

CERTIFIED MAIL

June 18, 1987

Mr. Aza Summers, AIA
P. O. Box 445
Kamuela, HI 96743

Dear Mr. Summers:

Variance Application (V87-4)
Aza Summers
Tax Map Key 6-4-06:25

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 interferes with the best use or manner of development of the property.

The property has a land area of 8,000 square feet which meets with the minimum 7,500 square feet lot size requirement of the Neighborhood Commercial (CN-7.5) zoned district. The property has an average width of a 100 feet which is more than the minimum 60-foot requirement. The depth of the property is 80 feet.

Existing on the property is a 2-story commercial building with Souza's Furniture Store occupying the 1st floor (1.632 sq. ft.). The 2nd floor which consists of 1.825 square feet is

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occupied by Souza's Furniture Store (600 sq. ft.) and Sharon & Co. Beauty Salon (1,225 sq. ft.). Eight parking stalls are located on the subject parcel with an additional six stalls located on the adjoining parcel which was permitted via a parking agreement between the Iwamasa's and Kamuela County Plaza. The parking requirement for the existing business is 8 stalls. This is based on one (1) stall per 500 square feet for the furniture store and one (1) stall per 400 square feet for the beauty salon. The applicant is proposing to add 1,327.5 square feet of floor area to the existing building. This addition to the furniture store improvement will require 2.655 ($1,327.5/500 = 2.655$) stalls for a total of 10.655 or 11 stalls.

It should be noted that the parking requirement for a retail store within the Neighborhood Commercial (CN) district is one (1) stall per 200 square feet. Should the lower level of the existing building (1,632 sq. ft.) be used for retail sales, the parking requirement would be 8 ($1,632/200 = 8.16$) stalls. Use of the second level for offices and general business uses other than retail sales would be 4.56 ($1,825/400 = 4.56$) stalls. The minimum parking requirement of these two (2) types of use would be 12.72 or 13 stalls. The proposed addition of 1,327.5 square feet if used for retail sales would add another 6.637 stalls. The resultant parking requirement would be 19.157 stalls.

As noted earlier, there are eight (8) parking stalls on the subject parcel with six (6) additional stalls located on the adjoining parcel. These six (6) stalls being used to meet with the minimum parking requirements for the subject development via a parking agreement. Covenant 4 of the agreement states that "Should the right to use the parking stalls on TMK 6-4-06:5 terminate, KCP agrees that it must discontinue the use of the ground-floor as a general merchandise store in the building in PA 1782, unless some other arrangement with the County can be worked out for adequate parking." To allow the expansion of the first floor would add to the existing parking requirements. This would create a parking problem should the agreement be terminated and the use of the first level be converted from a furniture store to a retail sales establishment.

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. As stated in the application, "The only reasonable alternative to resolve this difficulty would be to consolidate parcels 25 and 51, thereby making the subject property line a side yard that would have a zero setback requirement." It should be noted that parcel 51 is not a legal lot or record since final approval has not been granted to create this lot. The subdivision application to create this lot is pending in the Planning Department. Therefore any lease of parcel 51 as noted on tax map is not valid. As noted above, an alternative available is to acquire additional lands (parcel 51?) to the west side of the subject property and consolidate it with the subject property to create a corner lot. This would result in the creation of a corner lot which has no rear property line. Further this added land area would provide the necessary land area for the construction of additional parking that would be located on the same property as the building, thereby eliminating the concern relating to the adequacy of parking should the existing parking agreement be nullified.

The petitioner has stated that "The subject parcel is very small and is zoned CN, which requires a front and rear setback of 15 feet. The resulting building is comparatively small and the development has not been economically viable. The original developer was forced to sell, and since the business climate at the time was very slow, the only buyer was Souza's furniture store. In order to be successful, the furniture store needs more showroom space." It should be pointed out that other landowners with developments within the same Neighborhood Commercial zoned district have been able to develop their properties within the limitations imposed by the Zoning Code. Moreover, the use of the variance procedure to economically justify the success of a development has to be viewed in terms of the relationship of the three criteria for the granting of a variance. Although the petitioner's claim that the size of the property is small and provides for a limited development, there are other reasonable options in view of the circumstances for this situation.

INTENT AND PURPOSE

The intent and purpose of the setback requirements is to ensure that air, light, physical and visual circulatory functions are available between structural developments and

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property lines. In addition, the parking requirements as set forth in the Zoning Code is to ensure that adequate parking are provided for on the property for a development. In the Neighborhood Commercial (CN) zoned district, the parking requirements is one of the key elements that control the ultimate size of a development. In this particular application, the minimum parking requirement with the proposed addition would be 11 stalls of which 3 stalls are provided for on the adjoining property. It should be noted that the parking requirement for a furniture store is 2 1/2 times less than that which is required for a retail store use. As noted previously, should the use of the lower level (including the proposed addition) be converted from a furniture store to a retail store, the parking requirements would increase to 19 stalls. Thus, all things being equal, an approval of the setback variance to increase the floor area of the existing development without any special or unusual circumstances related to the land and the enhance a property's development rights would violate the original intent of the setback concept, would not be in keeping with the area's character 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. Further, the granting of the variance with regards to the criteria test for variances would be setting precedence for the rest of the other properties within the same zoning district classification.

Finally, while it could be construed that the impact of allowing the variance to the adjacent properties and the cumulative impact of subsequent similar variance 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 petitioner in favor of the intent and purposes of the Zoning Code 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:

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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, 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.)
J. R. Souza

Souza's Furniture & Appliance
P. O. Box 2186
Kamuela, HI 96743