

CERTIFIED MAIL

July 18, 1979

Mr. C. M. Poulton
P. O. Box 114
Kailua-Kona, HI 96740

Dear Mr. Poulton:

Variance Application
Tax Map Key 7-6-16:31

At its meeting on June 14, 1979, the Planning Commission voted to deny your request for a variance to allow the construction of a condominium building at a height of three (3) stories and forty (40) feet in lieu of the maximum allowable height limit of two (2) stories and thirty (30) feet as stipulated within the Village Commercial - 7,500 square foot (CV-7.5) zoned district at Holualoa, North Kona, Hawaii.

The Commission voted to deny your request based on the following findings:

That there are no unusual conditions relating to the subject property which deprive the owner of substantial property rights. The subject property has a gradual slope from its northern to southern corners of approximately four (4) percent. Such terrain does not impose any serious constraints on land development.

The subject request to allow an additional story does not propose to mitigate any potential hazards nor provide relief from unusual conditions related to the land. Rather, the petitioner seeks to obtain added property rights to allow a three (3) story structure where only two (2) stories

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are permitted. The principle reason cited by the petitioner for the subject request is the financial constraint imposed by the district height limitation. However, financial hardship per se is not a valid basis for considering a variance. Staff would like to note in this regard that the present owners of the property purchased the land in 1978, according to the Department of Taxation records. The CV zoning designation of the property was in effect at that time. Thus, to approve the subject request would be tantamount to approving speculation, and a misuse of variance process. In absence of unusual conditions or circumstances to grant the subject request solely for the purpose of increasing the petitioner's property rights to improve the petitioner's financial position would be contrary to the purpose and intent of the variance provisions of the Zoning Code, and inconsistent with the limitations imposed on other properties under identical district limitations.

Should the petitioner wish to pursue a three (3) story structure for the subject property the appropriate course of action would be to request a change of zone. The Commission would like to point out, however, that the citing of this course of action does not imply that such a change of zone request would be approved. Rather, it is only to point out the appropriate process.

As your request has been denied, you may appeal the decision of the Planning Commission if you feel that the action of the Planning Commission was based on an erroneous finding of a material fact, or that the Commission has acted in an arbitrary or capricious manner, or had manifestly abused its discretion.

In accordance with Section 7.05 of the Zoning Code, such appeal recourse must be initiated within thirty (30) days after such action was taken. We had, however, inadvertently failed to formally notify you of this procedure and we sincerely apologize for this oversight.

Accordingly, should you decide to appeal the decision of the Commission in the denial of your variance request, we shall request that the Board of Appeals waive the stipulated time requirement pertaining to the above if a petition setting forth the following shall be submitted to the Board of Appeals within thirty (30) days from the date of receipt of this letter:

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1. Name, mailing address and telephone number;
2. Identification of the property and interest therein;
3. The particular provision of the Zoning Ordinance or Subdivision Ordinance or regulation in question;
4. All pertinent facts;
5. The action of the Commission;
6. Reasons for the appeal, including a statement as to why the appellant believes that the Commission's action was based on an erroneous finding of a material fact, or that the Commission has acted in an arbitrary or capricious manner, or had manifestly abused its discretion; and
7. A filing fee of ten dollars (\$10.00).

Inasmuch as no public hearing will be held on this matter, your filing fee will be refunded under separate cover.

For your information, we are enclosing a certified copy of the Findings of Fact, Conclusions of Law and Decision and Order.

Should you have any questions on this matter, please feel free to contact the Planning Department at 961-8288.

Sincerely,

ROY KAGAWA/s/

for WILLIAM J. PARIS, JR.
Chairman Pro-tem
Planning Commission

DK/lgv

Enclosure

cc H. C. Bennett
Colin Love
Mayor
Corporation Counsel
Building Division, DPW
Kona Services Office

PLANNING COMMISSION OF THE PLANNING DEPARTMENT

COUNTY OF HAWAII

In the Matter of the Appeal)
 of)
 C. M. POULTON)
))
Tax Map Key 7-6-16:31)
_____)

Variance No. 579

FINDINGS OF FACT

CONCLUSIONS OF LAW

AND

DECISION AND ORDER

PLANNING COMMISSION OF THE PLANNING DEPARTMENT

COUNTY OF HAWAII

In the Matter of the Appeal)
 of)
 C. M. POULTON)
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Variance No. 579

FINDINGS OF FACT

CONCLUSIONS OF LAW

AND

DECISION AND ORDER

The above-entitled matter was brought on a preliminary hearing on June 14, 1979, in the Councilroom, County Building, South Hilo, Hawaii, at which time, C. M. Poulton's representatives, Colin Love and Charles Bennett, appeared before the Planning Commission.

