

LAND USE COMMISSION

Public Hearing

Hearing Room

Honolulu, Hawaii

8:00 P.M. - October 24, 1962

Commissioners

Present:

Edward C. Bryan
Stanley C. Friel
Wayne D. Gregg
Yuichi Ige
Edward Kanemoto
Franklin Y. K. Sunn
Roger T. Williams

Ex-Officio Members

Absent:

E. H. Cook
Frank Lombardi

Staff

Present:

R. J. Darnell, Executive Officer (XO)
W. M. Mullahey, Field Officer (FO)
John Canwright, Legal Counsel

Chairman Bryan called the public hearing to order and opened it with a prayer.

Chairman Bryan noted that the public hearing was called pursuant to a legal notice published in the Honolulu Advertiser on October 4, 1962.

APPLICATION OF MINNIE TAVARES (SP(T) 62-8), FOR SPECIAL PERMIT TO DIVIDE
1.05 ACRES IN WAIMANALO, OAHU, INTO SIX LOTS: Described as TMK 4-1-10: Por. 41.

Chairman Bryan asked if there were anyone present representing the applicant.

Mr. Daniel Tavares was sworn in and introduced himself stating that he would represent the applicant.

The FO described and located the area in question on the map.

The Chairman called upon Mr. Tavares to present his case.

Mr. Tavares stated that he and his five brothers wanted to have this property subdivided into six lots. After his father passed away, the property went to his mother, and she had promised his father that she would not sell the property and would give it to the boys. Mr. Tavares stated that now that his mother is not feeling well, he and his brothers wished to subdivide it into six lots and have it divided before anything should happen to her. He stated that he and his brothers would like to have it either subdivided or to put some homes on it, at least six homes on the land.

The Chairman asked if any members of the Commission had any question to ask Mr. Tavares.

Commissioner Sunn asked if this particular lot were in a Rural Protective Area, or in a straight Agricultural area according to the City regulations. The FO stated that it is in a Rural Protective Zone.

Commissioner Sunn stated that under the present rules and regulations, Mr. Tavares is able to put up six homes. The FO stated that it was his understanding that under the present regulations this is not so, it would have to be done under advice. The FO stated that Rural Protective depended upon access. If you have proper access the City would allow you to subdivide to 5,000 sq. ft. However, in this area there is a question of access, and there may be other considerations; but the ruling in this area is one house to an acre.

Commissioner Ige asked, "What do you mean by access. There is no roadway." Mr. Tavares stated that there is an easement coming out to their place from Kumuhau Street to a dead end, and a dirt road going into the easement and all the way out.

Commissioner Kanemoto asked, "DO you know how wide the easement is?" Mr. Tavares stated, "Approximately 10 to 15 feet."

Commissioner Gregg asked if the roadway has been in use for many years. Mr. Tavares replied in the affirmative.

The FO explained that he had asked the City for reference to their zoning in this area. He stated that further down Kumuhau Street, 5,000 sq. ft. is allowed in Rural Protective Zoning. The FO stated that the way it was explained to him by the Planning Department is that Mr. Louis, who was Director of City Planning, stated that in this particular area, a parcel of record (regardless of size) before 1949 would be allowed to have 5,000 sq. ft. lots on it. Parcels of record subsequent to 1949 were one house to an acre. The FO stated that he asked City Planning if they would make a check of their files, which they did, as to when Mr. Tavares bought that one acre piece; and the City Planning stated it was after 1949. The FO asked Mr. Tavares whether this finding was correct. Mr. Tavares replied in the affirmative. The FO then stated that this is the basis for the criteria for the 5,000 sq. ft. and the one acre difference in that area. The FO stated, "In other words, before 1949 it was a non-conforming use for parcels of record."

The Chairman wondered why this petition ended with the Land Use Commission instead of the City.

The FO stated that this is a subdivision in a Rural Protective Zone. The Chairman asked, "If it is not a subdivision and the applicant wants to put six houses on one lot would it be the City's responsibility?" The FO replied in the affirmative, stating that since the Land Use Commission's 5-acre minimum requirement for lots in Agricultural districts was eliminated, without subdivision it would be City Planning's responsibility. The legal counsel responded in agreement with the FO, stating that there is no authority under the City and County to allow residential use.

The XO gave a brief background on the history of this application before and after the Attorney General's first opinion was issued.

Commissioner Ige inquired whether Mr. Tavares had made an application with City Planning. Mr. Tavares replied in the negative, stating that he was told by the Land Use Commission staff he was going to get his check back and he could go ahead and put the house on the property. Mr. Tavares stated that he had gone to the City Planning and they told him to go ahead with his plans but just to bring in the maps showing the property to be subdivided. Mr. Tavares stated that Island Homes was hired and was sent to the City to obtain a permit but was stopped. Mr. Tavares stated that he was told to submit a petition to this Commission.

Commissioner Ige stated, "In other words you made an application." Mr. Tavares replied, "Not in writing. They told me to go ahead and do it; to bring the maps in after it was subdivided. When we were going ahead with the job, they stopped us from going ahead -- after they looked the place over and after we had tried obtaining the permit. The City Planning staff stated we couldn't put any house on the property or have it subdivided since it was in a Rural Protective Zone. They told me to come up here and see Mr. Mullahey and open another petition with the Land Use Commission."

