mr. Y. Ebesuzaki
Corporation Counsel
Building Division, Public Works

PLANNING COMMISSION OF THE PLANNING DEPARTMENT
COUNTY OF HAWAII

In the Matter of the Appeal)
 of)
 MITSUO ENOMOTO)
))
Tax Map Key 2-4-24:44)
_____)

Variance No. 528

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)
 MITSUO ENOMOTO)
Tax Map Key 2-4-24:44)
_____)

Variance No. 528

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND
DECISION AND ORDER

The above-entitled matter was brought on for a Preliminary Hearing before the Planning Commission of the Planning Department, County of Hawaii on October 27, 1977, at the Councilroom, County Building, South Hilo, Hawaii; and was continued on December 6, 1977, at the Seven Seas Luau House, South Hilo, Hawaii, at which time the matter was scheduled for a Public Hearing.

A Public Hearing was held on January 12, 1978, in the Conference Room, State Building, South Hilo, Hawaii at which time testimony was heard from Mitsuo Enomoto, Y. Ebesuzaki and Duane Carlsmith. Action meetings on this matter were conducted by the Planning Commission on March 8, 1978, in the Kealakehe School Cafetorium, Kealakehe, North Kona, Hawaii, on March 22, 1978, in the Councilroom, County Building, South Hilo, Hawaii.

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 building site area requirement was received on September 2, 1977..

2. The request was to allow the construction of a second dwelling on a 19,326-square foot lot situated within the Single Family Residential - 10,000 square foot (RS-10) zoned district. The minimum building site area for this zoned district is 10,000 square feet for each dwelling. The subject parcel is 674 square feet less than the minimum requirement.

3. The property involved is located along the Puna side of Mohouli Street, approximately 600 feet makai of Komohana Street, Waiakea, South Hilo, Tax Map Key: 2-4-24:44.

4. In support of this variance request, the petitioner had stated the following:

"Our property is located on Mohouli Street, Tax Map Key 2-4-24-44, 19,326 square feet, half of which is idle and overgrown with trees and shrubs.

"My son is to be married early next year and the price of land is high. We want to build to help our son.

"The zoning for this district is RS-10 and our property is only 674 square feet short of the required 10,000 square foot. The area for the second unit is large enough to build.

"This won't militate against the County General Plan."

5. Soils of the area have been classed through reconnaissance by the U.S. Department of Agriculture's Soil Survey of Island of Hawaii, State of Hawaii (Dec. 1973) as being of the Keaukaha series. This series consists of well drained, thin organic soils overlying pahoehoe lava bedrock. It is undulating to rolling and follows the topography of the underlying lava. Rock outcrops occupy about 25 percent of the area. The soils above the lava is rapidly permeable. The pahoehoe lava is very slowly permeable, but water moves rapidly through the cracks.

6. There are 6 to 20 percent slopes in the subject area. Rainfall is approximately 150 inches per year.

7. There are no obvious or particularly evident special or unique topographic condition with respect to this parcel.

8. Surrounding land uses include single family dwellings and vacant land. There are single family dwellings on both adjacent lots.

9. The General Plan Land Use Pattern Allocation Guide Map designates the area for Low Density Urban uses. This designation may allow single family dwellings at a density of no more than 4 units per acre.

10. Parcels along Mohouli Street range in size from 10,000 square feet to 32,000 square feet, though the bulk of the parcels are 16,000 square feet to 18,000 square feet in size.

11. The area is serviced by all essential public utilities. Mohouli Street has a right-of-way width of sixty (60) feet and a pavement width of twenty (20) feet. Mohouli Street was recently resurfaced.

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

13. At the Preliminary Hearing of October 27, 1977, the Planning Commission voted to defer the matter until the question as to whether a request for additional density can be processed through the variance provisions. This question was referred to the Corporation Counsel for an opinion.

