

CERTIFIED MAIL

December 4, 1979

Dr. and Mrs. Andrew Maeda
1041 Olioli Way
Hilo, HI 96720

Dear Dr. and Mrs. Maeda:

Variance Application
TMK: 2-4-22:120

The Planning Commission at its preliminary hearing on November 29, 1979, considered your application for a variance to allow the construction of an addition to the existing single family dwelling with a rear yard setback of ten (10) feet in lieu of the minimum requirement of twenty (20) feet within the Komohana Gardens Subdivision, Waiakea, South Hilo, Hawaii.

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

That there are no special conditions applying to the subject property which do not generally apply to the surrounding properties within the same zoned district. There are no topographical or non-conforming conditions which particularly differentiate this parcel from others in the area. The subject property is relatively flat and there is still ample room for expansion. In fact, there are several viable alternatives which would allow the applicants to expand their existing dwelling without necessitating a variance.

One option is to build a 680 square foot structure which would include space for two cars and 240 square feet for storage. This structure could be built without intruding into the twenty-foot rear yard setback area. The

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applicants could also provide space for a third car by building a 10' x 14' open addition to the structure described above. The specific design of any proposed addition to the existing dwelling is, of course, a choice for the owners to make. The point is that the building parameters established by the Zoning Code leave ample space for addition to the existing dwelling on this property. Therefore, the applicants have not been deprived of substantial property rights nor has there been any interference with the best use or manner of development of the subject property in relation to surrounding properties within the same zoned district.

Further, the property owners are already enjoying property rights related to the property as there is an existing single family dwelling with approximately 2500 square feet of living area on the property. In requesting the variance, the petitioners seek 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. It should be pointed out that other landowners in the Komohana Gardens Subdivision have been able to develop substantial homes within the limitations imposed by the Zoning Code.

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 on 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 receipt of this letter 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, please feel free to contact the Planning Department at 961-8288.

Sincerely,

for 
WILLIAM F. MIELCKE
CHAIRMAN
PLANNING COMMISSION

lgv

cc Corporation Counsel
Building Division, Public Works

bcc Land Use Controls Division, Plng. Dept.

PLANNING COMMISSION OF THE PLANNING DEPARTMENT

COUNTY OF HAWAII

In the Matter of the Appeal)
 of)
 DR. ANDREW MAEDA)
)
Tax Map Key 2-4-22:120)

Variance No. 603

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)
 DR. ANDREW MAEDA)
)
 Tax Map Key 2-4-22:120)

Variance No. 603

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND
DECISION AND ORDER

The above-entitled matter was brought on for a preliminary hearing on November 29, 1979, at the Hilo Lagoon Hotel, Kaiko'o Lanai, South Hilo, Hawaii, at which time, Dr. Andrew Maeda appeared 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 Decision and Order.

FINDINGS OF FACT

1. An application for a variance from the minimum rear yard setback requirement was received on October 19, 1979.

2. The property is located on Olioli Way within the Komohana Gardens Subdivision, Waiakea Homesteads, Waiakea, South Hilo, Tax Map Key 2-4-22:120.

3. More specifically, the request was to construct a 3-car garage and storage area with a 10-foot rear yard setback in lieu of the minimum requirement of twenty (20) feet.

4. The property is located within the County's Single Family Residential - 15,000 square foot (RS-15) zoned district. This parcel is 11,523 square feet in size and was permitted as

part of a Cluster Plan Development. The Cluster Plan Development procedure permits lots to be reduced in area below the minimum lot size in the district, provided that the permitted density of dwelling units for the proposed development are maintained on an overall basis. This would allow desirable open space, tree cover, recreational areas or scenic areas to be preserved.

5. The minimum setback requirements for this district are 20 feet for front and rear yards and 10 feet for side yards. The setback requirements reduce the parcel's buildable area to 6455⁺ square feet which is 56% of the total area of the parcel. If the variance request is granted, an additional 660 square feet would be added to the buildable area.

6. In support of this request, the petitioners stated, in part, the following:

"Our present home is a two-level dwelling with the living area consisting of approximately 2500 square feet. We are planning to increase our living area by another 1000 square feet to accommodate our four children, visitors from the mainland, storage and my parents who will be living with us in the near future.

"We cannot build a structure as suggested, 10 feet from the main house, since the area in question is not large enough to accommodate this type of plan.

"The rear boundary of our property borders the county drainage easement. This drainage easement is approximately 50 feet wide. Therefore, our proposed plan will not infringe upon the rights or privacy of the owner of the property on the other side of the drainage easement or on either side of my property. This plan will not alter the appearance of the subdivision in any way nor cause any unfavorable distractions to visitors to this area.

