

CERTIFIED MAIL

February 4, 1983

Mr. Daniel E. Wilson  
P. O. Box 1316  
Pahoa, HI 96778

Dear Mr. Wilson:

Variance Application (V82-51)  
Variance from Minimum Parking Requirements  
Tax Map Key 1-5-12:69 & 70

After reviewing your application and the information submitted in behalf of it, the Planning Director by this letter hereby certifies the approval of your variance request to allow the waiver of ninety-four (94) parking stalls for the Akebono Theatre building complex in lieu of the minimum zoning code requirement of ninety-four parking stalls which are also required to be paved with an all weather dust free surface in Pahoa Village, Puna, Hawaii, Tax Map Key 1-5-12:69 & 70.

The approval is based on the following:

VARIANCE CRITERIA NO. 1

There are special or unusual circumstances applying to the subject real property which exist either to a degree which deprives the owner or applicant of substantial property rights that would interfere with the best use or manner of development of that property.

According to the County Tax Office, the subject property was subdivided prior to 1948. As such, it is considered a "grandfathered" subdivision. Because it was subdivided prior to the present Zoning Code, it is also considered non-conforming relative to setbacks and the minimum parking requirements for commercial buildings. The parcel was zoned for "Village Commercial" uses in 1967. Consequently, although the uses that are permitted through the present zoning are allowed, they must

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also meet with the minimum parking requirements. However, the subject complex was constructed approximately around 1926 with no parking area. Because of the absence and lack of a need for parking areas, the subject properties were developed almost entirely with buildings. As such, pursuant to the Zoning Code, all of the buildings on the property are "Non-conforming Buildings". According to the Zoning Code, all non-conforming situations such as the above, can continue to exist, as long as a "grandfathered" non-conforming use and/or conforming use does not terminate for more than one (1) continuous year. If a non-conforming use terminates for one (1) continuous year, it may not be re-established and if a conforming use terminates for more than one (1) continuous year, it may not be re-established due to the absence of parking facilities. In this situation, all of the original uses in the building complex with the exception of the spaces for the "Puna Land Company" and Richard Tatum's coffee shop and realtor's office, termination and documentation could not be submitted to show that a continuation of the other original uses had occurred. Although the buildings on the property are old in nature, the petitioner is attempting to rehabilitate them in his attempt to retain this commercial core of Pahoehoe Village with its past architecture.

These considerations effect unusual circumstances with respect to the development constraints on the property. These constraints contribute to a deprivation of substantial property rights as well as interfere with the best use or manner of development of the subject property.

#### VARIANCE CRITERIA NO. 2

There are no other reasonable alternatives that would resolve the difficulty.

The alternative to utilize the property without the variance would cause undue hardships on the petitioner, when other more reasonable alternatives are available. Furthermore, it is determined that the denial of the variance would not serve as a reasonable alternative in this situation. The fact that the subject properties are fully developed with the existing structures with no area for any parking by today's standards is not a self-created problem by the petitioner.

Therefore, because of these considerations, any strict adherence to the minimum Zoning Code's parking requirements would be unreasonable and foreclose any options in the utilization of the buildings on the subject property.

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Also in light of the constraints and circumstances being applied to the property, any other alternatives in resolving this issue would only be putting excessive demands upon the petitioner when a more reasonable solution is available.

VARIANCE CRITERIA NO. 3

The variance shall be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning and Subdivision Codes, and the County General Plan and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or to adjoining properties.

The exclusion of the minimum parking requirements is predicated upon the view that the original building complex is still permitted to operate without the minimum parking as required by the present Zoning Code. However, the fact still remains that the existing structures and the percentage of the properties already developed leave no room for any parking area accommodation. As such, the only other alternative is to demolish and redesign the subject properties development. This has been discussed previously as being unreasonable in light of the situation. Within the context of the General Plan's Land Use Commercial, the following courses of action are articulated:

1. "Centralization of commercial activities in Keaau and Pahoa shall be encouraged".
2. "Rehabilitation of existing commercial development in appropriate locations shall be encouraged".

Thus, since the petitioner is attempting to re-establish commercial businesses within the existing commercial core, it is determined that this portion of the General Plan is being implemented and that the granting of the variance will be in accord with these policies.

Consequently, the physical and visual impact will also not be affected. Based on these considerations, it is also determined that the granting of the variance will not be considered to be materially detrimental to the public's welfare or cause any substantial or adverse impact to the area's character or to adjoining properties.

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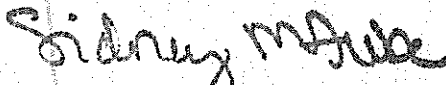
The variance request is approved, subject to the following conditions:

1. That the petitioner or his authorized representative shall be responsible for complying with all the stated conditions of approval.
2. That plans for "Plan Approval" for any use within the subject complex be submitted and approval secured prior to the establishment of any business.
3. That should a "Parking Improvement District" study be proposed and implemented for this area, the petitioner or his authorized representative shall agree to participate in such a proposal and contributing their fair share for any proposed improvements.
4. That consolidation maps for the two (2) parcels be submitted for review and approval within one (1) year from the effective date of approval of the Variance Permit.
5. That the requirements of the Department of Water Supply and the Department of Public Works shall also be complied with.
6. That the State Department of Health requirements shall also be complied with.
7. That all other State and County rules and regulations shall be complied with.

Should any of the foregoing conditions not be complied with, the Variance Permit shall be automatically be voided.

If you have any questions on this matter, please feel free to contact us.

Sincerely,



SIDNEY M. DUKE  
Planning Director

RHY:lgv

cc: Planning Commission