

CERTIFIED MAIL

December 3, 1984

Mr. Michael Klyne  
Marty's Steak & Seafood  
P. O. Box 3121  
Kailua-Kona, HI 96745

Dear Mr. Klyne:

Variance Application (V84-37)  
Applicant: Marty's Steak & Seafood  
Tax Map Key 7-5-06:10

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 to construct a 48 square foot building addition to the existing non-conforming structure with a zero front yard setback in lieu of the minimum 20 foot front yard setback required in the Resort Zone by the Zoning Code; and to allow the proposed building addition with zero parking stalls in lieu of the minimum 1 parking stall as required by the Zoning Code. The subject property, which is identified by Tax Map Key 7-5-06:10, consists of 11,385 square feet and is located in the Kailua Bay Inn complex on the corner of the Likana Road/Alii Drive intersection in Kailua Village, North Kona, Hawaii.

The approval is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

Although there are no topographical circumstances related to the subject requests, there are non-conforming conditions which can be considered as special or unusual circumstances related to this property. The evidence will show that property rights are being deprived or being interfered with for the best development use of the subject property.

The allowance of variances is designed to allow deviations from the literal enforcement of ordinances which, if strictly

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applied, would deny a property owner of all beneficial use of the land and thus amount to confiscation of the property.

The subject property was developed prior to the adoption of the Zoning Code which qualifies the development as being non-conforming relative to the present parking and setback requirements for the Resort zone district. The County Tax Office records shows that approximately 82 percent of the property has been developed with buildings. If the subject buildings were to be assessed parking according to the present zoning code parking requirements, a range between 40 to 60 stalls could be required, depending upon the uses established. In this particular instance, the petitioner would be enclosing a portion of a building space within the existing building volume. This would not constitute creation of any new additional volume to the existing restaurant. The restaurant use is a permitted use in this zone district and allowed to operate within this non-conforming building within the existing volume of space. Therefore, the enclosure of the kitchen portion of this existing building volume to enhance the operational aspects of the restaurant has to be distinguished between a totally new addition and renovations within an existing building. The existing wall line of the restaurant will be maintained with this small enclosure and should not change the character or impact of the building with respect to its proximity to the front property line.

Therefore, based on the above considerations, we have determined that these are also 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

The petitioner has limited alternatives in resolving this matter. The use of the variance procedure to request relief from certain requirements of the Zoning Code must meet all three criteria tests of the variance procedure. The question of reasonableness has to be viewed in terms of the relationship of the three criteria for the granting of a variance and not solely on the reasonableness of the alternative in trying to resolve the difficulty.

In requesting the variance, the petitioners are not seeking to increase any property rights related to the property through

the construction of the proposed enclosure, but to enhance the visual character of the existing building. As such, this proposed improvement is determined to be the most reasonable alternative. Moreover, the denial of the variance requests would be putting excessive demands upon the petitioner when a reasonable alternative is available.

#### INTENT AND PURPOSES

The intent and purpose of the parking requirements is to ensure that car storing areas are available to minimize the impact of vehicular circulation on the traffic systems in an area. It is a regulatory tool which is also used in determining pedestrian safety; design compatibility and circulation functional solutions. In this particular application, the proposed enclosure of a 48 square foot portion of the existing restaurant will not intensify or create additional demands for parking in this area. As such, there will be no burdens placed on existing parking and pedestrian systems in the area.

The intent and purpose of the setback requirements is to ensure that air, light, physical and visual circulatory functions are available between structural developments and property lines. It is a regulatory tool which is also used in determining design compatibility and functional solutions. In this particular application, the original design solution did not provide the minimum area for these functions. In the petitioner's proposal, the request is determined to be minor in terms of its physical or visual impact, and the air, light and circulatory functions between the subject property and the adjacent properties will not be diminished or seriously affected as it is located in a setting which is already in excess of the minimum standards. What is important in this situation is that the excessiveness is not being added to in such a fashion that would make the existing development more intrusive. More importantly, the petitioner is making an attempt to clean up the building facade to make it more compatible with the guidelines of the Kailua Village Design Plan.

In this sense, all things being equal, in this particular application, an approval of a setback and parking variance with these special or unusual circumstances related to the land would be in keeping with the areas character and not be of any detriment to the adjoining properties.

Based on the foregoing, the variances are viewed to be consistent against the criteria test for a variance and would be consistent with the general purpose of the Zoning District and the intent and purpose of the General Plan.

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

- A. The petitioner, its successors or assigns, shall be responsible for complying with all stated conditions of approval.
- B. The plans for the proposed improvements shall be submitted for Plan Approval within one year from the effective date of approval of this Variance Permit.
- C. The construction of the proposed improvements shall commence within one year from the effective date of final Plan Approval and be completed within two years thereafter.
- D. All other applicable State and County rules and regulations shall be complied with.

Should any of the above conditions not be complied with, the variance shall automatically be deemed void.

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

Sincerely,



SIDNEY M. FUKÉ  
Planning Director

RHY:lkt

Enc.

cc: Mr. John Dinmore w/enc.  
Planning Commission w/enc.

bcc: Billy Y.