

CERTIFIED MAIL

June 30, 1978

Mr. Edward Katahira  
272 Nohea Street  
Hilo, Hawaii 96720

Dear Mr. Katahira:

Variance Application  
Tax Map Key 2-7-17:31

The Planning Commission at its preliminary hearing on June 29, 1978 considered your application for a variance to allow the construction of a dwelling with a ten-foot front yard setback in lieu of the minimum requirement of fifteen feet for a 7,250-square foot lot at Pauka'a, South Hilo, Hawaii.

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

That the purpose and intent of the variance is to allow reasonable deviations to accommodate those circumstances in which the strict and literal enforcement of the law would cause undue hardship to the petitioner and would deprive him of substantial property rights. The petitioner is requesting this variance in order to allow for the preservation of an existing view of Hilo Bay from the adjacent parcel on the north. In applying the tests for considering a variance request, it is determined that the siting of a building to preserve an existing viewplane from a neighboring property in some cases can be construed to meet the test for an unusual or special circumstance which does not generally apply to surrounding properties or improvements in the same zoned district. Views and viewplanes are recognized as important considerations with respect to properties and property rights as evidenced by the building envelope requirements of the Zoning Code and by the General Plan's Natural Beauty Element.

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However, in this particular case, it is determined that these viewplane considerations do not meet the test for an unusual or special circumstance. According to the drawings submitted by the petitioner, the siting of the proposed dwelling five (5) feet into the setback area fronting Kahoa Street will result in very minimal savings with respect to the viewplane from the parcel immediately north of the subject area. Because of the trapezoidal configuration of the parcel, the rear of the dwelling will be within three (3) feet of the setback line fronting Kulana Street. This 3-foot saving in the viewplane is mitigated by the fact that the dwelling must be situated at least two feet closer to the northern side property line, thereby encroaching somewhat into the viewplane area. Therefore, because of the minimal savings to the viewplane that would result from the granting of this variance request, it was determined that there are no special or unusual circumstances relating to these particular viewplane considerations.

Furthermore, the subject area is level in character and has been landscaped with grasses and trees. There are no topographical or terrain constraints which may inhibit the use of the area for the proposed single family residential purposes. The subject area is also of a reasonable size and configuration for these residential uses. When all setback requirements are applied to this 7,250 square foot parcel, the buildable area remaining is approximately 3,600 square feet. This area is determined to be sufficiently large in size in order to allow reasonable options with respect to the size and design of the proposed dwelling and to the siting of this dwelling within the building envelope. It is therefore determined that there are no special or unusual conditions relating to the physical character or configuration of the subject area which may interfere with the use or development of this area for the proposed purposes.

Based on the above, it is determined that the subject request does not meet the test for the granting of variances. There are no unique conditions or circumstances applying to the subject area which inhibits the development of this area for residential purposes. Consequently, the approval of this request would be contrary to the purpose and intent of the variance provisions of the Zoning Code and could be construed as a grant of personal or special privilege inconsistent with limitations upon other properties under identical district classification.

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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 findings 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;
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

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cc Corporation Counsel  
Building Division, Public Works

PLANNING COMMISSION OF THE PLANNING DEPARTMENT  
COUNTY OF HAWAII

In the Matter of the Appeal       )  
                  of                        )  
              EDWARD KATAHIRA           )  
  )  
Tax Map Key 2-7-17:31                )  
\_\_\_\_\_

Variance No. 536

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	)	
EDWARD KATAHIRA	)	Variance No. <u>536</u>
	)	
Tax Map Key 2-7-17:31	)	
_____	)	

FINDINGS OF FACT  
CONCLUSIONS OF LAW  
AND  
DECISION AND ORDER

The above-entitled matter was brought on for a preliminary hearing on June 15, 1978 in the Kealakehe School Cafetorium, Kealakehe, North Kona, Hawaii and was deferred to June 29, 1978 in the Councilroom, County Building, South Hilo, Hawaii, at which time testimony was received from the petitioner.

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. The application for a variance to allow a ten (10) foot front yard setback in lieu of the required fifteen (15) foot setback was received on May 4, 1978.

2. The property involved is located approximately 400 feet north of the intersection of Kulana Street and Kahoa Road, Pauka'a, South Hilo, Tax Map Key: 2-7-17:31 and consists of 7,250 square feet.

3. The property is situated within the Single Family Residential - 15,000 square foot (RS-15) zoned district. The subject property is non-conforming with respect to the minimum area requirement of the RS-15 zoned district. The subdivision of this area was approved prior to the adoption of the Zoning and Subdivision Codes.

4. The Zoning Code, Chapter 8, Article 7, Section 8B, states:  
"If a legal building site in any RS district has less area . . . than is required, then the yard requirements for said building shall be the same as in the RS district having the largest requirement for which said building site can comply."

