

PLANNING COMMISSION

Planning Department
County of Hawaii
Hilo, Hawaii

APPLICATION FOR VARIANCE)	
by)	
ROBERT SMELKER)	
from)	
MINIMUM FRONT AND SIDE)	
YARD SETBACK REQUIREMENTS)	VARIANCE NO. 538
in)	
KAILUA VILLAGE, HONUULA 1ST,)	
NORTH KONA, HAWAII)	

VARIANCE PERMIT

The County of Hawaii Planning Commission at a duly held public hearing on July 13, 1978, considered the application of ROBERT SMELKER for a variance from Article 9, Section 7 of Chapter 8 (Zoning Code), Hawaii County Code, as amended, more specifically, to allow a one (1) inch front yard setback and the retention of a bay window with a four (4) foot side yard setback in lieu of the minimum requirements of twenty (20) feet and eight (8) feet respectively stipulated in the Resort - 750 square foot zoned district in Kailua Village, Honuula 1st, North Kona, Hawaii, Tax Map Key 7-5-7:23.

The Commission has found:

That a portion of Ali'i Drive including the section fronting the subject property is proposed to be converted to a pedestrian mall. At the time that the mall conversion is completed there will be an approximately fifty (50) foot wide pedestrian and landscaping area between the subject property and the Kona Inn property across Ali'i Drive. Such a width is more than adequate to provide for full pedestrian traffic flow and a sense of openness within the Kailua Village area. On the other hand the strict and literal enforcement of the twenty (20) foot front yard setback requirement together with the existing fifty (50) foot right-of-way could result in the landscaping and pedestrian area being ninety (90) feet wide. Such a width would be less conducive to the free flow of pedestrian movements between attractions on opposite sides of the Ali'i Drive pedestrian mall. Based on these considerations it is determined that unusual circumstances apply to the subject area which do not apply to Resort zoned properties in general, and which interfere with the best manner of development of the subject area.

The granting of the subject request will not be contrary to the General Plan. The General Plan designates Kailua as a Major Resort Area. Such designations refer to areas which

can supply full range of visitor amenities in addition to providing sufficient visitor units to achieve commensurate economies of scale. In addition to providing visitor units, Kailua currently contains the largest concentration of visitor oriented retail shops and services in the County. These shops are concentrated along Ali'i Drive between the King Kamehameha Hotel and Hualalai Road. The physical developmental requirements for this commercial core are similar to other shopping complexes and include the diminishing prominence of vehicular traffic as opposed to pedestrian movements, and the grouping of shops and other services so that pedestrian movement between stores is convenient. Thus in regards to the physical development of structures and open spaces, it is felt that the setback requirements of the Village Commercial zoning designation are more appropriate design guidelines for the subject area. The CV zoned district requires a fifteen (15) foot setback in the front or rear, and no setback on the sides except as imposed during Plan Approval. These setbacks allow the development of commercial facilities up to the front property line where pedestrian access is most feasible, and the construction of shops side by side to make pedestrian flow between stores more convenient. The subject request for a one (1) inch front yard setback and a four (4) foot side yard setback is consistent with the CV design guidelines, and thus approval of this request would be consistent with the commercial character of the subject area. Further, the commercial character of the subject area implements the General Plan requirement that Mauor Resort Areas provide complete facilities and amenities for a large scale resort complex. Thus, approval of the subject request is determined to be consistent with the General Plan.

That the granting of this request will not be materially detrimental to the public welfare. As noted previously, the bay windows are in compliance with the Uniform Building Code. Further, the petitioner has installed a seven (7) foot wide sidewalk and landscaping improvements fronting the subject property. With these improvements in place it is determined that the bay/windows, which will not overhang the sidewalk, will not impede pedestrian movement along Ali'i Drive and thus will not be materially detrimental to the public welfare.

That by erroneously approving the side bay window without first requiring a variance from the side yard setback requirements, government has contributed to the present encroachment into the side yard setback. The variance procedure is, in part, designed to permit deviations from the Zoning Code provisions which are necessitated by circumstances brought about through no fault of the applicant. It is determined that the side yard encroachment has been permitted through erroneous governmental action, and that to deny this portion of the request would be an unnecessary hardship brought to bear upon the petitioner.

Therefore, the Commission hereby grants to the applicant a variance to allow a one (1) inch front yard setback and the retention of a bay window with a four (4) foot side yard setback in lieu of the minimum requirements of twenty (20) feet and eight (8) feet respectively stipulated in the Resort - 750 square foot

zoned district, pursuant to the authority vested in it by Article 1, Section 7 of the Zoning Code, subject to the following conditions:

1. That plans be submitted for Plan Approval within one (1) year from the effective date of the Variance Permit.
2. That construction shall commence within one (1) year from the date of final Plan Approval and be completed within one (1) year thereafter.
3. That all other applicable rules and regulations shall be complied with.

Should any of the foregoing conditions not be met, the Variance Permit may be deemed null and void by the Planning Commission.

The effective date of this permit shall be from July 13, 1978.

Dated at Hilo, Hawaii, this 3rd day of August, 1978.



Chairman, Planning Commission

