

May 13, 1977

Mr. Robert C. Smith
American International
Rent A Car of Hawaii
3049 Ualena Street
Honolulu, HI 96819

Dear Mr. Smith:

Variance Application
Tax Map Key 7-5-07:5

The Planning Commission at its preliminary hearing on May 12, 1977 considered your application for a variance to allow the retention of a U-Drive office building with a front yard setback of 3'-6" and a side yard setback of 6" in lieu of the required twenty (20) feet and eight (8) feet respectively at Kailua Village, Honuaula 1st, North Kona, Hawaii.

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

The Planning Commission concludes that the denial of this particular request will not deprive the petitioner 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. The intent of variances is to allow deviations to accommodate those circumstances in which, through no previous actions of the petitioner, the strict and literal enforcement of the law would cause undue hardship to the petitioner and deprive him of substantial property rights. There is no evidence to show that the petitioner is faced with this situation. Prior to proceeding with the construction of the subject building, the petitioner should have inquired of the County as to whether a permit was required. At that time, the petitioner would have been informed of the setback as well as other applicable requirements as stipulated within the Zoning Code. Therefore, it is determined that any hardship created, if any, was solely through the petitioner's own doing.

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Variance Permit No. 200 which was granted by the Planning Commission on March 19, 1970, for existing improvements on the subject property, imposed a condition which required the setting aside of a 4-foot wide walkway on the property under consideration along the side of the adjacent Marlin Plaza building. The intent of this condition was to combine the 4-foot walkway with the walkway along the adjacent Marlin Plaza property; thus, creating an 8-foot walkway between the building on both properties so as to permit complete access around the buildings. The petitioner has violated this condition by constructing the subject building within the area designated for a walkway. The Planning Commission feels that the intent of the original variance (Variance No. 200) of providing an 8-foot walkway between the two (2) building is still a valid one, and would be in keeping with the pedestrian-oriented theme of the Kailua Village Design Plan. From a circulation standpoint, it would be a more acceptable plan to leave that area free from any buildings.

Also, from a design standpoint, the subject building is not aesthetically pleasing, and does not blend in with the architectural character of the area. This position is confirmed by the Kailua Village Special District and Urban Design Review Commission who recommended denial of the subject request. It is therefore felt that the granting of this particular variance request would be in conflict with the Kailua Village Design Plan.

Furthermore, since the present construction of the building does not meet with the Building Code requirement, even if the variance were to be approved, the walls of the building would still have to be removed and reconstructed or remodeled.

The building would have to be of 1-hr. construction. 1-hr. construction is either 6-inch hollow tile or wood studs with 5/8-inch gypsum boards on both sides.

The roof overhang of the building also encroaches into the adjacent Marlin Plaza property. The Zoning as well as the Building Codes do not allow such encroachments. As such, even if the variance were to be allowed, that portion of the roof which encroaches into the adjacent lot will still have to be removed.

In light of the above, it is determined that the granting of this particular variance will be contrary to the intent of the setback requirement which is to provide for adequate light, air, and circulation.

The Commission further concludes that there are no special or unusual circumstances applying to the subject property and its improvements which do not generally apply to other properties and improvements in the same zoned district. The granting of this

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particular variance will, in fact, constitute a grant of personal or special privilege inconsistent with the limitations placed upon other properties. Other properties with similar characteristics are obliged to comply with the requirements as stated in the Zoning Code. If this particular variance were to be approved, we would be hard-pressed not to grant other similar requests whether the structure has already been constructed or is proposed for construction.

As your request has been denied, you are required to remove the U-Drive office building immediately in accordance with the Zoning Code requirement.

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.

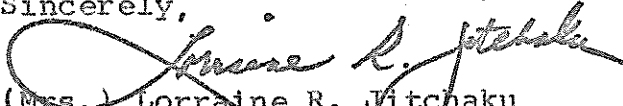
Should you decide to appeal the decision of the Commission in the denial of your variance request, a petition setting forth the following shall be submitted to the Board of Appeals within thirty (30) days from the date of action and accompanied by a filing fee of ten dollars (\$10.00):

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,


(Mrs.) Lorraine R. Jitchaku
Chairman, Planning Commission

lgv
cc Corporation Counsel
Building Division, Public Works

COUNTY OF HAWAII

NO. 496

DECISION AND ORDER

COUNTY OF HAWAII

In the Matter of the Appeal)
of)
AMERICAN INTERNATIONAL RENT)
A CAR OF HAWAII)
Tax Map Key 7-5-07:5)

NO. 496

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND
DECISION AND ORDER

The above-entitled matter was brought on for a preliminary hearing on May 12, 1977, before the Planning Commission of the Planning Department, County of Hawaii, at the State Conference Room, State Building, South Hilo, Hawaii, at which hearing Mr. Robert Bloechworth appeared.

