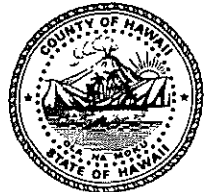


VAR 531



Stephen K. Yamashiro  
Mayor

Virginia Goldstein  
Director  
Norman Olesen  
Deputy Director

# County of Hawaii

## PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252  
(808) 961-8288 • Fax (808) 961-9615

September 15, 1993

Mr. Robert D. Triantos  
Attorney-at-Law  
P.O. Box 1720  
Kailua-Kona, Hawaii 96745

Dear Mr. Triantos:

Variance Application WH(VAR 93-28)  
Applicant: KONA BEACH INVESTMENT CORPORATION dba SEAFOOD  
PASTA PALACE  
Variance from Minimum Off-Street Parking Requirements  
Tax Map Key: 7-5-08: 009

After reviewing your application and the information submitted in behalf of it, the Planning Director certifies the approval of your variance request to allow expansion of the existing Seafood Pasta Palace restaurant into an adjacent existing lanai of approximately 830 square feet without the provision of any off-street parking in lieu of the minimum of four (4) off-street parking stalls as required by Chapter 25 (Zoning Code), Division 11 (Supplementary Off-Street Parking and Loading Regulations), Section 25-73 (a)(18)(Parking spaces required for various uses).

The subject restaurant is in the WATERFRONT ROW complex, on the second floor level, on the makai side of Alii Drive approximately 400 feet south of the Alii Drive/Hualalai Road intersection in Kailua Village, Hienaloli, North Kona, Hawaii, TMK: 7-5-08: 009.

The Planning Director has concluded that the variance request from the minimum off-street parking requirements should be approved, based on the following findings:

### SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject restaurant was built in 1987 with Building Permit No. 895655 and consists of approximately 2,205 square feet on the second floor level of the Waterfront Row commercial complex and is accessible from a stairway and an elevator.

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2. The original Waterfront Row development was approved by the Planning Commission by Special Management Area Major Use Permit No. 226 and Shoreline Setback Variance No. 631 on August 28, 1985 and was constructed in 1987.
3. A total of 106 off-street parking stalls were provided for the development of which 69 stall are located on the property and 37 stalls are located off-site at the corner of Alii Drive and Hualalai Road. The lanai areas on the second floor were not calculated in the off-street parking requirements. However, a seating area on the first floor area was included for the food arcade.
4. The petitioners wish to extend the restaurant services to the adjacent existing lanai area for their customers. This area comprises approximately 830 square feet.
5. According to the Zoning Code's off-street parking requirements, a total of 4 additional parking stalls would be required. However, the Department of Public Works, Building Division has stated that if the variance is approved, the applicant must comply with the Building Code's requirement relative to a seating and exit plan. This plan must be approved by their office. With this added requirement, the total area of the deck which could be used for the outdoor seating will be reduced by approximately 200 to 300 square feet depending upon the design. As such, the applicant will not be able to utilize the entire 830 square foot deck area. Therefore, the actual outdoor seating area will have to be reduced which will lessen the required off-street parking requirements. As such, although the variance request is being approved is for the deviation of providing 4 parking stalls for this area, a condition of approval is being included to require the applicant to present a seating and exit plan to the Department of Public Works, Building Division for their review and approval. In essence, the variance approval is for 4 stalls and the 830 square foot outdoor deck area, but the area to actually be used by the applicant for the outdoor seating will less with the requirements by the Department of Public Works, Building Division.
6. At their August 24, 1993 meeting, the Kailua Village Design Commission, the applicant represented to the Commission that they would not be increasing the existing seating capacity, and they intend to move five (5) of their existing tables inside the restaurant to the outdoor deck area for the outdoor dining whenever the weather permits. They also represented that there will be no increase in employees with this proposal. The employee count would remain the same. Based

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on these commitments by the applicant, the Kailua Village Design Commission voted to forward a favorable recommendation on the variance request to the Planning Director.

7. A condition of approval of this variance is being included to ensure that the seating capacity of the restaurant and number of employees do not exceed the present numbers. This condition will be enforced by the Department of Liquor Control, who controls the premises where the dispensing of liquor is allowed and also by the Planning Department should it become necessary.
8. The design of this particular restaurant has this particularly wide outdoor lanai deck area which can be used for outdoor dining. From this area, one can see the beautiful Kona scenery that is available from the outdoor deck area for people to enjoy while having their meals. This particular amenity and resource is unique to this particular restaurant and should be used to the fullest extent possible for people to enjoy.

