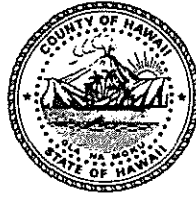


Stephen K. Yamashiro  
Mayor



Virginia Goldstein  
Director

Russell Kokubun  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252  
(808) 961-8288 • Fax (808) 961-8742

#### CERTIFIED MAIL

P 101 317 699

April 27, 1999

Mrs. Alberta Lindsey, President  
c/o AOA Bayshore Towers  
84 Pukihae Street, #1203  
Hilo, HI 96720

Dear Mrs. Lindsey:

Variance Permit No. 997 (VAR 99-003)  
Applicant: ALBERTA LINDSEY, PRESIDENT  
Owners: AOA BAYSHORE TOWERS  
Request: Variance From Division 6, Nonconforming Uses and Building,  
Pursuant to Chapter 25, Hawaii County Zoning Code  
Tax Map Key: 2-6-001:015

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request to allow the existing building improvements and related site improvements constructed on the property in 1968 to remain Pursuant to Division 6, Nonconforming Uses and Buildings, Chapter 25, Hawaii County Zoning Code.

#### FINDINGS AND RECOMMENDATION

The Planning Director has concluded that the variance request to allow the existing building improvements constructed and established on the property prior to 1970 be approved based on the following findings:

#### SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The property containing 34,898 square feet was zoned Resort-Hotel (VH-.75) by the County on December 26, 1968 and is designated Urban "U" by the State

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Mrs. Albert Lindsey, President  
AOAO Bayshore Towers  
Page 2  
April 27, 1999

Land Use Commission (LUC). During 1975 the property was situated within an area designated Special Management Area (SMA) by the County.

2. The existing building and related site improvements were approved by the County and built under a building permit (BP No. 40409) issued on December 26, 1968.
3. The site plan, drawn to scale, dated November 10, 1998, and submitted with the variance application, identifies the location "footprint" of the existing condominium within the property boundaries and denotes the building was constructed to a height of 145.13 feet.
4. The Department of Health memorandum dated February 18, 1999, states:  
  
"The Department of Health is unable to make comments to the proposed project at this time. The applicant needs to submit a site plan for review."
5. The Department of Public Works (DPW) memorandum dated March 25, 1999, states in part:  
  
"As requested, we have determined that the subject property is located within Flood Zone "X" according to the Flood Insurance Rate Map (FIRM) dated September 16, 1988. Flood Zone "X" is an area determined by the Federal Emergency Management Agency (FEMA) to be outside the 500-year flood plain (may include areas not studied with unknown flood hazards)."
6. No comments were received from the Department of Finance-Real Property Tax Office.
7. A letter attached to the variance application dated June 14, 1997 from Nancy T. Roney, Association Manager, to the Planning Director, states in part:  
  
"I am on behalf (sic) of the Board of Directors of Bayshore Towers with regard to their Variance application.

I have been asked by Board President Ronald Johnson to comply with several variance application requirements; namely writing to owners or surrounding properties (within 300') to obtain their approval of the Variance and to provide a summary of the problems along with an explanation of why their (sic) appears

Mrs. Alberta Lindsey, President  
AOAO Bayshore Towers  
Page 3  
April 27, 1999

to be no other reasonable alternatives (sic) of ways to resolve the difficulties.

I have sent a letter to all owners within 300' to ascertain that they have no objections, as required.

As to why there are no other reasonable alternatives or ways to resolve the difficulties, simply, there appears that there are no other reasonable alternatives that would be in compliance with either State or County regulations. As a result, this limits solutions to the problem to one, i.e. a variance from the County.

As for a summary of the problems which exist and would deprive the current owner/owners or potential owner/owners, there are several. Presently, in the event of a major catastrophe (earthquake, etc.) that severely damaged the structure, all owners above the fifth floor, would not be able to rebuild. With this inability to rebuild looming, obtaining bank financing in order to purchase (potential owner/owners) or to refinance mortgages (current owner/owners) would be impossible. In addition, this inability to obtain financing also limits sales potential. All of which cause financial hardship to present owners.

