

May 23, 1974

Mr. John M. La Plante
P. O. Box 1448
Kailua-Kona, HI 96740

Re: Variance Application - Harry M. Knight
Tax Map Key 7-5-19:27

The Planning Commission at its duly held public hearing on May 22, 1974 considered the above application for a variance to construct an 8-unit condominium with a height of four (4) stories in lieu of the maximum height of three (3) stories within a Resort-Hotel zoned district and to allow the encroachment of lanai and roof overhang four (4) feet into the shoreline setback area in a portion of Kahului 1st and 2nd, North Kona, Hawaii.

The Commission voted to approve your height variance request effective May 22, 1974, subject to the following conditions:

1. That the proposed building be limited to a maximum height limit of forty-five (45) feet; and
2. That all applicable regulations be complied with including the "Plan Approval" process.

However, the Commission voted to deny your variance request from the shoreline setback rules and regulations based on the following findings:

1. That it is determined that no hardship will be caused to the applicant if the proposed structure is not permitted to encroach into the shoreline setback area. In this instance, the question of the cantilever encroachment is not related to any topographical or terrain constraints which results in a confiscatory or the manner which renders the land unusable so as to make the encroachment necessary. It is felt that the proposed plan can be redesigned so as to place the cantilever elements outside of the shoreline setback area and still allow a reasonable size living unit; and

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2. That the applicant has not shown that the encroachment of the lanai and roof overhangs of the building into the shoreline setback area is in the best public interest. In fact, the encroachment of the cantilever elements as proposed is considered to be contrary to the spirit and purpose of the shoreline setback rules and regulations which states in summary that concrete masses along the shoreline are contrary to the policy for the preservation of the natural shoreline and the open space. In addition, the General Plan natural resources and shoreline section states that "the shoreline shall be protected from the encroachment of man-made improvements and structures."

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.

We will be forwarding you the official Variance Permit and a certified copy of the Denial Order as soon as the documents are prepared. Should you have any questions regarding the above,

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please feel free to contact Norman Hayashi or Royden Yamasato of
the Planning Department at 961-8288.



Arthur W. Martin
Chairman

lat

cc Harry M. Knight
Corporation Counsel
Building, Public Works

PLANNING COMMISSION OF THE PLANNING DEPARTMENT

COUNTY OF HAWAII

In the Matter of the Appeal)
 of)
 HARRY M. KNIGHT)
)
Tax Map Key 7-5-19:27)
_____)

Variance Application
 No. 405

FINDINGS OF FACT

CONCLUSIONS OF LAW

AND

DECISION AND ORDER

PLANNING COMMISSION OF THE PLANNING DEPARTMENT

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In the Matter of the Appeal)
 of)
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Variance Application
No. 405

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND
DECISION AND ORDER

The above-entitled matter was brought on for a public hearing before the Planning Commission of the Planning Department, County of Hawaii, on the 22nd day of May 1974, in the Sgt. Rodney J. T. Yano Memorial Hall, Captain Cook, South Kona, Hawaii, at which hearing John Parazette appeared in behalf of the applicant. 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 requesting a variance from the shoreline setback rules and regulations, and the maximum allowable height limit within a Resort-Hotel zoned district was received on April 2, 1974.

2. A preliminary hearing on the above matter was held on May 2, 1974 in the County Council Room, County Building, Hilo, Hawaii.

3. The subject property is located in Kahului 1st, North Kona, Hawaii, on the makai side of Alii Drive approximately 240 feet Kailua side of the Kona Tiki Hotel.

4. The requested variance was to allow the construction of an eight (8) unit condominium with a height of four (4) stories in lieu of the maximum allowable height of three (3) stories within a Resort-Hotel zoned district and to allow the encroachment of lanai and roof overhang four (4) feet into the shoreline setback area.

5. As a result of a shoreline survey conducted and verified by the State surveyor on November 29, 1973, the parcel was reduced in size to 10,000 square feet of land area.

6. The subject area is located within the Tsunami Inundation zone.

7. The staff recommended that the variance from the maximum allowable height be scheduled for a public hearing and that the variance from the shoreline setback rules and regulations be denied based on the following findings:

- a. That it is determined that no hardship will be caused to the applicant if the proposed structure is not permitted to encroach into the shoreline setback area. In this instance, the question of the cantilever encroachment is not related to any topographical or terrain constraints which results in a confiscatory or the manner which renders the land unusable so as to make the encroachment necessary. It is felt that the proposed plan can be re-designed so as to place the cantilever elements outside of the shoreline setback area and still allow a reasonable size living unit.

b. That the applicant has not shown that the encroachment of the lanai and roof overhangs of the building into the shoreline setback area is in the best public interest. In fact, the encroachment of the cantilever elements as proposed is considered to be contrary to the spirit and purpose of the shoreline setback rules and regulations which states in summary that concrete masses along the shoreline are contrary to the policy for the preservation of the natural shoreline and the open space. In addition, the General Plan natural resources and shoreline section states that "the shoreline shall be protected from the encroachment of man-made improvements and structures."

8. However, the Commission voted to schedule both variances for a public hearing.

9. A public hearing on the above matter was held on May 22, 1974 in the Sgt. Rodney J. T. Yano Memorial Hall, Captain Cook, South Kona, Hawaii.

10. The staff recommended that the variance from the maximum allowable height be approved and that the variance from the encroachment of lanais and roof overhang four (4) feet into the shoreline setback area be denied based on the following findings:

a. That it is determined that no hardship will be caused to the applicant if the proposed structure is not permitted to encroach into the shoreline setback area. In this instance, the question of the cantilever encroachment is not related to any topographical or terrain constraints which results in a confiscatory or the manner which renders the land unusable so as to make the encroachment

necessary. It is felt that the proposed plan can be re-designed so as to place the cantilever elements outside of the shoreline setback area and still allow a reasonable size living unit.

- b. That the applicant has not shown that the encroachment of the lanai and roof overhangs of the building into the shoreline setback area is in the best public interest. In fact, the encroachment of the cantilever elements as proposed is considered to be contrary to the spirit and purpose of the shoreline setback rules and regulations which states in summary that concrete masses along the shoreline are contrary to the policy for the preservation of the natural shoreline and the open space. In addition, the General Plan natural resources and shoreline section states that "the shoreline shall be protected from the encroachment of man-made improvements and structures."

11. It was moved and seconded that the shoreline setback variance request be denied. Motion was carried.

CONCLUSIONS OF LAW

1. Pursuant to Section 5-4.3(g) of the 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. The requirements for the variance have not been met.

DECISION AND ORDER

Based upon the testimony and exhibits introduced at the 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 Section 8.7.2 of Rule No. 8 Rules and Regulations relating to shoreline setback pertaining to Prohibited Activities (structures) within the Shoreline Setback area, of Tax Map Key 7-5-19:27 located in Kahului 1st, North Kona, Hawaii, be and is hereby denied on its merits.

Dated at Hilo, Hawaii, this 12th day of June, 1974.



Arthur W. Martin, Chairman

