

CERTIFIED MAIL

June 18, 1987

Mr. Mark A. Schwartzman  
P. O. Box 1051  
Kapaa, HI 96755

Dear Mr. Schwartzman:

Variance Application (V87-12)  
Mark A. Schwartzman  
Tax Map Key 5-5-10:13

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:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are no special or unusual circumstances applying to the subject property which deprives the petitioner of substantial property rights which would otherwise be available or interfere with the best use or manner of development of the property.

The property has a land area of 6,327 square feet and is considered as a non-conforming lot since it does not meet with the minimum 10,000 square foot requirement of the CV-10 zoned district. Existing on the parcel are 2 structures (single family dwelling and commercial building) with a total square footage of approximately 3,144 square feet. This building coverage is approximately 49.7% of the land area. These structures were built prior to the Zoning Code. A similar development built under the present Zoning Code requirement would require a minimum of 8 parking stalls which would result in the paving of a parking lot of approximately 2,964 square feet.

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The existing commercial building has a setback of 19 feet which meets with the minimum 15 foot front yard setback. Under the present condition, the petitioner can construct a deck 9 feet deep with a resultant clearspace of 10 feet from the front property line.

The petitioner has stated that "the primary purpose of the deck is to both enhance the facade of the building and make the restaurant visible from the highway. This is essential in as much as the business is most dependent on tourist traffic and as is presently the case it is very difficult to notice the restaurant when driving past. Consequently I have been unable to make the restaurant a profitable business and hope that the deck will reverse the trend." The present configuration of the property is such that the front property line of the subject property protrudes 12.79 feet into the highway right-of-way than the adjoining property to the east resulting in the property line being closer to the road pavement. This in itself would make the property and development more visible from the highway.

Based on the foregoing, we have concluded that there are no special and unusual circumstances which unreasonably interferes with the best use or manner of development of the property.

#### ALTERNATIVES

The petitioner does have other design alternatives. The proposed open type deck could be constructed within the front yard setback area meeting with the minimum clearspace requirement of 10 feet without the necessity of a setback variance.

There is nothing in the existing building design which makes it unique or unusual that would necessitate deviation from the minimum front yard setback clearspace requirements of the Zoning Code. Other developments under similar zoning designation have been able to develop their properties within the limits as set forth by the Zoning Code. Although the petitioner's claim that the primary purpose of the deck is to both enhance the building facade and make the restaurant visible from the highway, this is not a valid reason for granting a variance. The variance request has to be viewed in terms of the relationship of the three criteria for the granting of the variance.

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INTENT AND PURPOSE

The intent and purpose of the setback and clearspace requirement is to ensure that light, air, physical and visual circulatory functions are available between structural developments and property lines. It is also used to separate and minimize impact of activities from adjoining parcels. It is a regulatory tool which is also used in determining design compatibility and functional solutions. Thus, all things being equal, an approval of a variance from the clearspace requirement without any special or unusual circumstances related to the land could be of some detriment to the adjoining properties. To approve the variance in this particular case would be for the purpose of increasing a personal property development rights and would violate the original intent of the setback and clearspace concept and thus may have a detrimental or adverse effect on the adjoining and surrounding properties.

This variance request is viewed to be inconsistent with the general purpose of the Zoning District and the intent and purpose of the General Plan. Furthermore, the granting of the variance without any substantiation of proof in conjunction with the criteria test for variances would be setting precedence for the rest of the subdivision to request for the same type of relief from these standards.

Finally, while it could be construed that the impact of allowing the variance to the petitioner may be minimal, the impact to the adjacent property and the cumulative impact of subsequent similar variances without legitimate hardships cannot be ignored. This consequence, in this instance, must be given a higher priority and must override the personal wishes or desires of the individual in favor of the intent and purposes of the Zoning and the welfare of the general public.

Based on the foregoing, the Planning Director further concludes that the variance application 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.

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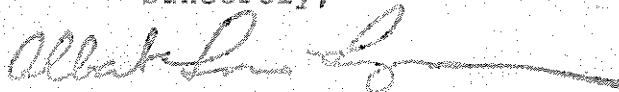
Should you decide to appeal, the Planning Commission shall conduct a public hearing within a period of ninety days from the date of receipt of a properly filed appeal. Within sixty days after the close of the public hearing or within such longer period as may be agreed to by the appellant, the Planning Commission shall affirm, 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:dh  
Enc. Background Report

cc: Planning Commission (w/enc.)