

March 31, 1978

Mr. Paul T. Rufo  
P. O. Box 177  
Kamuela, HI 96743

Dear Mr. Rufo:

Variance Application 22  
Tax Map Key 6-4-24:44

The Planning Commission at its continued preliminary hearing on March 22, 1978 considered your application for a variance to allow the expansion of a non-conforming use by establishing commercial uses in an existing structure on 0.60 acres of land situated within the Agricultural 5-acre (A-5a) zoned district at Pu'ukapu Homesteads, 1st Series, South Kohala, Hawaii.

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

That there are no special or unusual circumstances or conditions applying to the subject property or buildings which deprive the petitioner of substantial property rights that would otherwise be available or that obviously interfere with the best use or manner of development of the subject property. The area under consideration is zoned Agricultural 5-acre (A-5a) by the County. This zoning designation does not permit retail or office uses except when they are related and accessory to agricultural activities conducted on the premises. The structure on the front portion of the subject property is permitted to be used for retail and office use under the non-conforming provisions of the Zoning Code which provide that if such uses had been conducted within the previous twelve months they may continue.

The purpose of this variance request is to allow the retail and office uses which have been permitted in the front structure to be expanded into the rear structure.

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Because use of the rear structure has ceased for more than twelve months, non-conforming uses relative to the zoned district cannot be re-established.

It is maintained that the petitioner is not being deprived of his property rights in that office and retail space in the front structure is being used and rented. Further, the function of the rear structure was used as a shed and was not actually in commercial use as the front structure was. Based on these findings, it is determined that the petitioner has not been denied of any substantial property rights and that approval of this variance request would constitute a grant of special and personal privilege.

In addition, there are no special or unusual circumstances applying to the subject property which would cause undue hardship to the petitioner. The intent of the variance provisions of the Zoning Code is to provide reasonable flexibility in those cases where the strict and literal enforcement of the law would cause undue hardship to the petitioner. In this particular case, there is no evidence that such a situation exists. The petitioner is in fact enjoying his property rights and the strict and literal enforcement of the law would not detract from that enjoyment. Further, the expansion of the non-conforming use in this particular case is not for the purpose of keeping an existing use viable or contributing to its efficiency. It is also not the result of having to comply with other regulatory provisions or for promoting the safety and welfare of users of the existing facilities. The proposed expansion, coupled with the substantial inputs made to the basic non-conforming structure would amount to nearly a rezoning of the property through the variance process. As such, it is determined that approval of the subject request would be contrary to the intent and purpose of the variance provisions.

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;

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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,



William F. Mielcke  
Chairman, Planning Commission

lgv

cc Corporation Counsel  
Building Division, Public Works

PLANNING COMMISSION OF THE PLANNING DEPARTMENT

COUNTY OF HAWAII

In the Matter of the Appeal )  
                  of )  
                PAUL RUFO )  
                              )  
Tax Map Key 6-4-24:22 )  
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VARIANCE APPLICATION

NO. 529

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 )  
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Tax Map Key 6-4-24:22 )  
\_\_\_\_\_ )

VARIANCE APPLICATION  
NO. 529

FINDINGS OF FACT  
CONCLUSIONS OF LAW  
AND  
DECISION AND ORDER

The above-entitled matter was brought on for a preliminary hearing on March 9, 1978, in the Civic Center Conference Room, Waimea, South Kohala, Hawaii and was continued to March 22, 1978, in the Councilroom, County Building, South Hilo, Hawaii before the Planning Commission of the Planning Department, County of Hawaii, at which time Mr. Paul Rufo 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 to allow the expansion of a non-conforming use was received on February 15, 1978.
2. The request was to allow the expansion of a non-conforming use by establishing commercial uses in an existing structure on 0.60 acres of land.
3. The property involved is the site of Fukushima Store located along the south side of Mamalahoa Highway, approximately one-half mile Honoka'a side of Kamamalu Street (Maertens Road), Pu'ukapu Homesteads, 1st Series, South Kohala, Tax Map Key 6-4-24:22.

