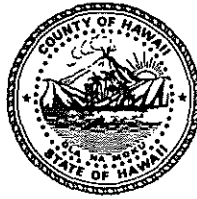


Stephen K. Yamashiro  
Mayor



✓ VAP 578  
denial  
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

#### CERTIFIED MAIL

March 7, 1994

Mr. Khaled Mohammed  
75-5707 Alii Drive  
Kailua-Kona, Hawaii 96740

Dear Mr. Mohammed:

Variance Application WH(VAR 94-3)  
Applicant: Khaled Mohammed  
Variance from Minimum Off-Street Parking Requirements  
Tax Map Key: 7-5-07: 019

After reviewing your application and the information submitted in behalf of it, the Planning Director certifies the denial of your variance request to allow the expansion of the existing Basil's Italian Bristo Restaurant on the subject property with no off-street parking in lieu of the minimum of one (1) off-street parking stall 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 property is located on the mauka side of Alii Drive in the Kim Chong Building adjacent to Mokuaikaia Church in Kailua Village, North Kona, Hawaii, TMK: 7-5-07: 019.

#### SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property is part of the Kim Chong Building complex consisting of 12,760 square feet of land area which contains a commercial building and an apartment building.
2. The subject building complex is a non-conforming building built prior to 1967 when Zoning was adopted for the North Kona district.
3. The subject complex does not have any on-site, off-street parking area resulting in its non-conforming situation.
4. There are other commercial developments in the same area which also do not have any on-site off-street parking.

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4. The petitioner is proposing to expand the restaurant (Basil's) behind the existing building adjacent to the apartment building on the property. The expansion is for the construction of a concrete pad to place a new factory built walk in cooler for the existing restaurant. The area will be approximately 80 square feet in area.
5. The proposed cooler location will be 4 feet from the south side property line and attached to the existing apartment building to the north for which a building permit is required.
6. The variance application was filed with the Planning Department on JANUARY 6, 1994.

The applicant has not shown or demonstrated that there are special or unusual circumstances related to the building, use or property which are unique only to this particular property in this area that would necessitate the approval of this variance request. Therefore, considering the foregoing facts, it is determined that there are no 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 a commercial building and an apartment building. As a result the applicant does not have the ability to place this proposed expansion in any other area which would suit their needs. However, there is the ability to contain their expansion with the existing non-conforming building. The applicant has expressed that this option is not economically feasible. While economic hardship may be considered, it cannot be the sole reason for the granting of a variance, no matter how hard the economic hardship may be. The variance request must address all 3 criteria of the variance process.
2. Therefore, while the applicant has claimed the need for the variance based solely on economic hardship, when an alternative is available, this alternative is deemed to be a reasonable alternative in resolving their difficulty.

Based on the above cited considerations, there is a reasonable solution which is not excessive considering the situation.

INTENT AND PURPOSE

1. The intent and purpose of requiring on-site, off-street parking is to ensure that the necessary vehicle storing for customers, employees and other users will require to service the restaurant. The property does not have any on-site, off-street parking to serve the present restaurant and commercial complex.
2. Chapter 25 (Zoning Code), Article 1 (General Provisions), Division 11 (Supplementary Off-Street Parking and Loading Regulations), SECTION 25-70 (a)(Off-street parking spaces; general requirement) states "In all districts, in connection with every use, there shall be provided at the time certain uses are established and at the time any building or structure is erected, enlarged, or is reconstructed or increased in floor area, off-street parking space for automobiles in the number and in accordance with the requirement set forth in this division.
3. SECTION 25-73 (Parking spaces required for various uses)(a)(18) states that "Restaurants, bars, drive-ins: one for each one hundred and fifty square feet of gross floor area where the main use utilizes the entire building. Where the main food or beverage service use occupies a part of a larger building such as an office complex or hotel or shopping mall: one for each two hundred square feet of gross floor area.
4. SECTION 25-76 (a)(Determination of parking and loading space by director)states "The director may increase any of the requirements in this division under plan approval only after reviewing the proposed use(s) and its impact to the immediate area and making a finding that the increase will further the public safety, convenience, and welfare.
5. The Planning Director finds that the existing development is non-conforming relative to off-street parking and does not have any on-site off-street parking on the property for this restaurant use or the development on the subject property. The Planning Director also determined that in this non-conforming situation, incremental increases of buildings whether or not they meet the minimum off-street parking floor area requirements or not, should be assessed as to its overall impact to the area. Therefore, the Planning Director found that although, the proposed expansion did not meet the 200 square foot gross floor area requirement, the imposition of off-street parking could not be ignored simply because of the size of the expansion.

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The finding also included the fact that this is not the only non-conforming building or development in the area that does not have any on-site off-street parking. With the high volume of traffic that the existing commercial developments attract along Alii Drive and the lack of any available on or off-street parking in the area, the Planning Director has determined that for the proposed expansion of this non-conforming situation, the imposition of the off-street parking requirement would further the public safety, convenience and welfare.

6. The Kailua Village Design Commission voted unanimously to forward a denial recommendation on the variance application relative to the same issues.

Based on the foregoing findings, this variance request would not 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. Therefore, this variance request is hereby denied.

The Director's decision is final, except that within thirty days after receipt of this letter, you may appeal the decision in writing to the Planning Commission in accordance with the following procedures:

1. Non-refundable filing fee of one hundred dollars (\$100); and
2. Ten copies of a statement of the specific grounds for the appeal.

Should you decide to appeal, the Planning Commission shall conduct a public hearing within a period of ninety days from the date of receipt of a properly filed appeal. Within sixty days after the close of the public hearing or within such longer period as may be agreed to be the appellant, the Planning Commission shall affirm, modify or reverse the Director's action. A decision to affirm, modify or reverse the Director's action shall require a majority vote of the total membership of the Planning Commission. A decision to defer action on the appeal shall require a majority vote of the Planning Commission members present at the time of the motion for deferral. If the Planning Commission fails to render a decision to affirm, modify, or reverse the Director's action within the prescribed period, the Director's action shall be considered as having been affirmed.

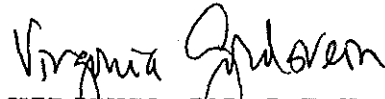
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All actions of the Planning Commission are final except that, within thirty days after notice of action, the applicant or an interested party as defined in Section 25-27.2 of this article in the proceeding before the Planning Commission may appeal such action to the Board of Appeals in accordance with its rules.

All actions of the Board of Appeals are final except that they are appealable to the Third Circuit Court in accordance with Chapter 91 of the Hawaii Revised Statutes.

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

Sincerely,

  
VIRGINIA GOLDSTEIN  
Planning Director

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xc: DPW-Building, Kona Office  
West Hawaii Office