The Planning Commission having heard the testimony and having examined the facts does hereby declare its Findings of Fact, Conclusions of Law, and Decision and Order.

FINDINGS OF FACT

1. An application for a variance to allow the construction of a condominium apartment building at a height of three (3) stories and forty (40) feet in lieu of the maximum allowable height of two (2) stories but no higher than thirty (30) feet as stipulated within the Village Commercial - 7,500 square foot (CV-7.5) zoned district was received on February 12, 1979.

2. On March 5, 1979, a representative of the petitioner, Mr. Charles Bennett, requested that the processing of the request be deferred until another application filed by the petitioner is acted upon.

3. The property involved is located along the mauka side of Ali'i Drive, approximately 240 feet Keauhou side of the Ali'i Drive-Royal Poinciana Drive intersection, Holualoa, North Kona, Hawaii, Tax Map Key 7-6-16:31.

4. The subject property consists of 45,130 square feet of land and has the general shape of a parallelogram. The property slopes downward from the northern corner to the southern corner at an average slope of approximately four (4) percent. The average elevation of the subject property is approximately twelve (12) feet. Currently, the subject property is vacant of any structures and is covered by Ekoa.

5. The subject property is zoned Village Commercial - 7,500 square feet (CV-7.5) which permits multiple family residential uses at a maximum density of one (1) unit per 1,250 square feet of land.

6. The General Plan designates the area as a flood plain and as a potential tsunami inundation zone. The General Plan Land Use Pattern Allocation Guide Map designations for the vicinity are Resort and Medium Density Urban.

7. The condominium apartment structure was proposed to consist of three (3) stories and a basement, having a maximum height of 40 feet. According to plans submitted with the subject request the proposed condominium apartment structure would be set back 44 feet from the Ali'i Drive right-of-way. The proposed development would have a density of one (1) unit per 2,149 square feet of land area which is within the maximum allowable density for residential units in the village commercial zoned district.

8. Access to the proposed condominium apartment would be off Ali'i Drive which has a 50-foot right-of-way and a 24-foot pavement in this area.

9. The surrounding area is in the Single Family Residential, Resort, and Village Commercial zoned districts. Surrounding land uses include single and multiple family residential uses, an abandoned quarry, and vacant lands.

10. Concerning the drainage situation the environmental assessment submitted as part of the subject request stated, in part, the following:

"The project is within the Holualoa Drainage Basin fed by two dry, shallow streams. These streams, the Horseshoe Bend and Holualoa School streams only maintain flow during intense and sustained rainfall. Based on a 1974 Environmental Impact Statement for the Kona Flood Control Project, the runoff (Hawaii County Criteria) at Alii Drive would approach 3,700 cfs. once every 100 years.

"The actual site is immediately above Alii Drive and in the lower reaches of the 2,600 acre (41 square mile) drainage area.

"Drainage follows a pronounced man-made drainage channel behind the site. At an elevation of 40 feet (and approximately 850 feet behind the rear property line) this channel flattens and enters a poorly defined drainage area which eventually crosses Alii Drive and enters Holualoa Bay via a 2.5' x 5' box culvert along and partially within the southern side yard of the proposed development.

"The intent of drainage on the proposed site to maintain the existing drainage characteristics with respect to flow and volume, but improve the actual drainage corridor. The existing drainage volume will not increase with the use of dry sumps within the project site to capture any surface runoff from pavement areas. The drainage corridor along the southern side yard between Holualoa Bay Villas and the Kona Bali Apartments will be graded and the poorly defined drainage channel will be upgraded with a trapezoidal channel.

"As evidenced by vegetation and the grading plan, the northern rear property line is at a higher elevation than the southern rear property line. The retaining wall along the rear property line will divert any existing runoff into the improved drainage channel in the side yard area." Plans submitted to the Planning Department show a swale along the mauka property line situated in the adjacent parcel, connecting to a channel running makai partially within the adjoining right-of-way to the south of the subject property. The environmental assessment goes on to state:

"This approach to the drainage on and adjacent to the site will provide adequate drainage up to the box culvert on Alii Drive. This area has been susceptible to drainage problems in the past resulting from the poorly defined drainage pattern in the area."

