

CERTIFIED MAIL

February 12, 1987

Mr. Jeffrey Choi
Case & Lynch
Attorneys At Law
275 Ponahawai Street, Suite 201
Hilo, Hawaii 96720

Dear Mr. Choi:

Variance Application (V86-30)
Applicant: Lands of Kukuau
Tax Map Key 2-4-25:14

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

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are no special or unusual circumstances which apply to the subject parcel. On February 17, 1983, the Planning Commission held a public hearing on an amendment to the City of Hilo Zoning Map that was initiated by the Planning Director relating to the future road right-of-way width of Kukuau Street. The subject parcel was included as part of the future right-of-way of Kukuau Street. Prior to the Public Hearing, a letter dated January 27, 1983, was sent to J. T. Trading Co., Ltd, etal, 1069 Lau Lima Place, Hilo, Hawaii, informing them of the proposed amendment to the City of Hilo Zone Map would be heard on February 17, 1983, by the Planning Commission beginning at 3:30 p.m. in the County Councilroom. At the public hearing, the minutes shows that there were approximately 6 people from the public in attendance. Of those in attendance, only one person (Mrs. Fish) spoke at the public hearing. No objections to the request was registered. On April 6, 1983, the county Council adopted Ordinance No. 872 which incorporated the proposed road right-of-way as part of the City of Hilo Zone Map. This ordinance became effective on April 18, 1983.

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Section 25-264 of the Zoning Code states that "Whenever plan lines for a future street have been established, they shall be deemed to be joint property lines, and the area between them shall be deemed to be street right-of-way. However, for computing the density, the area of the lot shall be based on gross land area."

Section 25-40 further states that "Unless otherwise designated the area of any street, right-of-way or easement is considered to be and shall be classified within the immediately adjacent district and if there be more than one district then each shall extend to the center of the street, right-of-way or easement, and the area shall not be used for any purpose other than that for which it was established."

Section 25-4b (50') defines street as "a private or public way or thoroughfare, however, designated, which affords the principal means of vehicular access to abutting properties."

ALTERNATIVES

As noted previously, public hearings were conducted both by the Planning Commission and the County Council prior to the adoption of the Ordinance which denoted the future road right-of-way which encompasses the entire property. The petitioner through its Consultant (Ronald Nagata) was informed by a letter dated June 18, 1981, from the Planning Department that we could not process the plans for the proposed office building in light of the Department of Public Works' comments. Their comment was that "the proposed building would conflict with the future extension of Kukuau Street. Although Kukuau Street is not on the General Plan, we feel that it should be. This will allow ready access to and from the Police Station and Komohana Street. There was an agreement to be executed by the skating rink owners of a tie to the future Kukuau Street (Kumu Street) when constructed in conjunction with the deletion of the Kinoole Street driveway as a condition of plan approval." The letter further stated that "In essence, we shall follow their recommendation in retaining the Kumu Street extension proposal." No appeals or variance application were filed on this rejection of the proposed office building nor was there any objections filed with the Planning Commission when the Public Hearing was held on the proposed future right-of-way of Kukuau Street.

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INTENT AND PURPOSE

The intent and purpose of establishment of future width lines and plan lines for future street is to provide a system of thoroughfares and streets for the safe, efficient and comfortable movement of people and goods between and within the various sections of the County. The proposed Kukuau Street extension is to provide a collection street connecting Komohana Street (secondary arterial) and Kinoole Street (collection street). This future road right-of-way was established and shown on the Zoning Map as provided in Section 25-82 and 25-85 of the Zoning Code (Chapter 25).

Section 25-264, Legal effect of establishment of building line, future width line, and plan line paragraph (c) states that "Whenever plan lines for a future street have been established, they shall be deemed to be front property lines, and the area between them shall be deemed to be street right-of-way. However, for computing the density the area of the lot shall be based on gross land area."

Consequently, we have determined that the granting of the variance would be contrary to the general purpose of the zoning district, the intent and purposes of the Zoning Code and the General Plan.

Based on the above findings, the Planning Director concludes that the variance application to allow the construction of improvements within the proposed Kukuau Street right-of-way should be denied.

The Director's decision is final, except that within thirty 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); and
2. Ten 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 days from the date of receipt of a properly filed appeal. Within sixty 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,

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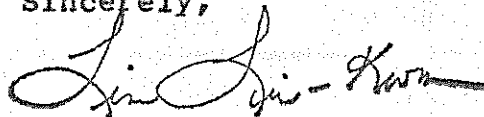
modify or reverse the Director's action. A decision to affirm, modify or reverse the Director's action shall require a majority vote of the total membership of the Planning Commission. A decision to defer action on the appeal shall require a majority vote of the Planning Commission members present at 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 thirty days after notice of action, the applicant or an interested party as defined in Section 25-27.2 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, please feel free to contact us.

Sincerely,


ALBERT LONO LYMAN
Planning Director

MO:lv
Enc. - Background Report

cc: Planning Commission w/enc.
Corporation Counsel