

# 304

CERTIFIED MAIL

September 9, 1987

Mr. Jack Clayton  
M.S. Petroleum Corp.  
P.O. Box 611  
Hilo, HI 96721

Dear Mr. Clayton:

Variance Application (V87-29)  
Applicant: M.S. Petroleum Corp.  
Tax Map Key 8-1-03:39

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 to allow the construction of a 70-foot high flag pole in lieu of the maximum 40-foot height requirement within the Village Commercial (CV-10) zoned district in Kealahou, South Kona, Hawaii. The reasons for the denial are as follows:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are no special and unusual circumstances applying to the subject property which deprive the applicant of substantial property rights that would otherwise be available, or which interfere with the best use or manner of development of the property.

The village commercial zoning of the parcel permits flag poles 10-feet above the 30-foot maximum allowable height for a total of 40-foot height, while the request is for a 70-foot high flag pole. The reason given for such a requested height is that the flag normally used by the company measures 15 feet by 25 feet. A 40-foot flag pole would result in a flag that size touching the ground. However, the applicant's desire to have a flag that size is not considered a circumstance resulting in deprivation of property rights which interfere with the best use or manner of development, and it is this criterion upon which a variance approval is based.

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Based on the foregoing, it has been determined that there are no special and unusual circumstances applying to the subject property which exist to a degree which deprive the owner of substantial property rights that would otherwise be available, or which unreasonably interfere with the best use or manner of development of the property.

#### ALTERNATIVES

There are reasonable alternatives to the applicant's situation, mainly, the flag size can be reduced to accommodate the maximum allowable pole height in this zone. While a large flag does represent the company's emblem, as noted at two Hilo stations, and is not just incidentally patriotic, its size can be varied, in this case, reduced without any negative connotation or lessening of fervency. In like manner can a revolving Shell gasoline or Union 76 "ball" sign be reduced in size without loss of recognition, should a particular locale's sign ordinance so require.

In the village of Kealahou, a flagpole and flag 40 feet high will still extend above the surrounding structures which are mostly one-story in height, and being located along the highway, the flag's visibility, even though reduced to a size less than 15 feet by 25 feet, will continue to be a very obvious landmark and display to motorists.

#### INTENT AND PURPOSE

The intent and purpose of the CV district's height limitation is in consideration of the physical scale of the particular community it encompasses. All buildings in this zone are restricted to a 30-foot height maximum (plus an additional 10-feet for poles, chimneys, spires, etc.) in large part to maintain the small town characteristics of Kealahou.

A 40-foot height limit for a flag pole (and its flag) still allows it to extend well above the buildings in this area, and especially with the site being next to the main highway and surrounding buildings being at most 20 feet high. Consequently, a 40-foot high flag pole will extend well above the surroundings and still be a stand out feature.

No hardships are found in the applicant's situation which are caused by the land or the zoning regulations applicable to it.

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This request is viewed as being inconsistent with the general purpose of the zoning district and the intent and purpose of the General Plan, and it does not meet the criteria test of land or zoning regulation hardship.

Based on the foregoing, the Planning Director has concluded that this variance request by 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.

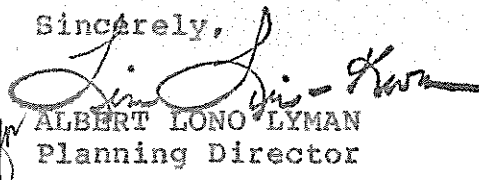
Should you decide to appeal, the Planning Commission shall conduct a public hearing within a period of ninety days from the date of receipt of a properly filed appeal. Within sixty days after the close of the public hearing or within such longer period as may be agreed to by the appellant, the Planning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

DT:lv  
Enclosure - Background Report

cc: Planning Commission (w/enc.)