

PLANNING DEPARTMENT
County of Hawaii
Hilo, Hawaii

APPLICATION FOR ADMINISTRATIVE VARIANCE)
by)
HEINZ LUECK) ADMINISTRATIVE
from) VARIANCE NO. 19
Minimum front yard setback requirement)
and minimum parking requirement)
in)
Puaa 2nd, North Kona, Hawaii)
_____)

ADMINISTRATIVE VARIANCE PERMIT

An administrative public hearing was held by the Planning Director of the County of Hawaii Planning Department on June 16, 1980, on the application of HEINZ LUECK for a variance from the minimum front yard setback requirement and minimum parking requirement, more specifically, to allow a variance from the minimum parking requirements relative to parking stall size and back-up aisle space; and to allow a two (2) foot front yard setback in lieu of the twenty (20) foot minimum requirement at Kailua Village, Puaa 2nd, North Kona, Hawaii, Tax Map Key 7-5-09:34.

After hearing the case, the Planning Director has found:

1. That there are special and unusual circumstances applying to the subject property and building which do not generally apply to surrounding property or improvements in the same district. When the petitioner acquired the subject property, improvements already existing included 20 striped parking stalls, two (2) open patio dining areas at ground level, and approximately 700 square feet of gross floor area on the second floor. These improvements were not included in any plans submitted for government approval. The petitioner assumed that all existing improvements on the property were legitimate. It was only after acquiring the property and submitting plans to improve one of the patio areas with a roof and the utilization of the vacant 700 square feet on the second floor that the illegitimate nature of these improvements were discovered.

It should be emphasized that it is the property owner's responsibility to submit accurate plans for review of any proposed construction. Government's role is to check the plans for compliance with the applicable regulations and to see that the construction is done in conformance with the approved plans. In this particular case, no plans for the illegitimate improvements were submitted for review. Thus, the prime responsibility in this case rests with the owner of the property. Nevertheless, government's responsibility to uphold the requirements of its regulations cannot be denied. Therefore, government may have also contributed to giving the petitioner a false impression of the property rights available on the subject property.

Based on the above, it is determined that there were special and unusual circumstances which led to the present level of development of the subject property.

2. That the strict interpretation of the Zoning Code, in light of the special and unusual circumstances described above, will interfere with the best use and manner of development of the subject property. The additional floor area which will increase the number of parking stalls required for the property is already constructed and available for use. Should this variance request be denied, the additional floor area in question would become unusable.
3. That the granting of the variance will not constitute a grant of personal or special privilege inconsistent with the limitations upon other properties under identical district classification. The special and unusual circumstances described in No. 1 above is sufficient to distinguish this request from others which may be submitted in the future. Future applications will have to be evaluated similarly.
4. That the granting of the variance will not be inconsistent with the general purpose of the Resort-Hotel district or the intent and purpose of the Zoning Code. Furthermore, the approval of this request will not militate against the General Plan and will not be materially detrimental to the public welfare or injurious to improvements or property rights.

The restaurant and retail store uses proposed for the additional floor area are permitted within the Resort-Hotel district. In terms of the parking requirements of the Zoning Code, the total number of stalls will be provided. Although the stall sizes and the back-up space to be provided will be less than the minimum required, the parking layout will be adequate in terms of circulation and turn-around purposes.

The variance request from the front yard setback requirement affects that portion of the property fronting on Alii Drive. This portion of the property is elevated approximately 15-20 feet above the road grade. Therefore, the proposed roof extension will not present any hazard to persons utilizing the Alii Drive right-of-way. The visual impact of this extension has been mitigated through design modifications recommended by the Kailua Village Special District and Urban Design Review Commission.

Therefore, the Planning Director hereby grants to the applicant a variance to allow a variance from the minimum parking requirements relative to parking stall size and back-up aisle space; and to allow a two (2) foot front yard setback in lieu of the twenty (20) foot minimum requirement at Kailua Village, Puaa 2nd, North Kona, Hawaii, Tax Map Key 7-5-09:34, pursuant to the authority vested in him by the County Charter, subject to the following conditions:

1. That the parking area located on the southern end of the property be expanded to accommodate four (4) parking stalls which are to be striped and kept clear of any obstructions at all times.