Based on the above, the applicable setbacks for the subject area are controlled by Article 3, Section 7A of Chapter 8, referring to "Minimum Yards." This Section states:

"On a building site in a district with a required area of 7,500 to 9,999 square feet; front and rear yards, fifteen (15) feet; side yards, eight (8) feet."

5. The petitioner has stated that he is seeking relief from the above front yard requirement in order to preserve a viewplane from the dwelling situated on Tax Map Key 2-7-17:30 which is immediately north of the subject area.

6. In support of the variance request, the petitioner stated the following:

"1. To preserve the existing view being enjoyed by the Nobu Kitsutani's (Tax Key: 2-7-17:30). Because their home is situated approximately eight feet from the boundary along Kahoa Road and because of the odd shapes

of the lots concerned we would deprive the Kitsutani's of much of their present view if we were to build with the fifteen feet setback.

"2. Because of the relatively low traffic flow on Kahoa Road there would not be any adverse effects to the occupants of our planned home. Usage of Kahoa Road is mainly by the residents living off of said road.

"3. We own the adjacent lot (Tax Key: 2-7-17:1) and considered building on it instead, but because of the danger of the mauka neighbor's (Tax Key; 2-7-17:16) car accidentally crashing into this lot, we chose to build on 2-7-17:31 instead. This neighbor's driveway is rather steep and long and directly in line with 2-7-17:1. On one occasion this neighbor's car lost its brakes and crashed into our property knocking down our fence. A few months ago another car from this mauka neighbor's driveway also began to roll down the driveway (without driver) but luckily this time the car hit a tree stopping it before entering our property."

7. The subject area is vacant. The parcel is level in character and is planted with trees and grasses.

8. The surrounding areas are primarily used for single family residential purposes, including the parcel immediately to the north of the subject area. The parcel immediately to the south of the subject area is vacant.

9. Access to the property involved is available from Kahoa Road and Kulana Street. Kulana Street has a 70-foot right-of-way and a 20-foot pavement. Kahoa Road has a 40-foot right-of-way and a 17-foot pavement.

10. The Departments of Public Works, Health and Fire had no comments on or objections to the subject request.

#### 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 variance 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 ordinances were literally enforced.

4. The Planning Commission has found that the subject request has not met these criteria for the granting of a variance as follows:

That the purpose and intent of the variance is to allow reasonable deviations to accommodate those circumstances in which the strict and literal enforcement of the law would cause undue hardship to the petitioner and would deprive him of substantial property rights. The petitioner is requesting this variance in order to allow for the preservation of an existing view of Hilo Bay from the adjacent parcel on the north. In applying the tests for considering a variance request, it is determined that the siting of a building to preserve an existing viewplane from a neighboring property in some cases can be construed to meet the test for an unusual or special circumstance which does not generally apply to



surrounding properties or improvements in the same zoned district. Views and viewplanes are recognized as important considerations with respect to properties and property rights as evidenced by the building envelope requirements of the Zoning Code and by the General Plan's Natural Beauty Element.

However, in this particular case, it is determined that these viewplane considerations do not meet the test for an unusual or special circumstance. According to the drawings submitted by the petitioner, the situating of the proposed dwelling five (5) feet into the setback area fronting Kahoa Street will result in very minimal savings with respect to the viewplane from the parcel immediately north of the subject area. Because of the trapezoidal configuration of the parcel, the rear of the dwelling will be within three (3) feet of the setback line fronting Kulana Street. This 3-foot saving in the viewplane is mitigated by the fact that the dwelling must be situated at least two feet closer to the northern side property line, thereby encroaching somewhat into the viewplane area. Therefore, because of the minimal savings to the viewplane that would result from the granting of this variance request, it was determined that there are no special or unusual circumstances relating to these particular viewplane considerations.

Furthermore, the subject area is level in character and has been landscaped with grasses and trees. There are no topographical or terrain constraints which may inhibit the use of the area for the proposed single family residential purposes. The subject area is also of a reasonable size and configuration for these residential uses. When all setback

requirements are applied to this 7,250 square foot parcel, the buildable area remaining is approximately 3,600 square feet. This area is determined to be sufficiently large in size in order to allow reasonable options with respect to the size and design of the proposed dwelling and to the siting of this dwelling within the building envelope. It is therefore determined that there are no special or unusual conditions relating to the physical character or configuration of the subject area which may interfere with the use or development of this area for the proposed purposes.

Based on the above, it is determined that the subject request does not meet the test for the granting of variances. There are no unique conditions or circumstances applying to the subject area which inhibits the development of this area for residential purposes. Consequently, the approval of this request would be contrary to the purpose and intent of the variance provisions of the Zoning Code and could be construed as a grant of personal or special privilege inconsistent with limitations upon other properties under identical district classification.

#### 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 7,

Section 7A, pertaining to minimum yard requirements, for Tax Map Key 2-7-17:31 located at Pauka'a, South Hilo, Hawaii, be and is hereby denied.

Dated at Hilo, Hawaii, this 17th day of August, 1978.



William F. Mielcke, Chairman