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 for a variance from the minimum front yard and side yard setback requirements was received on April 21, 1977.
2. The request was to allow the retention of a U-Drive office building with a front yard setback of 3'-6" and a side yard setback of 6" in lieu of the required twenty (20) feet and eight (8) feet respectively as stipulated within Resort-Hotel (V-.75) zoned district.
3. The property involved is the site of the World Square Center complex, Kailua Village Honuaula 1st, North Kona, Hawaii, Tax Map Key 7-5-07:5.

4. The subject building, consisting of approximately 82 square feet in size, was recently constructed without a building permit. The violation was found during a field inspection conducted by the Planning Department staff on March 22, 1977. Consequently, a letter dated March 30, was sent to the landowners informing them of the violation, and that the use of the building would have to cease immediately. A building citation was also issued by the Department of Public Works, Bureau of Building Construction and Inspection.

5. In support of the request, the petitioner had stated the following:

"Applicant contends that dividing property line should be deemed superfluous considering both adjoining properties are operated as a single entity - World Square Center and specified area is consequently located at a strategic point resulting in its present non-use which is visually and distractful and impractical. Structure proposed would be setback on a line parallel to the two existing structures and not obtrusively jutting forward as normally might exist in a frontage setback variance. The dual primary use of our forementioned property designation is suited to serve specifically the World Square Center and entire business area in the capacity of a "general information center" as well as its utilization for auto rental services.

"It is the general contention of the applicant that the overall visual result of wood-beam--English tutor facing would be comparable and complimentary of the surrounding architectural structures. As this area has been a perpetual distraction which reflected masses of mechanical equipment, air conditioning ducts, conduit, plumbing, and other technical and mechanical aspects of the two main structures constituting the World Square

Center. We believe that in line with Variance #200 filed by George V. Tharp and Edmond Wong and approved in March 1970 to facilitate the dual operation of these properties as World Square Center. The natural and best use of this area would be as previously specified. We believe that the Variance would not be inconsistent with the general purpose of the district not would it militate against the county general plan. The Variance should not be materially detrimental to public welfare not injurious to property rights of adjoining properties. Both the height and 4 foot walk way requirement specified in Variance #200 would be preserved, and the general frontage area of the two properties enhanced; thereby, retaining the existing sense of scale, balance and intimacy now lending to the attractiveness of Kailua-Kona, as we are sure is the objective of the Planning Department."

6. Variance Permit No. 200 which the petitioner referred to allowed the existing buildings on the subject property with a 10-foot front yard setback along Alii Drive and a 1-foot front yard setback along Kakina Road. As a condition of approval of that Variance Permit, a 4-foot wide walkway on the subject property along the side of the adjacent Marlin Plaza building was imposed. Thus, a side yard of four (4) feet was required. According to the plan submitted with the application, the building in question was constructed within this four (4) feet side yard area; thus, it is also in violation of the condition as stated in Variance Permit No. 200.

7. There also is a 4-foot wide sidewalk within the Marlin Plaza property adjacent to the area under consideration. However, the roof of the subject building projects over the sidewalk and into the adjacent lot. According to the Zoning Code, there must be a minimum clear space of four (4) feet between the edge of the roof and the side property line; thus, this requirement was also

violated. The Building Code also does not allow buildings to project into adjacent lots.

8. The subject building is structurally attached to existing building within the property under consideration.

9. Within the Resort-Hotel zoned district, the Zoning Code allows certain commercial uses subordinate to a hotel or main resort building provided that access to such uses is not available directly from any street or adjoining property. Therefore, in this particular case, the Code does not allow "over-the-counter" transactions. All business transactions must be conducted within the building.

10. The property involved is situated within the Kailua Village Special District. The Variance request was sent to the Kailua Village Special District and Urban Design Review Commission for review and comments. At its meeting on May 2, 1977, that Commission recommended disapproval of the request on the basis that the petitioner is "in violation of existing Planning Department procedures, the building is authentically not very attractive and creates a lot of confusion and a pedestrian hazard in the area in which it is located."

11. A Special Management Area (SMA) Minor Permit for the subject building was issued by the Planning Department on May 4. The reasons for approval were as follows:

- a. The total cost of the proposal will not exceed \$25,000;
- b. Structural activity will involve only the construction of an information/auto rental booth; and
- c. The proposal will not have any substantially adverse environmental or ecological effect; nor will it significantly conflict with Rule 9.1.B, 9.3, 9.4, or 9.7.D.

The area in question is located within an existing retail complex mauka and adjacent to Ali'i Drive in Kailua Village. As

such, the proposal is not expected to affect, either individually or cumulatively, any existing or potential SMA resources and/or amenities such as publicly owned or used beaches, recreation areas, or scenic vistas.

Furthermore, no reduction or restriction of public access to tidal and submerged lands, beaches, and the mean high tide line where there is no beach, will be involved as a result of this proposal. Adverse effects on water resources and scenic amenities should be minimal, and the proposal will not substantially interfere with nor detract from the line of sight towards the sea from any of the major rights-of-way near the coast.

12. Upon review of the request, the Department of Public Works offered the following comments:

- a. The structure shall be of 1-hr. construction.
- b. No openings allowed on walls located less than 5'-0" to the side property line. Openings shall be protected when located between 5' to 10' of side property line.