4. The subject property is within the State Land Use District, the County of Hawaii zoning is Agriculture - 5 acre (A-5a), and the General Plan Land Use Pattern Allocation Guide Map designates the area as Medium Density Urban.

5. Currently on the subject property are two (2) structures, a building on the front portion of the property which is currently in office and retail uses; and another structure to the rear which has been identified as a shed. The petitioner intends to use the rear structure for additional office and retail activities.

6. In an April 26, 1976 letter to Dr. James H. Kellog, the Planning Director determined that the front building on the subject property could be put to office uses under the non-conforming provision of the Zoning Code. More specifically, the Planning Director stated, in part, the following:

"This is to acknowledge receipt of the attached statement indicating that the store was in operation as of November 28, 1975. Additionally, this is to confirm a conversation between Mr. Albert Kawabata and my Deputy on April 26, regarding the subject matter. We were informed by Mr. Kawabata that he had been the manager of the Store and that he could confirm the use of the building as a store during the month of November, 1975.

"In view of the foregoing, we find that you may convert the store building into office use, as this conversion would be occurring within the year since the store use was finally terminated. As indicated to you earlier, however, you may use only that area within the confines of the buildings. Any structural expansion would necessitate prior governmental approval."

7. A field check of the subject area was conducted by the Planning Department staff on October 4, 1977. During this investigation, it was determined that the structures on the subject property consist of two (2) buildings and as such the establishment of office uses in the rear building would not be permitted in accordance with the non-conforming provisions of Article 1, Section 9B1 of the Zoning Code. Further, since the applicant did not request the resumption of non-conforming uses for the rear structure within twelve (12) months from November, 1975, the applicant has been required to secure a variance prior to expanding into the rear building.

8. The rear building is a single story structure with a gable roof and a lean-to shed.

9. In support of the variance request, the petitioner has, in part, stated the following:

"Fukushima Store is the second oldest store in Waimea. It was built in 1928 and was later followed with additional wings and out buildings. From the time it was built to the time it ceased operations in 1975, it has been used in part as a residence, a dormitory, office building, restaurant and as a farm. The store is a significant part of the history of Waimea.

When the present owners acquired the property, it consisted of a main building of approximately 3,500 sq. ft. and 1,500 sq. ft. of scattered outbuildings. These structures were all in deteriorating condition. When former occupants vacated, nothing was done to maintain the property because of absentee owners. It was left unsecured, encouraging minor looting. It was overgrown

with grass. Rubbish and accumulations of many years were stored beneath the structures. Excessive amount of damp rotting was prevalent throughout the exterior. Fukushima Store was rapidly becoming an eyesore in its neglected condition.

Presently, the Store has been renovated to allow more efficient use of space. The outside has been resided, painted, and modifications were made to enhance its character. All renovations have taken place within the confines of the existing building. The space under roof was reduced from approximately 3,500 sq. ft. to approximately 2,800 sq. ft.. There now is a clean and attractive building that is not an eyesore but a plus for the community as well as for the seven businesses that are established in the Store.

Continuation of the restoration is desired for the remainder of the Store.

We are proposing a well-designed structure that will be within the confines of the existing structure and compatible with the design of the renovated Store.

Our proposal to restore and put to highest and best use will have a positive effect on the surrounding property in that it may encourage rehabilitation of more older structures that have significant historical value in the community. Too often, these buildings are neglected and become the source of neighborhood blight, which was the case with Fukushima Store.

Our proposed use will impose no additional burden on public agencies; all utilities are presently available. In fact, once the renovations are completed, it will

relieve the Fire Department of a fire hazard that exists with old abandoned buildings.

Although the land is presently zoned agricultural, Fukushima Store predates the current zoning by nearly a half century. There is little valid argument that the .6 acre parcel that the Store occupies could be a viable farm when adjacent parcels over an acre show no agricultural activity at all. We feel that the full restoration of Fukushima Store to all remaining buildings is the highest and best use of this property with the added benefit of preserving an important part of the history of Waimea.

We will be most grateful for your favorable consideration of this proposal."

