

October 11, 1990

CERTIFIED MAIL

Mr. Thomas Paul  
P. O. Box 785  
Lanai City, Lanai 96763

Dear Mr. Paul:

Variance Application (V90-5)  
Thomas Paul  
Tax Map Key 2-5-57:43

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 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.

Applicant's land slopes north to south gradually with perhaps a 10 to 12 ft. elevation difference within the 360 ft. length. This characteristic is typical of the lots in the area.

Observed at about 30 ft. from the applicant's rear property line and 20 ft. from the makai side boundary is what appears to be a recently completed, covered cesspool excavation although there is no structure on this parcel. According to the site plan of the applicant's building permit #892836 signed on December 11, 1989, the dwelling should be 30 ft. from the rear property line and the cesspool some 50 ft. or more south of its present location.

The contention that a structure under construction on the adjoining parcel effectively blocks the applicant's view of the ocean is not considered a special and unusual circumstance applying to the subject property itself. Further while the drainage swale which bisects the property limits development somewhat, the remaining area of this 1-acre lot does provide adequate buildable area throughout the lot.

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There is also a somewhat limiting factor caused by the existence of the applicant's cesspool which apparently was not placed according to the building permit-approved site plan. It is determined, however, that this situation was self imposed by the applicant and thus, can not be considered a special and unusual circumstance applying to the real property which deprives the owner of substantial property rights.

#### ALTERNATIVES

There are alternatives available to the applicant.

With the exception of the swale, the entire property being 1-acre in size is suitable for construction and the southeast views of the seacoast, even with the adjacent 2-story dwelling under construction, are still available.

#### INTENT AND PURPOSE

The intent and purpose of the respective setback distances is to afford light, air, open space and related spatial considerations between properties and buildings in a scale commensurate with the environs, the immediate community and the duly adopted zoning designations. In these larger, low density land use zones, all dwellings are expected to be placed at a proportionally greater distance from the front/rear and side boundaries. In this instance, the views are not impeded beyond the usual expectations from adjacent residences, and terrain; the low density zoning and the orientation of the lots continue to afford the applicant siting alternatives within his property.

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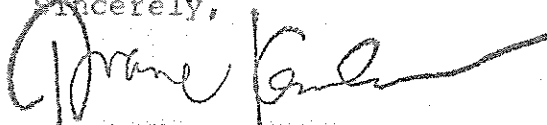
Should you decide to appeal, the Planning Commission shall conduct a public hearing within a period of ninety days from the date of receipt of a properly filed appeal. Within sixty days after the close of the public hearing or within such longer period as may be agreed to by the appellant, the Planning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



DUANE KANUHA  
Planning Director

NO:aeb

Enc: Background Report

cc: Planning Commission (w/enc.)