"Due to the rising cost of land today and the expense of building a new house, it will be more feasible for us to expand our present house. Our existing two-car garage will be converted into a living area and another three-car garage with storage and guest room will be added. The proposed design has been discussed with Hilo Drafting Service as well as alternate ideas, but the original plan is presently the most feasible to accommodate our needs and the area in question.

"Our bedrooms are located above the garage and we feel that this is a hazard. We would prefer to have the garage away from the sleeping quarters. Our four children all sleep in one room, but as they get older they will need individual rooms, which the expansion and remodeling will provide.

"My office bookkeeping is done at home and I do need an area to keep my personal and office papers. A storage area is very badly needed to store gardening tools, cans of paint, gas for the lawn mowers, etc."

7. The property is as asymmetric lot with the following dimensions: front - 112.35 feet; north side - 132.03 feet; rear - 71.85 feet; and south side - 115 feet.

8. The existing single family dwelling has the following approximate setbacks: front - 24 feet; north side - 14 feet; rear - 40 feet; and south side - 17 feet.

9. The property has been graded and is relatively flat except for the area in front of the dwelling.

10. The surrounding area has been developed with single-family dwellings, however, a few vacant lots still remain.

11. The petitioners also have an agreement of sale on the adjacent parcel located on the north side of the subject property. This parcel, which is presently vacant of any structures, is situated at the corner of Olioli Place and Olioli Way, Komohana Gardens Subdivision, TMK: 2-4-22:121.

12. There is an open strip of land to the rear of the subject property which has a varying width between 60'-70'. Although the petitioner stated that this is a county drainage easement, the tax map book indicates that the drainage easement is just a rectangular strip 18' long and 15' wide which abuts Olioli Place. Tax records show that this open area is owned by the Komohana Gardens Association.

13. The petitioners proposed to construct a 1,020 square foot structure which will serve as an enclosed three-car garage and a storage area. This structure will be added to the rear of the existing dwelling. The driveway to the rear of the property will run along the north side of the existing dwelling. The existing two-car garage will be converted to a living area.

14. The Department of Health commented that "A Registered Professional Engineer is needed to evaluate the existing cesspool cover. We shall accept his stamped comments and/or design for reinforcement if needed."

15. None of the other cooperating agencies had any comments on or objections to the subject request.

16. At the preliminary hearing on November 29, 1979, the Planning Department recommended denial of the application based on the following findings:

"That there are no special conditions applying to the subject property which do not generally apply to the surrounding properties within the same zoned district. There are no topographical or non-conforming conditions which particularly differentiate this parcel from others in the area. The subject property is relatively flat and there is still ample room for expansion. In fact, there are several viable alternatives which would allow the applicants to expand their existing dwelling without necessitating a variance.

"One option is to build a 680 square foot structure which would include space for two cars and 240 square feet for storage. This structure could be built without intruding into the twenty-foot rear yard setback area. The applicants could also provide space for a third car by building a 10' x 14' open addition to the structure described above. The specific design of any proposed addition to the existing dwelling is, of course, a choice for the owners to make. The point is that the building parameters established by the Zoning Code leave ample space for additions to the existing dwelling on this property. Therefore, the applicants have not been deprived of substantial property rights nor has there been any interference with the best use or manner of development of the subject property in relation to surrounding properties within the same zoned district.

"Further, the property owners are already enjoying property rights related to the property as there is an existing single family dwelling with approximately 2500 square feet of living area on the property. In requesting the variance, the petitioners seek 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. It should be pointed out that other landowners in the Komohana Gardens Subdivision have been able to develop substantial homes within the limitations imposed by the Zoning Code."

17. After review of the Planning Department's background and recommendation and the petitioner's testimony, the Planning Commission voted to deny the request for the reasons as presented by the Department. The vote was recorded on five (5) ayes and two (2) 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 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 Chapter 8 (Zoning Code), Article 3, Section 7, pertaining to the minimum setback requirement for a proposed garage/storage addition to an existing single family dwelling on property described as Tax Map Key 2-4-22:120 located at Waiakea, South Hilo, Hawaii, be and is hereby denied.

Dated at Hilo, Hawaii, this 22nd day of April, 1980.

William J. Paris Jr.

WILLIAM J. PARIS, JR.
CHAIRMAN, PLANNING COMMISSION

APPROVED AS TO FORM
AND LEGALITY:

DEPUTY

R. B. Tsukazaki
Corporation Counsel
County of Hawaii

Date:

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