Commissioner Sunn stated, "I think what Commissioner Ige is trying to find out is that there are two ways in which you can go about this: (1) If you want to subdivide this particular acre of parcel into six lots you would not be able to do so because of improper access, you don't have a taxable road. This would have precluded you from subdividing this one acre parcel into six lots. (2) However, if you had gone to them and ask to put up six homes....." Mr. Tavares spoke up at this point and stated that this was what he had done and was stopped by the City Planning. Commissioner Sunn replied, "On the basis that it was one house to an acre." Mr. Tavares replied in the affirmative and stated that at first he was told it was 5,000 sq. ft. to a home and could do it.

Commissioner Sunn stated that this law does not state that one house could be constructed per acre in a Rural Protective Area. In a Rural Protective Zoning you are supposed to be able to build a house for every 5,000 sq. ft. or duplex for every 7500 or an apartment house on 15,000 if permitted. Commissioner Sunn stated that the City's interpretation of the law is a little different from his, it's much more rigid.

Mr. Tavares stated that he had discussed this with the City but they stopped him from going ahead but allowed the next-door neighbor to go ahead. He stated that this neighbor had just bought his property about two years ago.

The FO was requested to give the staff report. After being sworn in, the FO presented the following communications:

1. Letter from the City Council stating that the matter has been referred to the Public Works Committee.
2. Letter from the Public Works Committee stating that the matter has been referred to the Mayor for his attention, consideration and action and that a copy of this report would be forwarded to the Land Use Commission.
3. Letter from the Board of Water Supply stating that the water system facilities were incapable of providing an adequate water supply for the proposed six-lot subdivision; that water service connection on the proposed lots will not be permitted; and that when the subdivision application is submitted to the City Planning Department, the Board of Water Supply will be compelled to disapprove this subdivision application.

The FO stated that comments and recommendations were solicited of the City Planning Department and the State Department of Land and Natural Resources, but no reply has been received.

The FO read the staff report. The staff recommended denial of the application, stating that the intent of the plans prepared by HB&A for the State (the principal landowner in the area) is that the extension of the existing residential use in this isolated cluster be avoided.

Chairman Bryan queried the problem of the water situation: "Is my understanding correct, that there is not enough water available either further down, even if the subdivider were to provide his own facilities to bring it to this area." The FO stated that the Board of Water Supply's letter was based on the fact that presently there is a 2-inch water main that comes from Lighthouse Spring. This is inadequate to serve any additional dwellings in the area. The FO stated that the Waimanalo Master Plan shows a new main, supposedly started in 1961, approximately a half mile down the road in the middle of the valley, which is designed to serve the agricultural subdivision for that area. He stated that it would be his assumption if the subdivider did want to carry the water up that far, there would be adequate water. The FO stated that in informal conversations with Mr. Tavares, Mr. Tavares stated that he could tap water from a source mauka of his place. The FO stated that this couldn't be researched and was just something the applicant had stated.

Commissioner Sunn asked if there were any record as to how satisfactory cesspools were in that particular area. The FO replied, "There might be, but I did not investigate it."

Commissioner Sunn stated that the Board of Health would insist, in the event of any subdivision, on either a cesspool test or sewer disposal system. The FO replied in the affirmative, stating, "The Board of Health would be brought into the picture on the County level."

Chairman Bryan inquired for his own education, "If this area were to be subdivided under the present City and County regulations, what would be the minimum requirement of street improvements, etc." The FO stated that either 32 or 44 foot streets would be required.

Mr. Tavares was asked if he had any question to ask the FO. Mr. Tavares stated that the staff report indicated there was not enough water for the area: Why is it that the City has allowed other families to build in this area? The Chairman stated that this Commission may be able to find out why the other families were allowed to move in there.

Mr. James T. Yamaguchi was sworn in and introduced himself as being an employee of Island Lumber Company. He stated that it was not his desire to have Mr. Tavares or other groups in that particular area to have homes built by them. The Company is primarily interested in builders and planners in new homes in some of the area. The Waimanalo area has been given particular observance, although it is designated as Agricultural. The Company feels that this isn't much of an agricultural land for this reason: Most of the people in the neighborhood and property owners prefer having homes. There have been several new homes built in this area in the last few years and by the same token the Tavares family would like to have some new homes built on their property rather than to pay high rent. Mr. Yamaguchi stated that everything has been done to obtain a building permit: talking to the City Planning Department, Building Department, prepared plans, etc., and that his position right now is requesting that the Land Use Commission grant the Tavares family their permit to subdivide.

Commissioner Sunn inquired whether Mr. Yamaguchi understood the requirements of the City and County for a six-lot subdivision and cited in detail the various requirements.

Mrs. Holly Viser was sworn in and introduced herself as an employee of Island Lumber Company also. She stated that the City has issued these permits to all of these property owners in this area in error and they were at present trying to correct these errors. She requested that the Tavares family be granted approval to build on the property, inasmuch as these other houses are in existence in error and the land is not good for farming.

The Chairman asked if there were any other interested person present who wished to be heard. There was no response.

The Chairman announced that if anyone has any additional information that he would like to submit within the next 15 days this Commission would welcome it. This Commission will not be able to take action in this matter for at least 15 days. I would like to make the staff report, letters referred to and the testimony given all part of the record of this proceeding.

The public hearing was closed at 9:30 p.m.