11. Upon review of the proposed drainage plan the Department of Public Works stated:

"With regard to the drainage scheme, under an earlier study made, a 60-foot drainage easement was proposed but not adopted. This would affect a trapezoidal shape portion of the south end of the property - 60 feet at the top and

25 feet at the bottom of the property. As you know, because of the high land rights and construction cost and the stringent water quality criteria for drainage disposal into the sea, implementation of such a project is futuristic. We are looking at alternatives to the flood control channel. The concern would be similar to the constraints for the Kanoelehua-Waiakea Ponds channel proposed in the Hilo Storm Drainage Study.

"We would like the developer to submit drainage calculations that assure that adjacent lands will not be harmed by this project. The runoff comes through the rear lot and should be carried through this project."

Subsequently, the Department of Public Works stated:

"1) Provide drainage ditch to eliminate ponding in the mauka property.

"2) Submit drainage documents."

12. Upon review of the subject request, the Department of Water Supply stated that:

"Comments were made previously on the SMA and PDP requests. Water service will be available after completion of the Third Phase of the Kahaluu Shaft Project. This commitment shall expire on May 22, 1979, unless definite progress is made by the applicant.

"The applicant is requested to submit the utility and mechanical layout for our review and approval."

13. The sewage to be generated from the proposed condominium apartment complex would be treated by an on-site sewage treatment plant. Commenting on this the State Department of Health stated that:

"Concerns are for the requirements of the following
Public Health Regulations:

1. Chapter 38, Sewage Treatment and Disposal System.

2. Chapter 1-B, Public Swimming Pools."

14. The Fire Department stated, in part, that "Fire protection is provided by Kailua Fire Station."

15. Upon review of the subject request the Department of Research and Development stated, in part, the following:

"The subject property is currently zoned for commercial use, and as such an allowable use would be multi-family dwelling units.

"Although individual projects such as the proposed condominium do not in itself stimulate the economy to any appreciable degree, they would be viewed collectively as to its impact construction to the local area."

16. None of the other cooperating agencies had any comments on or objections to the subject request.

17. In support of the subject request the petitioner has stated, in part, the following:

"The project site is located in a CV-7.5 zoning district allowing a height limitation of two stories but not higher than thirty feet. The proposed building has a maximum height of forty feet as measured from pavement to top of roof line. The structure has three stories with a basement containing parking, office space, storage, recreational area and maintenance facilities.

"The adjoining lots to the north and rear are zoned CV-7.5; to the south, V-1.25, and makai, V-1.25 and open. The CV District to which the subject parcel belongs is undeveloped. Only the remains of a small quarry operation indicate any prior activity within the CV district.

"A height variance is being sought on the basis that the proposed complex provides the most attractive development in terms of aesthetics, recreational value and economics. Aesthetically, the use of an additional story reduces the area of lot coverage containing structures and frees this area for landscaping. Since the area generates a substantial revenue from tourism and the lot is adjacent to Alii Drive, a major visitor traffic artery, additional landscaping will visually enhance the building. A three-story structure also allows a greater setback from Alii Drive, which will be aesthetically pleasing to prospective apartment owners.

"From a recreational standpoint, a three-story building reduces the lot coverage sufficiently to allow use of two regulation size tennis courts, shuffleboard court and swimming pool, and still provides the required area for mandatory facilities (i.e. sewage treatment plant and access driveway).

"Economically, the projected cost of the units is approximately \$140,000. By reducing the height from three stories to two stories (14 units) and maintaining all other features, the anticipated cost per unit would be \$180,000.

"The uses allowed in a CV zoning district include RM district uses, provided that a maximum density of 1,250 square feet of land area per unit is not exceeded. The density of the proposed project is greater than 2,000 square feet per unit and well within the density requirements.

"Finally, a request for height variance does not constitute a grant of special or personal privilege nor is the request inconsistent with the intent of Hawaii County Zoning Code."

The petitioner has further stated that,

"The developers of Holualoa Bay Villas have analyzed their financial position with extreme care and cannot justify the construction, as it stands, with only 14 units. It is their desire to go ahead with a 21 unit condominium (the original design) of three floors and a basement.

"The addition of a third story will still allow this building to conform to the height of Bali Kai Condominium next door and will not dominate the visual area. It is important to note this building is set an average of 60' mauka of Alii Drive behind walls and trees so the height will appear to be even less than 40'-0".

"All aspects of the landscaping and plot plan remain the same as before except the parking below the tennis courts and the drainage area. We have increased the number of parking spaces and have moved the drainage area mauka.

We will provide a document assuring this use in perpetuity."