13. The subject building is not of 1-hr. construction. 1-hr. construction is either of 6-inch hollow tile or wood studs with 5/8-inch gypsum boards on both sides.

14. All other cooperating agencies had no comments or objections to the subject request.

15. The following letter dated May 12, 1977 was received from Lawrence W. Cohn, Director of the Exchange Club of Kona:

"The Exchange Club of Kona would like to take this opportunity to express its position regarding the request for variance submitted by American International Rent a Car.

"It is our feeling that such request should in the best interest of the Kona community be denied.

"Our concern is one of precedent to allow the variance to one who has apparently either willfully or negligently

not complied with existing zoning regulations would only 'open the door' to others who could then take advantage of such a precedent-setting ruling and subvert the wisdom in goals set forth by County planners. Further, as the Planning Commission well knows, personal economic hardship, especially when coupled with self-imposed error, is not sufficient reason for the granting of the variance.

"In fact, we, as Kona residents and businessmen, feel that the granting of such a variance would even encourage others to disregard community standards, regulations and concerns in order to exploit Kailua-Kona for selfish profit, motivated reasons, which would ultimately result in the eventual collapse of planned community growth for this area and foster the genesis of disorder.

"For the foregoing reasons, Exchange Club of Kona strongly urges the Planning Commission to deny the request for variance herein."

16. At a preliminary hearing on May 12, 1977, the Planning Department staff recommended denial of the application based on the following findings:

Staff concludes that the denial of this particular request will not deprive the petitioner 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. The intent of variances is to allow deviations to accommodate those circumstances in which, through no previous actions of the petitioner, the strict and literal enforcement of the law would cause undue hardship to the petitioner and deprive him of substantial property rights. There is no evidence to show that the petitioner is faced with this situation. It is determined that any hardship created

is self-imposed. Prior to proceeding with the construction of the subject building, the petitioner should have inquired of the County as to whether a permit was required. At that time, the petitioner would have been informed of the setback as well as other applicable requirements as stipulated within the Zoning Code. Therefore, it is determined that any hardship created, if any, was solely through the petitioner's own doing. Variance Permit No. 200 which was granted by the Planning Commission on March 19, 1970, for existing improvements on the subject property, imposed a condition which required the setting aside of a 4-foot wide walkway on the property under consideration along the side of the adjacent Marlin Plaza building. The intent of this condition was to combine the 4-foot walkway with the walkway along the adjacent Marlin Plaza property; thus, creating an 8-foot walkway between the buildings on both properties so as to permit complete access around the buildings. The petitioner has violated this condition by constructing the subject building within the area designated for a walkway. Staff feels that the intent of the original variance (Variance No. 200) of providing an 8-foot walkway between the two (2) buildings is still a valid one, and would be in keeping with the pedestrian-oriented theme of the Kailua Village Design Plan. From a circulation standpoint, it would be a more acceptable plan to leave that area free from any buildings.

Also, from a design standpoint, the subject building is not aesthetically pleasing, and does not blend in with the architectural character of the area. This position is confirmed by the Kailua Village Special District and Urban Design Review Commission who recommended denial of the subject request. It is therefore felt that the granting of this particular

variance request would be in conflict with the Kailua Village Design Plan.

Furthermore, since the present construction of the building does not meet with the Building Code requirement, even if the variance were to be approved, the walls of the building would still have to be removed and reconstructed or remodeled.

The building would have to be of 1-hr. construction. 1-hr. construction is either of 6-inch hollow tile or wood studs with 5/8-inch gypsum boards on both sides.

The roof overhang of the building also encroaches into the adjacent Marlin Plaza property. The Zoning as well as the Building Codes do not allow such encroachments. As such, even if the variance were to be allowed, that portion of the roof which encroaches into the adjacent lot will still have to be removed.

In light of the above, it is determined that the granting of this particular variance will be contrary to the intent of the setback requirement which is to provide for adequate light, air, and circulation.

Staff further concludes that there are no special or unusual circumstances applying to the subject property and its improvements which do not generally apply to other properties and improvements in the same zoned district. The granting of this particular variance will, in fact, constitute a grant of personal or special privilege inconsistent with the limitations placed upon other properties. Other properties with similar characteristics are obliged to comply with the requirements as stated in the Zoning Code. If this particular variance were to be approved, we would be hard-pressed not to grant other similar requests whether the structure has already been constructed or is proposed for construction.

17. At that meeting, the Planning Commission voted to deny the variance request for the reasons as outlined by the staff. The vote to deny was recorded as eight (8) ayes and zero (0) no.

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 the variance from the requirements of Article 9, Section 7.A and C pertaining to the minimum front yard and side yard setback requirements of Tax Map Key 7-5-07:5 located at Honuaula 1st, North Kona, Hawaii, be and is hereby denied.

Dated at Hilo, Hawaii, this 3rd day of June, 1977.

APPROVED AS TO FORM
AND LEGALITY:



Corporation Counsel
County of Hawaii



(Mrs.) Lorraine R. Jitchaku, Chairman

Date: June 1 1977