

CERTIFIED MAIL

April 4, 1986

Ms. Jocelyn Cruz
P. O. Box 54
Pahoa, HI 96778

Dear Ms. Cruz:

Variance Application (V86-6)
Jocelyn Cruz
Tax Map Key 1-5-12:19

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 conversion of an existing dwelling into a retail store with no parking stalls in lieu of the minimum four (4) parking stalls requirement as required by the Zoning Code.

The approval is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special or unusual circumstances applying to the subject real property which exists 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 the subject property.

The zoning of the property is Village Commercial (CV-10) which began effective on December 20, 1967. The property was created prior to the zoning and is considered as a non-conforming lot since it is below the minimum 10,000 square foot lot size requirement. The existing dwelling located on the property was built in 1933 on the front portion of the property extending almost the width of the property. There is no way of providing vehicular access to the rear portion of the property short of demolishing portion of the existing

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building. As such, pursuant to the Zoning Code, the existing building on the property is considered as a non-conforming building. The Zoning Code states that "Any non-conforming use of land or use of building may continue to the extent if existing at the time of adoption of this chapter or any amendments hereto, provided that: (5) If a use of building is non-conforming because of a particular requirement of the district within which it is located (e.g. parking, yards, height, distance between buildings), then the use may be enlarged and the building may be change or added to, provided such enlargement, change or addition in itself in full compliance with the district regulations." In this situation, the petitioner is requesting to change the use from a dwelling to a retail store without meeting with the parking requirements, maintaining the same architectural character of Pahoa Town.

The considerations effect special and 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.

ALTERNATIVES

There are no other 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 property has an existing building on it, the narrowness (approx. 38.5 feet) of the property and no access to the rear of the property by today's standard is not 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 building on the subject property.

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.

INTENT AND PURPOSE

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

The exclusion of the minimum parking requirements is predicated upon the view that the original building is still permitted to exist without the minimum parking as required by the present Zoning Code. However, the fact still remains that the existing structure and the percentage of the property already developed have no room to develop a driveway access and parking area. As such, the only other alternative is to demolish and redesign the subject property development. This has been discussed previously as being unreasonable in light of the situation. With the context of the General Plan's Land Use Commercial, the following courses of action are stated:

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

Thus, since the petitioner is attempting to re-establish commercial business 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 nor cause any substantial or adverse impact to the areas character or to the adjoining properties.

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

1. That the petitioner, its assigns or 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 building be submitted and approval secured prior to the establishment of any business.

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3. That should a "Parking Improvement District" study be proposed and implemented for this area, the petitioner, its assigns or authorized representative, shall agree to participate in such a proposal and contributing their fair share for any proposed improvements.
4. That the requirements of all State and County agencies, including those of the Department of Public Works, shall be complied with.

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

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

Sincerely,



ALBERT LONO LYMAN
Planning Director

MO:ds

cc: Plan Approval