18. At the preliminary hearing on June 14, 1979, the staff recommended denial of the application based on the following findings:

That there are no unusual conditions relating to the subject property which deprive the owner of substantial property rights. The subject property has a gradual slope from its northern to southern corners of approximately four (4) percent. Such terrain does not impose any serious constraints on land development.

The subject request to allow an additional story does not propose to mitigate any potential hazards nor provide relief from unusual conditions related to the land. Rather, the petitioner seeks to obtain added property rights to allow a three (3) story structure where only two (2) stories are permitted. The principle reason cited by the petitioner for the subject request is the financial constraint imposed by the district height limitation. However, financial hardship per se is not a valid basis for considering a variance. Staff would like to note in this regard that the present owners of the property purchased the land in 1978, according to the Department of Taxation records. The CV zoning designation of the property was in effect at that time. Thus, to approve the subject request would be tantamount to approving speculation, and a misuse of variance process. In absence of unusual conditions or circumstances to grant the subject request solely for the purpose of increasing the petitioner's property rights to improve the petitioner's financial position would be contrary to the purpose and intent of the variance provisions of the Zoning Code, and inconsistent with the limitations imposed on other properties under identical district limitations.

Should the petitioner wish to pursue a three (3) story structure for the subject property the appropriate course of action would be to request a change of zone. Staff would like to point out, however, that the citing of this course of action does not imply that such a change of zone request would be approved. Rather, it is only to point out the appropriate process.

19. After hearing the staff's background report and recommendation, the Planning Commission called for the petitioner or his authorized representative to providing testimony on the matter.

20. After hearing testimony on behalf of the petitioner by Colin Love and Charles Bennett, the Planning Commission voted to deny the request for the reasons as presented by the staff. The vote carried with five (5) ayes and two (2) noes.

CONCLUSIONS OF LAW

1. Pursuant to Section 5-4.3 (g) of the Hawaii County Charter, the Planning Commission has jurisdiction to hear and determine appeals requesting variances from the Subdivision and Zoning Codes.

2. All procedural requirements as prescribed by law have been complied with.

3. Under Section 5-4.3 (g) of the Hawaii County Charter, a variance may not be granted unless there are special or unusual circumstances applying to the subject property which would result in unnecessary hardship if the ordinance were literally enforced, and the granting of the variance would not be contrary to the public interest.

4. Under Article 1, Section 7.01, of Chapter 8 (Zoning Code), of the Hawaii County Code, as amended, a variance may not be granted unless the Planning Commission finds the following:

- a. That there are special or unusual circumstances applying to the subject property or building which do not generally apply to surrounding property or improvements in the same district.

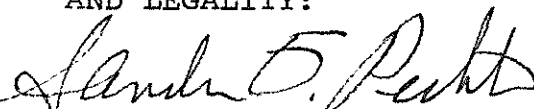
- b. That said special or unusual circumstances exist either to a degree which deprives the owner or applicant of substantial property rights which would otherwise be available, or to a degree which obviously interferes with the best use or manner of development of the subject property.
- c. That the granting of the "variance" shall not constitute a grant of personal or special privilege inconsistent with the limitations upon other properties under identical district classification.
- d. That the granting of the "variance" shall not be inconsistent with the general purpose of the district or the intent and purpose of this Chapter will not militate against the County General Plan and shall not be materially detrimental to the public welfare or injurious to improvements or property rights related to property in the near vicinity.

DECISION AND ORDER

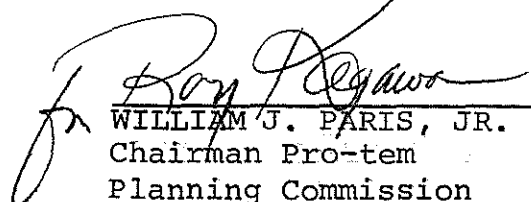
Based upon the testimony and exhibits introduced at the preliminary hearing and the foregoing Findings of Fact and Conclusions of Law, it is the decision of the Planning Commission and it is hereby ordered that a variance from the requirements of Chapter 8 (Zoning Code), Article 13, Section 4, pertaining to maximum height requirements, for Tax Map Key 7-6-16:31 located at Holualoa, North Kona, Hawaii, be and is hereby denied.

Dated at Hilo, Hawaii, this 18th day of July, 1979.

APPROVED AS TO FORM
AND LEGALITY:



Corporation Counsel
County of Hawaii



WILLIAM J. PARIS, JR.
Chairman Pro-tem
Planning Commission

Date: JUL 10 1979