

CERTIFIED MAIL

September 10, 1982

Mr. Albert Souza
P. O. Box 105
Pepeekeo, HI 96783

Dear Mr. Souza:

Variance Application (V82-29)
Minimum Lot Size Requirement
Tax Map Key 2-8-06:14

We regret to inform you that after reviewing your application and the information presented in its behalf, the Planning Director is hereby denying your variance request. The reasons for the denial are as follows:

1. There is no evidence which indicates that there are special or unusual circumstances that apply to the land and deprives the owner or applicant of substantial property rights that would otherwise be available. The lack of any special or unusual circumstances relating to the subject property, would also not interfere with the best manner or use of the property. Although, economic or personal interest hardship is a consideration in the evaluation process, it should not be the sole basis for a variance request.
2. There are other reasonable alternatives in accomplishing the applicant's purposes. The applicant's main purpose of conveying interest in the land to family members can be accomplished on an "undivided interest" basis. The applicant may also submit rezoning applications for the subject property. However, the submittal of a change of zone application does not mean an automatic approval of such a request. The opportunity to do so is, however,

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considered an alternative. The recently passed legislation concerning "Ohana Zoning" permits the applicant to construct an additional single family dwelling on the property. The petitioner is also permitted to construct additional "farm dwellings" under certain conditions and with the Planning Director's approval. These alternatives are not considered to be excessive or overburdening in view of the present density limitations and the lack of any substantive circumstances or reasons for the granting of the variance. Additionally, these other alternatives available to the petitioner are considered to be reasonable and do not foreclose any options for the use of the land by the petitioner.

3. The variance request is not consistent with the General Plan and the intent and purpose of the Subdivision and Zoning Codes. Chapter 8 (Zoning Code), Article 1, Section 7 (Variances) and Chapter 9 (Subdivision Code), Article 1, Section 5 (Variances) state that "Variances from the provisions of this Chapter may be granted; provided that a variance shall not allow the introduction of a use not otherwise permitted within the district; and provided further that a variance shall not primarily effectuate relief from applicable density limitations." (Emphasis added) The Zoning Code presently permits one (1) single family dwelling per building site. The new Ohana Zoning law would enable the applicant to construct a second single family dwelling on the property. If the variance is approved, the density which would be permitted on the two parcels would double from two (2) to four (4) single family dwellings. This would "primarily effectuate relief from applicable density limitations" for this proposed subdivision and be contrary to the provision that variances cannot be granted for density purposes.

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. A non-refundable filing fee of one hundred dollars (\$100.00); and
2. Ten (10) copies of a statement of the specific grounds for the appeal.

Should you decide to appeal, the Planning Commission shall conduct a public hearing within a period of ninety (90) days from the date of receipt of a properly filed appeal. 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

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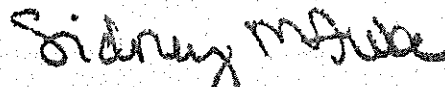
shall affirm, modify, or reverse the Director's action. A decision to affirm, modify or reverse the Director's action shall require a majority vote of the total membership of the Planning Commission. A decision to defer action on the appeal shall require a majority vote of the Planning Commission members present at the time of the motion for deferral. If the Planning Commission fails to render a decision to affirm, modify, or reverse the Director's action within the prescribed period, the Director's action shall be considered as having been affirmed.

All actions of the Planning Commission are final except that, within ten (10) working days after notice of action, the applicant or an interested party as defined in Section 7.-5 of this article in the proceeding before the Planning Commission may appeal such action to the Board of Appeals in accordance with its rules.

All actions of the Board of Appeals are final except that they are appealable to the Third Circuit Court in accordance with Chapter 91 of the Hawaii Revised Statutes.

Should you have any questions on this matter, please feel free to contact our office at 961-8288.

Sincerely,



SIDNEY FUKU
Planning Director

RHY:gs

cc: Planning Commission