This potential loss of the building without being able to restructure same also holds a hardship for owner/owners of the first five floors as their units' value is also being diminished. Should a catastrophe occur and the upper floors of the project not be restored, the value of the entire project to include the lower floors is severely decreased. The inability to rebuild may also hold insurance ramifications as well."

8. Proof of mailing was received by the Planning Department on April 12, 1999.
9. The Planning Department received a letter of objection dated March 12, 1999 from the owners of property whose address is 74 Pukihae Street. The property is located within 300 feet of the subject TMK property. A copy of the objection letter dated March 12, 1999 was forwarded to the applicants for consideration and reply.

The present owners submitted a copy of a site or plot plan, drawn to scale, which identifies the location or "footprint" of the existing building on the subject TMK property. For the record the plot plan submittal does not identify the location of the existing parking spaces and other existing building and landscaping improvements on the subject property.

Mrs. Alberta Lindsey, President  
AOAO Bayshore Towers  
Page 4  
April 27, 1999

Therefore, considering the foregoing facts and circumstances the Planning Director has determined that there are special or unusual circumstances applying to the subject property which exist either to a degree which deprive the owners 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 Planning Director has determined that there are no reasonable alternatives in resolving the difficulty of the owners. Alternatives available to the owners include removing or reconstructing the existing building to and within the building envelope prescribed by the Zoning Code.

The Planning Department acknowledges there may be design or building alternatives available to the owner other than those recited above. However, these design and building alternatives are deemed to be unreasonable at this time and would place excessive demands on the present owner when a more reasonable alternative is available by the granting of the subject variance request.

#### INTENT AND PURPOSE

The intent and purpose of requiring building limits (i.e. density, minimum yards, height, etc.) are to assure that adequate air and light circulation is available between permitted structure(s) and property lines. Therefore, it is felt the existing nonconforming building improvements will not detract from the character of the immediate neighborhood or the subdivision not compromise the adequacy of air and light circulation.

The subject variance application was deemed complete on February 10, 1999, and was acknowledged by Certified Letter dated February 10, 1999. In light of a recent December 1998 ruling and court decision, additional time to consider the variance application and variance procedures was necessary.

Based on the foregoing findings, the Planning Director has determined the subject variance request would be consistent with the general purpose of the zoning district and the intents and purposes of the Zoning Code, Subdivision Code and the County General Plan. Furthermore, the variance request will not be materially detrimental to the public's welfare and will not cause substantial adverse impact to the area's character and to adjoining properties.

Mrs. Alberta Lindsey, President  
AOAO Bayshore Towers  
Page 5  
April 27, 1999

This variance request is approved subject to the following conditions:

1. The owner, assigns or successors shall be responsible for complying with all stated conditions of approval. The effective date of this permit is April 26, 1999.
2. The approval of this variance from the Zoning Code pertains only to the existing building improvements built under the original building permit (BP No. 40409). The owners, successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property damage, personal injury, or death arising out of any act or omission of the owner or owners, their successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.
3. The nature of the variance request and location of the existing building improvements on the property meet the nonconforming provisions of the Zoning Code. The approval of this variance is from the Zoning Code only and allows the affected improvements to remain on and within the subject property pursuant to the site plan submitted with variance application. Future improvements if necessary shall meet DPW building code structural requirements including approval of all necessary building permits.
4. The owners, successors or assigns shall maintain the existing nonconforming parking space improvements and existing landscaping materials including any permitted architectural landscape buffers on the subject property. The permitted and existing planting materials shall be healthy and free of plant debris.
5. Future building improvements and permitted uses on the subject property shall be subject to all appropriate state statutes and County Ordinances and Regulations pertaining to building construction and building occupancy.

Mrs. Alberta Lindsey, President  
AOAO Bayshore Towers  
Page 6  
April 27, 1999

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

VKG/RK:gp  
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xc: Real Property Tax Office