

CERTIFIED MAIL

December 11, 1980

Mr. Ed Smith
Geni Swim Pool Company
P. O. Box 88331
Honolulu, HI 96815

Dear Mr. Smith:

Variance Application (V80-34)
Minimum Setback Requirements
Tax Map Key 7-5-27:10

We regret to inform you that after reviewing your application and the information presented at the administrative public hearing on December 10, 1980, the Planning Director is hereby denying your variance request. The reasons for the denial are as follows:

That the petitioner has not shown that there are special or unusual circumstances applying to the subject property and the location of the swimming pool which do not generally apply to surrounding properties or improvements in the same zoned district. In fact, in its reasons, the petitioner did state that since the pool is portable, it "can easily be removed or moved to a different location..." (Emphasis added) Based on this statement alone, it is questionable as to why the petitioner has sought a variance.

Further, in initially applying for a Building Permit for the construction of the pool, the plot plan originally reflected a front yard setback of ten (10) feet and a side yard setback of five (5) feet. However, in approving the Building Permit, corrected notations were made on the plot plan to indicate that the pool had to be constructed a minimum of fifteen (15) feet and eight (8) feet from the front and side property lines, respectively. Therefore, the petitioner had full knowledge of the minimum setback requirements prior to constructing the pool.

In its reasons, the petitioner further stated that the Zoning Code for Oahu allows a pool to be constructed at the property lines. It is felt that this is not a legitimate reason for the granting of the request; especially since the petitioner

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was well aware of the County of Hawaii's Zoning Code relative to minimum setback requirements. The petitioner had full knowledge of our requirements and that the requirements of other jurisdictions are not necessarily applicable in the County of Hawaii.

Although we can sympathize with the circumstances faced by the landowner, it is felt that the petitioner has not shown that special or unusual circumstances exist to a degree which deprives the owner 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 petitioner also has not provided any reasons to justify that the granting of this variance will not be inconsistent with the intent and purpose of the Zoning Code requirements nor will it militate against the County of Hawaii General Plan.

Based on the above, it is determined that the granting of this particular variance will constitute a grant of personal or special privilege inconsistent with the limitations placed upon other properties under identical district classification.

Please be informed that the final denial order will be forthcoming under separate cover.

The Director's decision is final, except that within ten (10) working days after receipt of this letter, you may appeal the decision in writing to the Planning Commission in accordance with the following procedures:

1. Non-refundable filing fee of one hundred dollars (\$100.00);
2. Ten (10) copies of a statement that clearly sets forth the legal and substantive bases for the appeal and that specifies the grounds which would support a finding that the Director's decision was in error; and
3. Any other plans or information required by the Planning Commission.

Upon receipt of the appeal, the Planning Commission shall conduct a public hearing within a period of ninety (90) calendar days, unless the time is waived by the appellant. Within sixty (60) days after the close of the public hearing or within such longer period as may be agreed to by the appellant, the Planning Commission shall affirm, modify or reverse the action from which the appeal was taken.

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Should you have any questions on the matter, please feel free to contact us.

Sincerely,

Sidney M. Joke

Sidney M. Joke
Planning Director

NH:gs

cc: Wally Gallup, Esq.
Planning Commission
Russell Okura