June 23, 1980

Mr. Heinz Lueck
P. O. Box 4871
Kailua-Kona, HI 96740

Dear Mr. Lueck:

Variance Application
Minimum Front Yard Setback Requirement and
Minimum Parking Requirements
Tax Map Key: 7-5-09:34

After review of your application and the information presented at the administrative public hearing on June 19, 1980, the Planning Director is hereby certifying the approval of the variance to allow a two (2) foot front yard setback in lieu of the twenty (20) foot minimum requirement; and the variance from the minimum parking requirements relative to parking stall size and back-up aisle space.

Approval of this request is based on the following findings:

1. That there are special and unusual circumstances applying to the subject property and building which do not generally apply to surrounding property or improvements in the same district. When the petitioner acquired the subject property, improvements already existing included 20 striped parking stalls, two (2) open patio dining areas at ground level, and approximately 700 square feet of gross floor area on the second floor. These improvements were not included in any plans submitted for government approval. The petitioner assumed that all existing improvements on the property were legitimate. It was only after acquiring the property and submitting plans to improve one of the patio areas with a roof and the utilization of the vacant 700 square feet on the second floor that the illegitimate nature of these improvements were discovered.

It should be emphasized that it is the property owner's responsibility to submit accurate plans for review of any proposed construction. Government's role is to check the plans for compliance with the applicable regulations and to see that the construction is done in conformance with the

approved plans. In this particular case, no plans for the illegitimate improvements were submitted for review. Thus, the prime responsibility in this case rests with the owner of the property. Nevertheless, government's responsibility to uphold the requirements of its regulations cannot be denied. Therefore, government may have also contributed to giving the petitioner a false impression of the property rights available on the subject property.

Based on the above, it is determined that there were special and unusual circumstances which led to the present level of development of the subject property.

2. That the strict interpretation of the Zoning Code, in light of the special and unusual circumstances described above, will interfere with the best use and manner of development of the subject property. The additional floor area which will increase the number of parking stalls required for the property is already constructed and available for use. Should this variance request be denied, the additional floor area in question would become unusable.
3. That the granting of the variance will not constitute a grant of personal or special privilege inconsistent with the limitations upon other properties under identical district classification. The special and unusual circumstances described in No. 1 above is sufficient to distinguish this request from others which may be submitted in the future. Future applications will have to be evaluated similarly.
4. That the granting of the variance will not be inconsistent with the general purpose of the Resort-Hotel district or the intent and purpose of the Zoning Code. Furthermore, the approval of this request will not militate against the General Plan and will not be materially detrimental to the public welfare or injurious to improvements or property rights.

The restaurant and retail store uses proposed for the additional floor are permitted within the Resort-Hotel district. In terms of the parking requirements of the Zoning Code, the total number of stalls will be provided. Although the stall sizes and the back-up space to be provided will be less than the minimum required, the parking layout will be adequate in terms of circulation and turn-around purposes.

The variance request from the front yard setback requirement affects that portion of the property fronting on Alii Drive. This portion of the property is elevated approximately 15-20 feet above

Mr. Heinz Lueck
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the road grade. Therefore, the proposed roof extension will not present any hazard to persons utilizing the Alii Drive right-of-way. The visual impact of this extension has been mitigated through design modifications recommended by the Kailua Village Special District and Urban Design Review Commission.

The conditions of approval are as follows:

1. That the proposed roof extension be limited to a maximum length of 55 feet.
2. That the two parking stalls, situated parallel to Walua Road, be shafted 1-2 feet closer to Walua Road.
3. That the parking area located on the southern end of the property be expanded to accommodate four (4) parking stalls which are to be striped and kept clear of any obstructions at all times.
4. That the petitioner or his authorized representative shall submit plans and receive Final Plan Approval within one (1) year from the effective date of approval of the Variance Permit.
5. That construction of the roof extension and parking modifications shall commence within one (1) year from the date of receipt of Final Plan Approval and be completed within two (2) years thereafter.
6. That no other setback or parking variance shall be granted for future improvements. This condition shall be stipulated in the deed of the property and recorded with the Bureau of Conveyances.

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

Please be informed that the official Variance Permit will be forthcoming under separate cover.

Should you have any questions in the meantime, please feel free to contact us.

Sincerely,



SIDNEY FUKU
Director

BN:lkt

cc: Planning Commission