

CERTIFIED MAIL

December 8, 1981

Mr. Owen Chock, AIA
Design Partners Incorporated
1709 Kalakaua Avenue
Honolulu, HI 96826

Dear Mr. Chock:

Design Partners, Inc. for Brehm Communities Hawaii
Variance Application V81-31
Height Limit Regulations
TMK: 7-6-16:1 North Kona

After reviewing your application and the information submitted in behalf of it, the Planning Director by this letter hereby certifies the approval of your variance request to construct seven (7) three (3)-story of two (2) stories in a Village Commercial Zone.

The approval is based on the following:

1. There are special and unusual circumstances applying to the proposed building which exist to a degree that interfere with the best manner of development of the subject property. The intent of height regulations as one factor of other dimensional requirements (yard setbacks, floor area ratios, etc.) is to generally assure light and air to the neighbors of the structure. Conventionally, height regulations may be expressed in feet, stories, or with reference to the width of the street on which a building fronts.

As proposed, the affected building will comply with all zoning densities, ground cover ratios, and landscaping/open space requirements. In terms of exterior height, these buildings will not physically exceed the district height limitation of thirty (30) feet. Thus, a literal enforcement of the interior height restriction of two (2) stories would neither add to nor detract from the exterior appearance of the structures from a visual and functional standpoint.

An additional consideration in this variance application is government's prior awareness of the petitioners' intention to construct two-story units with a third level mezzanine. Early consultation with the Planning Department had clarified the maximum height requirements allowed under the Zoning Code. Provisions for a third level mezzanine, however, are not found in the Zoning Code but within the Uniform Building Code which is administered by the Department of Public Works.

An attempt to clarify these discrepancies resulted in a legal interpretation that Zoning Code height limit requirements prevail and thus, a mezzanine must be considered as a story for purposes of determining height. Under these circumstances, government contributed to the petitioner's reliance on conflicting height limitation requirements, thereby resulting in special circumstances which did not generally apply to similar zoned developments.

2. Approval of this request would not constitute a grant of special privilege. Building height exceptions can be considered in cases where the overall height is not an intrusive element. As stated above, while the overall height conforms with existing zoning regulations, the mezzanine inclusion would not render the building any more conspicuous than the maximum height allowances and the visual impact of the proposal would not be aggravated by the granting of this variance.
3. Approval of the Variance would be consistent with the intent of the Zoning Code and the General Plan as the development would be within the overall height parameters since the variance is primarily concerned with interior deviations from the zoning requirements. The general intent of physical height considerations will not be compromised by the granting of this variance.

This variance application is approved, subject to the following conditions:

1. The applicant shall comply with all other conditions stipulated in SMA Use Permit No. 132 (effective May 7, 1980).

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2. Plans submitted for Plan Approval in accordance with Article 22, of Chapter 8 (Zoning Code) shall conform substantially to plans submitted for this variance application.
3. The applicant shall comply with all other applicable State and County rules, regulations, and requirements.

Should any of the foregoing conditions not be met, the Variance Approval may be deemed null and void.

If you have any questions on this matter, please feel free to contact us.

Sincerely,



SIDNEY FUKU
Planning Director

DT:lrp

cc: Public Works
Planning Commission

bcc: Masa Onuma