

CERTIFIED MAIL

December 18, 1987

Mr. Mark Sperry
P.O. Box 938
Kamuela, HI 96743

Dear Mr. Sperry:

Variance Application (V87-52)
Tax Map Key 6-5-08:25

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 deprive the applicant of substantial property rights that would otherwise be available, or which interferes with the best use or manner of development of the property.

There is land area available on this lot to accommodate the uses being proposed without exceeding the code maximum for a guest house (500 square feet). A linear 64 foot of available land area exists between the southeast lanai and that boundary. Honoring the requirements of building separation and side yard setbacks (6 foot clearspace and 8 foot side yard) would leave 50 feet of length and 22 feet of depth upon which to construct. Excavation into a portion of the filled slope (lawn) is not considered an unreasonable effort. There is also 24 feet of land area between the southwest lanai and its closest property line which would accommodate a small structure. Small size accessory structures are also not considered unreasonable for a relatively small lot.

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On the other hand, an accessory structure 25 feet in height, 8 or 10 feet from an adjacent property would be obtrusive, given the scale of this lot and the immediate subdivision, rendering an adverse impact to adjoining property, moreso given the fact that the standard one story requirement for a guest house would be a building only one-half that 25 foot height, and consequently its bulk, in this case. Additionally, the adjacent property owner to the southeast, who would be affected, does protest.

ALTERNATIVES

There are alternatives to siting the proposed uses at the extreme corner of the property. Attaching the guest house or garage to the main building is one; separating the two uses (garage and guest house) so that one is on the other side of the dwelling is another. On a relatively small lot, the builder or occupant must naturally scale down his preferences to fit what he voluntarily chose to buy, build and/or site. And, absent any compelling special and unusual circumstances applying to the land, the generalized alternatives are not considered unreasonable.

INTENT AND PURPOSE

The intent and purpose of having such accessory structures limited to 15 feet or one story in height, and guest houses to be less than 500 square feet in area, is that such structures are, for residential size areas, intended to be minor uses and smaller in size and scope, compared with the main use and the scale of a residential lot size subdivision.

In addition, this subdivision's deed stipulates that any outbuildings (building other than the main dwelling) shall not exceed one (1) story in height. The stipulation runs for 10 year periods following December 1, 1979, prior to which a majority of the owners can modify the requirement (which it has not). While it is not the intent of this review to enforce private deed covenants, the main point is that this subdivision has the one-story expectation for its scale and scope of development where accessory structures are concerned.

Based on the foregoing, it is found that the variance request would not be consistent with the general purpose of the Zoning Code and its intent and purpose of the County General Plan.

Therefore, the Planning Director has concluded that this request be denied.

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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.)
Wesley Smith