

VAR 507

denied

CERTIFIED MAIL

February 16, 1994

Mr. Douglas Fulton  
Ms. Marsha Durling  
P.O. Box 383165  
Waikoloa, Hawaii 96738-3165

Dear Mr. Fulton:  
Dear Ms. Durling:

Variance Application WH(VAR93-70)  
Applicants: DOUGLAS M. FULTON & MARSHA DURLING  
Variance from Maximum Allowable Height and Maximum  
Allowable Square Footage Requirements for a Guest House  
Tax Map Key: 6-8-10: 09

After reviewing your variance application and the information submitted in behalf of it, the Planning Director hereby certifies the denial of a height variance request to allow a TWO STORY ACCESSORY STRUCTURE WITH A 877 SQUARE FOOT GUEST HOUSE ON THE SECOND FLOOR LEVEL AND A GARAGE ON THE FIRST FLOOR LEVEL in lieu of the MAXIMUM ONE STORY HEIGHT LIMIT AND MINIMUM 500 SQUARE FOOT REQUIREMENT as stipulated in Chapter 25 (Zoning Code), Article 1 (General Provisions), Division 7 (Supplementary Use Regulations), Section 25-49 (Guest house).

The subject property is located on the south side of Paniolo Avenue approximately 150 feet west of the Pu'u Nui Street/Paniolo Avenue intersection in the Waikoloa Village Unit I-B Subdivision, Waikoloa, South Kohala, Hawaii, TMK: 6-8-10: 09.

The Planning Director has concluded that the variance request from the MAXIMUM ALLOWABLE HEIGHT LIMIT AND MAXIMUM ALLOWABLE SIZE LIMIT FOR A GUEST HOUSE BE DENIED, based on the following findings:

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property is situated within the County's Single Family Residential - 10,000 square foot zoned district. The petitioners propose to construct a TWO STORY ACCESSORY

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STRUCTURE WITH A 877 SQUARE FOOT GUEST HOUSE ON THE SECOND FLOOR LEVEL AND A GARAGE ON THE FIRST FLOOR LEVEL on the subject property.

2. There is an existing single family dwelling on the property with a two car garage. The proposed guest house consisting of 877 square feet will be constructed above the new garage structure.
3. Building Permit No. 905004 was issued on January 3, 1990 and closed on May 10, 1990 for 1 story, 3,670 square foot for a single family dwelling.
4. Building Permit No. 905274 was issued for a swimming pool on February 15, 1990 and closed on May 10, 1990.
5. Building Permit No. 915018 was issued for a garage on January 8, 1991 and closed on April 30, 1991.
6. Although the County of Hawaii does not have the authority to enforce private subdivision restrictions and covenants, for the record, the subject property has a Declaration of Protective Covenants. Section 2 (General Application - Residential), A (Accessory Outbuildings) state "No garage or shed shall be built before a dwelling is built on the lot. No garage, shed, temporary building, or partially completed building shall be used for human habitation.
7. Section 4 (Environmental Control Committee), A (General Powers of the Committee, (1) (Power of Approval) states "No improvement may be constructed without the prior written approval of the Committee."
8. In a letter dated January 7, 1994, from Phil Conciecao, Manager of Environmental Affairs, which states in part "...The applicant has not submitted detailed plans for any improvement to the Environmental Control Committee for review as is required by the Declaration of Protective Covenants. The Environmental Control Committee requests that the Planning Department deny this variance and maintain the integrity of the Hawaii County Zoning Codes."
9. Since the property is over 30,000 square feet in size, despite the topography circumstances, there is adequate available area along the Paniolo Avenue frontage of the subject property to allow for the construction of a 1 story guest house which is allowed under the County's Zoning Code which can meet the maximum allowable size as well as the maximum allowable height without the need for a variance.

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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

1. The subject property is a flag lot with two frontages and two side yard setbacks.
2. The area along the frontage of Paniolo Avenue is relatively level and provides alternatives for the development of a 1 story guest house within the limitations of the Zoning Code.
3. The applicant does have available land area in which to comply with the minimum requirements of the Zoning Code.

Based on the above cited considerations, there are reasonable available solutions without excessive demands placed on the applicant.

#### INTENT AND PURPOSE

1. The intent and purpose of requiring maximum allowable heights for accessory buildings as a guest house and the size limitation is because of the nature of the use and accessory function of the building. The Zoning Code states an "Accessory building" means a building detached from and subordinate to a main building on the same building site and used for purposes customarily incidental to those of the main building, in this case, the single family dwelling on the property.
2. The subject property is zoned for single family residential purposes, the zoning code allows 1 single family dwelling for each 10,000 square feet of land area in addition to any accessory buildings, including a 1 story guest house, not exceeding 500 square feet in size and not having a kitchen facilities.
3. The granting of the proposed variance will not be consistent with the general purpose of the zoned (single family residential) district, the intent and purpose of the Zoning Code, and the County General Plan because it exceeds the maximum allowable height and size of accessory buildings when there are reasonable alternatives available to the petitioner to comply with the existing Zoning Code requirements.

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4. There have also been 12 surrounding property owners who are objecting to the granting of this variance.
5. Although, the granting of the proposed use will not unreasonably burden public agencies to provide roads and streets, sewer, water, drainage, schools, police and fire protection and other related infrastructure, the request does not meet the required variance criteria.

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 areas character and to adjoining properties.

Therefore, based on the above findings, the Planning Director has concluded that this variance request is 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 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.

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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 Royden Yamasato of our office at 329-4878.

Sincerely,

  
VIRGINIA GOLDSTEIN  
Planning Director

RHY/rld  
2591D

xc: West Hawaii Office  
Carlos E. Rivas  
John Piacentini  
Nancy J. Santoro  
Wang & Margaret Chiu  
Machi Horita  
Gayle Foster  
Ronald & Elizabeth Ramsey  
Edward & Betty Stanley  
Peter Abarcar Sr.  
Phil Conceicao, (Manager of Environmental Affairs, Waikoloa Village Association),  
Ken Melrose (Vice President, Waikoloa Land Company).