10. Surrounding land uses include single-family residential, diversified agricultural activities, scattered retail and vacant lands.

11. Access to the subject property is off the Mamalahoa Highway which has a 50-foot right-of-way.

12. All essential utilities are available to the subject property.

13. Soil on the subject property has been classified as "Good" or Class "B" by the Land Study Bureau.

14. The Department of Research and Development reviewed the subject request and offered the following comments:

"1. The Fukushima Store, as it existed prior to 1975 could be considered a landmark in the Waimea area.

"2. The New Fukushima Store as it now exists is different in more of operation character, etc. from the original store.

"3. The creation of office spaces would add to the viability of the existing shops.

"4. Preliminary indications from our survey of industrial/commercial demand shows that there is some demand for office/retail type of space in the area. It should be noted that the survey is preliminary, and that the sample base was rather small."

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

16. At the preliminary hearing of March 9, 1978, Staff recommended denial of the application based on the following reasons:

That there are no special or unusual circumstances or conditions applying to the subject property or buildings which deprive the petitioner of substantial property rights that would otherwise be available or that obviously interfere with the best use or manner of development of the subject property. The area under consideration is zoned Agricultural 5-acre (A-5a) by the County. This zoning designation does not permit retail or office uses except when they are related and accessory to agricultural activities conducted on the premises. The structure on the front portion of the subject property is permitted to be used for retail and office use under the non-conforming provisions of the Zoning Code which provide that if such uses had been conducted within the previous twelve months they may continue.

The purpose of this variance request is to allow the retail and office uses which have been permitted in the front structure to be expanded into the rear structure. Because use of the rear structure has ceased for more than twelve months, non-conforming uses relative to the zoned district cannot be re-established.

It is maintained that the petitioner is not being deprived of his property rights in that office and retail

space in the front structure is being used and rented. Further, the function of the rear structure was used as a shed and was not actually in commercial use as the front structure was. Based on these findings, it is determined that the petitioner has not been denied of any substantial property rights and that approval of this variance request would constitute a grant of special and personal privilege.

In addition, there are no special or unusual circumstances applying to the subject property which would cause undue hardship to the petitioner. The intent of the variance provisions of the Zoning Code is to provide reasonable flexibility in those cases where the strict and literal enforcement of the law would cause undue hardship to the petitioner. In this particular case, there is no evidence that such a situation exists. The petitioner is in fact enjoying his property rights and the strict and literal enforcement of the law would not detract from that enjoyment. Further, the expansion of the non-conforming use in this particular case is not for the purpose of keeping an existing use viable or contributing to its efficiency. It is also not the result of having to comply with other regulatory provisions or for promoting the safety and welfare of users of the existing facilities. The proposed expansion, coupled with the substantial inputs made to the basic non-conforming structure would amount to nearly a rezoning of the property through the variance process. As such, it is determined that approval of the subject request would be contrary to the intent and purpose of the variance provisions.

17. A motion to deny the variance request was considered by the Planning Commission. This motion died for lack of a majority of all members to which the Commission is entitled. The vote was recorded as three (3) ayes and two (2) noes with four (4) excused.

18. A motion to continue the hearing was then considered. This motion died for lack of a second. The preliminary hearing was automatically continued when no action could be taken.

19. The preliminary hearing was continued on March 22, 1978. At this hearing, the Planning Commission voted to deny the variance request for the reasons outlined by staff. The vote to deny was recorded as five (5) ayes and three (3) noes with one (1) excused.

#### 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 a Variance from the requirement of Article 1, Section 9B1 pertaining to the expansion of non-conforming uses, for Tax Map Key 6-4-24:22 located at Pu'ukapu Homesteads, 1st Series, South Kohala, Hawaii, be and is hereby denied.

Dated at Hilo, Hawaii, this 1st day of June, 1978.



WILLIAM F. MIELCKE, CHAIRMAN  
Planning Commission

APPROVED AS TO FORM  
AND LEGALITY:



ASSISTANT CORPORATION COUNSEL  
County of Hawaii

Date: APR 19 1978