

CERTIFIED MAIL

July 22, 1991

Mr. Eric Heideman  
P.O. Box 5512  
Hilo, HI 96720

Dear Mr. Heideman:

Variance Application (V91-7)  
Petitioner: ERIC HEIDEMAN  
Variance from Minimum Setback Requirements  
TMK: 7-6-17:14

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

Although there are contended to be unusual circumstances that exist with respect to lot size and lot configuration of the subject property, the variance application must be considered with all three criteria, as stipulated by the Zoning Code, in order to warrant a waiver from the minimum zoning requirements. Therefore, the evaluation of a variance application must show conclusively that it meets all three variance criteria before it can be approved. The overall impact of an approval decision in concert with the Variance Criteria must also be considered in terms of how this may affect the neighborhood. In this case, there are numerous other properties which exist in substandard conditions relative to the zoning requirements and infrastructure. These substandard conditions will not by and of themselves improve without government intervention.

Therefore, the existence of the small lot size and narrow lot configuration are not circumstances which would singularly justify the approval of this variance application. Furthermore,

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the approval of this particular setback variance would further frustrate government's attempt to alleviate and improve the substandard conditions of the neighborhood. Beginning with an SMA permit recently granted to another lot (parcel 6) fronting this same 25 feet roadway, future road widening has already been imposed in the form of a condition that there be an additional 7 and 1/2 feet front yard setback to the minimum front yard setback of 15 feet. This is in recognition of the inadequate roadway systems in the neighborhood and provides a means by which the infrastructure of the neighborhood can be improved to more adequate standards. This can eventually result in a road width of 40 feet, a widening of 7 1/2 feet on each side.

The topography of the subject property is relatively level. As such, there are no special or unusual circumstances related to the topographical condition of the subject property land which would warrant special considerations under the variance criteria. In addition, the granting of a setback variance for this particular property would not be for the best use or best manner of development of the subject property in relation to the surrounding neighborhood.

Therefore, considering the foregoing facts, it is determined that there are no special or unusual circumstances applying to the subject property which exist either to a degree which deprives the owner or applicant of substantial property rights that would otherwise be available or to a degree which obviously interferes with the best use or manner of development of the subject property.

#### ALTERNATIVES

There are reasonable alternatives in resolving the difficulty of the applicant. Alternatives available to the petitioner include purchasing additional land adjacent to the subject property so that a more reasonably sized area can be used for the development of a single family residence without hindering the process to upgrade the subject neighborhood with appropriate infrastructural improvements compatible with the development of the area. This alternative exists and provides a means by which the substandard condition can be brought up to conformance with present zoning standards.

There is also no personal or economic hardship incurred as the petitioner is not the owner of the property, and the sale of the property is contingent upon the disposition of the

variance. As such, it would not be an excessive demand on the petitioner to seek other options in resolving this difficulty.

INTENT AND PURPOSE

The intent and purpose of requiring building setbacks within a subdivision are to assure that adequate air and light circulation is available between structures and between the street and the structure. The applicant's proposed two story dwelling would be situated 6 1/2 feet from the north front yard property line whereas the north front property line of parcel #6 has already been imposed with an additional 7 1/2-foot front yard setback to allow for a future 40-foot wide road right-of-way.

Granting a variance to the petitioner, when an adjacent lot has already been imposed with a future road widening setback requirement would only hinder government's efforts to bring that roadway fronting the subject property up to more modern day standards.

In this particular instance, the petitioner would also be required to apply for variances from the Housing Code as well as from the State Department of Health for the Individual wastewater system for the proposed residence. These additional variance requests would further restrict the ability to bring the subject neighborhood up to present zoning, building and health standards. The approval of the petitioners request would also send a negative signal to all other substandard lot owners that the County is not concerned about the substandard conditions of the neighborhood. The approval of the variance request would further exacerbate the traffic and social problems which the neighborhood is already experiencing, which when fully built up would demand additional improvements and services.

Based on the foregoing findings, this variance request would be inconsistent with the general purpose of the zoning district, the intent and purpose of the Zoning and Subdivision Codes and the County General Plan; will be materially detrimental to the public's welfare; and will cause substantial adverse impact to the area's character and to adjoining properties.

Based on the above findings, the Planning Director has determined that the subject variance 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 (10) 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 be 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 to 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 welcome to contact Donald Tong of this office.

Sincerely,



NORMAN K. HAYASHI  
Planning Director

RHY/DT:mra  
2511D

cc/encl: West Hawaii Office