

CERTIFIED MAIL

June 6, 1979

Mr. Earl Younker  
Earl Younker Enterprises  
Route 1, Box 130  
Kailua-Kona, HI 96740

Dear Mr. Younker:

Variance Application  
Tax Map Key 7-5-28:56

The Planning Commission at its preliminary hearing on May 31, 1979, considered your application for a variance to allow a fiberglass greenhouse addition to an existing dwelling with a nine (9)-foot rear yard setback in lieu of the minimum requirement of fifteen (15) feet along the north side of Kona Drive within the Kona Heights Subdivision, Increment II, Hienaloli, North Kona, Hawaii.

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

That the petitioner has not shown that there are unusual circumstances related to the subject property which deprives the owner of substantial property rights. In summary, the petitioner's stated rationale for the request is that there is a hole in the bathroom wall, and to rectify the situation the petitioner proposes to make a 6-foot by 9-foot addition. Although staff concurs that covering the hole in the wall is desirable, the situation could be remedied by covering the hole, and a rear yard setback variance would then not be necessary. Thus, there appears to be no unnecessary hardship and/or special circumstance which would justify granting of this variance request.

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Further, the property owner is already enjoying property rights related to the property as there is an existing single family dwelling with a bathroom on the property. In requesting the variance, the petitioner seeks to increase the rights related to the property through the construction of an addition encroaching into the rear yard setback which does not rectify any existing deprivation of rights. Thus, should the subject request be approved, it would constitute a grant of personal and special privilege inconsistent with the limitations imposed on other properties in the same zoned district.

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 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,

A handwritten signature in dark ink, appearing to read "William F. Michie". The signature is stylized with a large initial "W" and a long horizontal stroke extending to the right.

Chairman, Planning Commission

smn

cc: Corporation Counsel  
Building Department, Public Works

PLANNING COMMISSION OF THE PLANNING DEPARTMENT

COUNTY OF HAWAII

In the Matter of the Appeal )  
                                  of )  
      EARL YOUNKER ENTERPRISES )  
                                  ) )  
Tax Map Key 7-5-28:56 )  
\_\_\_\_\_ )

Variance No. 576

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     )  
          EARL YOUNKER ENTERPRISES     )  
  )  
Tax Map Key 7-5-28:56     )  
\_\_\_\_\_     )

Variance No. 576

FINDINGS OF FACT  
CONCLUSIONS OF LAW  
AND  
DECISION AND ORDER

The above-entitled matter was brought on a preliminary hearing on May 31, 1979, in the Cafetorium, Kealahou Elementary School, Kealahou, North Kona, Hawaii, before the Planning Commission.

The Planning Commission having heard the testimony and having examined the facts does hereby declare its Findings of Fact, Conclusions of Law, and Decisions and Order.

FINDINGS OF FACT

1. An application for a variance to allow the construction of a fiberglass greenhouse addition to an existing dwelling with a nine (9) foot rear yard setback in lieu of the minimum requirement of fifteen (15) feet as stipulated for a 7,632 square foot lot in the unplanned (U) zoned district was received on April 16, 1979.

2. The property involved is located along the north side of Kona Drive within the Kona Heights Subdivision, Increment II, Hialeah, North Kona (TMK: 7-5-28:56).

3. The subject property consists of 7,632 square feet of land area and is situated within the Kona Heights Subdivision. In this area the General Plan Land Use Pattern Allocation Guide Map designations are Orchards and Alternate Urban Expansion.

4. The property is in the State Land Use Agricultural District and is zoned by the County as Unplanned. Since the property involved contains 7,632 square feet of land area, a 15-foot rear yard setback is required.

5. In requesting the subject variance, the petitioner proposes to construct a 6-foot by 9-foot shower and enclosed garden addition to an existing single-family dwelling. The proposed shower and enclosed garden addition would connect with the existing bathroom within the dwelling. The existing dwelling is situated 15 feet from the rear property. The enclosed addition would have a 9-foot rear yard setback, thus necessitating the subject request.