Therefore, considering the foregoing facts, it is determined that there are 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

1. The subject property is fully developed with 69 parking stalls in the basement and 37 stall off-site within 500 feet of the complex. There are no other areas on the subject property in which to provide for additional off-street parking stalls unless the entire building is redesigned and reconstructed.
2. The applicant has unsuccessfully attempted to lease off-street parking stalls at the Kona Alii Condominium, the St. Michael's Church across the street and other landowners within 500 feet of the complex.
3. These alternatives, though available to the applicant do not allow a reasonable basis in which to allow compliance with the off-street parking requirements in this particular instance.

Based on the above cited considerations, there are no reasonable available solutions without excessive demands placed on the applicant when a more reasonable alternative is available by the granting of this variance application.

INTENT AND PURPOSE

1. The intent and purpose of the Zoning Code's requirement of providing off-street parking for commercial developments is to ensure adequate vehicle storage for customers and employees.
2. The existing Waterfront Row commercial development is provided with 106 off-street parking stalls with 69 basement parking stalls and 37 off-site parking stalls.
3. At the Waterfront Row development, 5 tenant spaces were recently converted into one tenant space (Wyland Art Gallery) which will have an effect on the employee and customer parking for the complex.
4. The applicant will not increase the present seating capacity or the number of employees of the existing inside restaurant with the use of the outdoor deck area. Conditions of approval are being included to specifically ensure compliance with this representation.
5. The applicant has represented that a maximum of 5 existing indoor tables shall be moved to the outdoor deck area and no additional tables shall be added to the inside of the restaurant. A condition of approval will be included to ensure that the seating capacity will not exceed the presently allowed seating capacity. This seating capacity will be determined by the Department of Public Works, Building Division. The enforcement of this provision shall be done through the Department of Liquor Control and the Planning Department.
6. Although, a 6 page petition was received in objection to the variance request was submitted, the concerns expressed in the petition of objection were related to the increase in seating capacity and number of new employees. The proposal by the applicant is not to increase the existing capacity, but to utilize the existing seating capacity and to stay within that limit with the moving of 5 existing indoor tables to the outdoor deck for outdoor dining. As such, the concerns expressed by the petition have been addressed.

Based on the foregoing findings, this variance request would 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; will not be materially detrimental to the public's welfare; and will not cause substantial adverse impact to the areas character and to adjoining properties.

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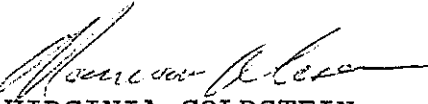
This variance request is approved, subject to the following conditions:

1. The applicant, its assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. The applicant shall submit a seating and exit plan within one (1) year from the date of official approval of this variance to the Department of Public Works, Building Division for their review and approval which shall include the following:
  - a. The total number of tables in the restaurant will not exceed 25 tables and the total number of table to be used on the outdoor deck area will not exceed 5 tables.
  - b. No additional tables shall be placed in the existing indoor restaurant to replace the tables being moved to the outdoor deck.
  - c. The seating capacity of the indoor and outdoor areas shall not exceed the seating capacity of the existing indoor restaurant.
  - d. The existing employee count shall be listed on this plan for enforcement purposes. No additional employees shall be added to the existing count.
3. Upon its approval, by the Department of Public Works, Building Division, the approved seating and exit plan shall be submitted to the Planning Department. Final Plan Approval shall be secured from the Planning Department within one (1) year from the date of approval of the seating and exit plan.
4. The applicant shall comply with the above requirements as set forth and will adhere to the requirements of the Department of Liquor Control in obtaining liquor license for the dispensing of liquor only for the outdoor area defined and approved by the Department of Public Works, Building Division and the Planning Department.
5. All other applicable State and County rules, regulations and requirements shall be complied with.

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Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,



VIRGINIA GOLDSTEIN  
Planning Director

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xc: Department of Public Works, Building Division, Kona Office  
Department of Liquor Control, Hilo Office  
Department of Parks and Recreation  
Planning Commission  
Kailua Village Design Commission  
Corporation Counsel  
West Hawaii Office