14. Upon confirmation that the request could be processed through the variance provisions, the preliminary hearing was continued on December 6, 1977, at which time staff recommended denial of the application based on the following findings:

- a. That there are no special conditions which apply to the subject property which do not generally apply to the surrounding properties within the same zoned district. The petitioner has not shown that there are topographical or non-conforming conditions which particularly differentiate this parcel from others in the area.
- b. That although the 674 square feet of deficiency represents a 6% deviation from the standard 10,000 square feet; and that this deviation, may, in isolation, be construed as a reasonable one; land use considerations should include not solely effects to this parcel alone but to the surrounding area. There are approximately 75 lots along Mohouli Street which are nearly similar in size and topographic conditions. Should this request be approved, the possibility does exist that other requests for a similar type of variance will be made. Moreover, should this request be approved, the Commission would be hardpressed not to deny other similar requests, lest it be construed as an arbitrary and capricious decision. Thus the approval of this request would represent a potential of greatly increasing the density along Mohouli Street. While Mohouli Street has a right-of-way of sixty (60) feet, the pavement width is twenty (20) feet or four feet below the standard required for collector streets. No further improvements have been scheduled for Mohouli Street in the near future. It is therefore determined that the granting of the variance request would be materially detrimental to the public welfare.

- c. That the granting of this particular variance would be contrary and inconsistent with the spirit and intent of the Zoning Code. In this case, the petitioner is requesting a waiver of what is essentially a density requirement. Particularly in view of the potential cumulative impact to surrounding areas, the variance procedure is not the appropriate vehicle to resolve this matter. The proper procedure would be to request a zone change to a lesser minimum lot size designation. It should be pointed out that although the change of zone route to accomplish the intent of this request is being suggested, this does not necessarily mean that the Planning Director is sanctioning such a zone change. We are merely pointing out the proper procedure which should have been utilized.

15. At that meeting the Planning Commission decided by a vote of six (6) ayes and two (2) noes to schedule the matter for a public hearing.

16. At the public hearing of January 12, 1978, testimony was heard from Staff, the petitioner, Mr. Enomoto; and the petitioner's representative, Mr. Ebesuzaki and Mr. Carlsmith. The Public Hearing was then closed.

17. At this meeting, the Commission moved to consider approval of the variance request based on the following findings:

- a. There is sufficient buildable room;
- b. That it will not place additional burden on County facilities; and
- c. That a precedent had already been set, and

Furthermore, that the variance request be approved based on the condition that access would be from the mauka side of the property.

18. The motion to approve the variance request for the above stated reasons died for lack of a majority of the full number of members to which the Commission is entitled. The vote was recorded as three (3) ayes and three (3) noes.

19. A motion to defer this matter was then considered by the Planning Commission. This motion was defeated by a simple majority vote of those present of two (2) ayes and four (4) noes.

20. The Planning Commission then acted on a motion to deny the variance request based on the reasons outlined by staff. This motion died for a lack of majority of the full number of members to which the Commission is entitled. The vote was recorded as three (3) ayes and three (3) noes. This resulted in the automatic deferral of this matter.

21. The variance request was taken up at the Planning Commission meeting of January 31, 1978. Action on the matter was deferred until the two (2) vacancies on the Commission could be filled.

22. At the Commission meeting of March 8, 1978, the Commission voted to defer action until the full Commission was present. The vote was recorded as five (5) ayes; zero (0) noes and four (4) excused.

23. At the meeting of March 22, 1978, the Planning Commission considered the motion to approve the variance request for the reasons outlined at the January 12, 1978, Public Hearing. This motion was defeated by a vote of three (3) ayes and five (5) noes.

24. The Commission then considered a motion to deny the variance request for the reasons outlined by staff. This motion carried by a vote of five (5) ayes and three (3) 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.

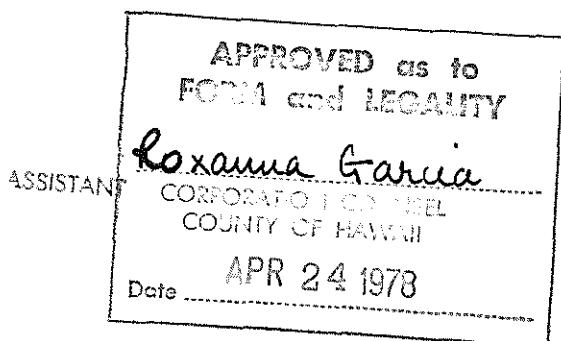
2. All procedural requirements as prescribed by law have been complied with.

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 public 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 5 pertaining to the minimum building site area requirement of Tax Map Key 2-4-24:44 located at Waiakea, South Hilo, Hawaii, be and is hereby denied.

Dated at Hilo, Hawaii, this 27th day of April, 1978.



William F. Mielcke

William F. Mielcke, Chairman