6. Surrounding land uses include single-family dwellings and vacant lands. The property immediately north of the property under consideration is vacant. This property consists of 35.608 acres and has the same General Plan, State Land Use and County Zoning designations as the subject property.

7. In support of the variance request the petitioner has stated the following:

"Sometime in the past a construction worker, Contractor or otherwise and with or without a permit, cut a hole through the rear hollow tile wall of this residence and exposed one of the bathrooms. This hole is approximately six foot wide by five foot high. This person then

proceeded to pour an elevated concrete shower platform on the outside of this hole extending some three feet into the allowable rear yard of 15'-0". This person then left for the mainland and never returned.

"The present owner, Mr. Hal Herwit, engaged the applicant to act as his agent and contractor to remedy his situation in the most feasible manner.

"It is my opinion that everyone will be best served by retaining the work that exists rather than demolish and patch. I then feel that it should be completed in a workmanlike manner, landscaped, and housed in an attractive covering.

"To the rear of this property is undeveloped ag land but even if it is developed in the future, this greenhouse structure would not prove unattractive."

8. Upon review of the subject request the Soil Conservation Service stated, in part, that,

"The parcel of land that is adjacent to the subject property is overgrown with kiawe, haole koa and other weeds and brush. Elevation is 400 feet and rainfall is approximately 40 inches annually.

"The latest flood analysis study for North Kona does not show this parcel to be in any flood prone area."

9. The Department of Health stated,

"Please identify location of existing private sewage disposal system."

10. The Fire Department noted that,

request be approved, it would constitute a grant of personal and special privilege inconsistent with the limitations imposed on other properties in the same zoned district.

13. After hearing the staff's background report and recommendation, the Planning Commission called for the petitioner or his authorized representative to provide testimony on the matter. Neither the petitioner nor an authorized representative of the petitioner appeared at that time to address the Planning Commission.

14. After hearing no testimony on behalf of the petitioner, the Planning Commission voted to deny the request for the reasons as presented by the staff. The vote was unanimous with eight (8) ayes.

#### 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.



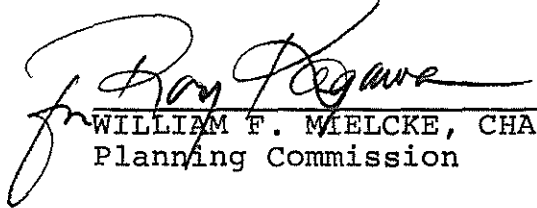
4. Under Article 1, Section 7.01, of Chapter 8 (Zoning Code), of the Hawaii County Code, as amended, a variance may not be granted unless the Planning Commission finds the following:

- a. That there are special or unusual circumstances applying to the subject property or building which do not generally apply to surrounding property or improvements in the same district.
- b. That said special or unusual circumstances exist either to a degree which deprives the owner or applicant of substantial property rights which would otherwise be available, or to a degree which obviously interferes with the best use or manner of development of the subject property.
- c. That the granting of the "variance" shall not constitute a grant of personal or special privilege inconsistent with the limitations upon other properties under identical district classification.
- d. That the granting of the "variance" shall not be inconsistent with the general purpose of the district or the intent and purpose of this Chapter will not militate against the County General Plan and shall not be materially detrimental to the public welfare or injurious to improvements or property rights related to property in the near vicinity.


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 requirements of Chapter 8 (Zoning Code), Article 8, Section 7 pertaining to minimum yard requirements, for Tax Map Key 7-5-28:56 located at Hienaloli, North Kona, Hawaii, be and is hereby denied.

Dated at Hilo, Hawaii, this 21st day of June, 1979.

  
WILLIAM F. MIELCKE, CHAIRMAN  
Planning Commission

APPROVED AS TO FORM  
AND LEGALITY:

  
DEPUTY Corporation Counsel  
County of Hawaii

Date: JUN 15 1979