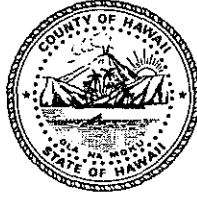


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

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

December 20, 2001

Mr. Klaus D. Conventz
dba Baumeister Consulting
P. O. Box 2308
Kailua-Kona, HI 96745

Dear Mr. Conventz:

VARIANCE PERMIT NO. 1248 WH (VAR 01-036)

Applicant: KLAUS D. CONVENTZ
Owners: N.F. INC., A HAWAII CORPORATION
dba KONA MARKETPLACE
Request: Variance from Minimum
Open Space Requirements/
Off-Street Parking Space Requirements,
Pursuant to Chapter 25, the Zoning Code
Tax Map Key: 7-5-007:016; V-.75 (SMA/KVSD)

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions stated herein. Variance Permit No.1248 allows a proposed awning/porte cochere over an existing terrace fronting an existing 2-story commercial building with 0.00 feet front yard open space requirement in lieu of 14.00 feet front yard open space required, and without providing the additional parking space required for the affected area according to the Zoning Code. The variance is from the Chapter 25, the Zoning Code, Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open spaces and Section 25-4-51, Required number of parking spaces, (a) (3).

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BACKGROUND AND FINDINGS

1. **Location.** The subject property or tax map key (TMK) property (Lot 3) is bounded by and shares a common boundary line along Alii Drive. The property contains approximately 21,998 square feet +/- and is a portion of Land Court Application 1874 situated at Auhaueake 2nd, North Kona, Hawaii.
2. **Land Use Controls.** The subject TMK property is zoned Resort (V-.75) and designated Urban "U" by the State Land Use Commission. The property is within Kailua Village Special District (KVSD) and Special Management Area (SMA).

Kailua Village Design Plan (KVDP). The proposed project is within an area designated Kailua Village Special District (KVSD). The proposed uses and building improvements within this area are subject to review by members of the Kailua Village District Commission. Some of the objectives cited by the Kailua Village Design Plan (KVDP) are:

“Man-made structures shall complement rather than compete for visual attention with natural features.”

“A stronger and concerted effort shall be made to better the pedestrian experiences and to lessen automobile impacts within certain areas of Kailua Village.”

“Design efforts shall avoid creating a similarity of building appearance except to the extent that common building materials and colors are used.”

The applicant's proposed project, plans, and subject variance request were presented and approved during a Kailua Village District Commission meeting on June 19, 2001.

Special Management Area (SMA). Special Management Area Use Permit No. 98 (SMM No. 98) was approved on July 12, 2001 subject to conditions.

3. **Application.** The applicants submitted the variance application form, supplemental information, tax clearance, and \$250.00 filing fee check on April 12, 2001.

4. **Site Plan.** The variance application's "**PLOTPLAN**" or site plan drawing, drawn to scale "1"=10" was prepared by the applicant. The site plan denotes and identifies the proposed awning improvements within the Zoning Code's required 10'-0" wide clear space area. The applicants are requesting a variance to allow a "zero" front yard clear space in lieu of the required minimum 14'-0" front yard clear space required between the affected portions of the existing building and the affected portions of the subject TMK property's front boundary line shared with the Alii Drive Right-of-Way.

For the record, it appears that the existing awning encroachments will not affect the location of any existing cesspool/Independent Wastewater System (IWS) or existing sewer tie in/connections or existing utility lines.

5. **Building Permit(s).** For the record, there are many outstanding "opened" DPW building permits issued to the subject TMK property. The status of these DPW permits and any further construction permits required by the DPW will be addressed by the owner(s), and are cited in the variance conditions below.
6. **Agency Comments and Requirements-WH (VAR 01-036).**
 - a. The applicant submitted a copy of "REAL PROPERTY TAX CLEARANCE" dated March 27, 2001 states in part the following:

"TMK(s): 3/7-5-007-016"

"This is to certify that NF Inc. (Owner-of-record) has paid all Real Property Taxes due the County of Hawaii up to and including 6/30/01."
 - b. The State Department of Health (DOH) memorandum dated June 19, 2001, in the subject variance file states in part:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."

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- c. No comments that The Department of Public Works (DPW) memorandum dated June 25, 2001, which states in part:

"We have reviewed the subject application and offer the following comment:

Please refer to the attached Building Division comments dated June 20, 2001."

The attached DPW memorandum dated June 20, 2001 states in part:

"We oppose the approval of the application on the comments as noted below.

"Permits 885666, 905112, 915581, 916179, EH63433, EK05140 & EK06518 for the subject dwelling (sic) were never finalized."

7. **Notice to Surrounding Owners.** Affidavits of mailing a first and second notice(s) were received by the Planning Department (Kona Office). For the record, it appears that the first and second notice(s) were mailed on April 12, 2001 and June 20, 2001, respectively.
8. **Comments from Surrounding Property Owners or Public.**

The Planning Department (Hilo) received an objection letter from Mokuaukaia Church dated June 28, 2001. The letter states in part the following:

"The trustees have been duly notified regarding the application for variance, submitted by Conventz (sic) and in behalf of N.F. Inc., and at the Kona Marketplace. We feel that the request for zero open space instead of fourteen feet, as well as no parking space in lieu of the one required is most unreasonable.

We therefore recommend denial."

SPECIAL AND UNUSUAL CIRCUMSTANCES

The existing building site and improvements and overall building character was developed and established in the 1970s/1980s. The applicant (Shop Tenant/Owner-HulaBean Coffee Shop) proposes renovations to improve and modernize the "rundown" shop space within the existing commercial resort building complex and would like to install 8 to 10 tables within the existing terrace fronting their shop (Shop A-101) area and install a cover "cloth-awning-porte cochere" over 8 to 10 tables placed within the terrace fronting the shop space. Due to the original building's design/placement and orientation along Alii Drive, the existing shop area and terrace area in front of the shop space is exposed to midday and intense afternoon sun which creates a hot and uncomfortable terrace and sidewalk environment during peak business daylight hours. The applicant proposes to install an awning (cover) over the tables and portion of the existing terrace. This awning would extend beyond the shop space and project from the second floor balcony slab to the common front property along Alii Drive. The 400 square foot +/- (cover) awning would provide shade and protection to shop customers and visitors from glare and peak mid-day and afternoon sun and provide protection during rainy days and inclement weather conditions. The outdoor tables and covered terrace would enhance the street and existing sidewalk ambience and promote pedestrian traffic along Alii Drive. The Kailua Village Design Commission (KVDC) members found that the shop's proposal to install tables on the terrace and cover (awning) would not obstruct views or impact nearby merchants and public uses by endorsing the planned improvements and subject variance(s) requested by the applicant (Tenant/Owner). Although the covering to the terrace expands the retail area floor area and existing commercial envelope, the primary anticipated customers would be pedestrian traffic (visitors) and would not warrant additional parking space improvements.

The applicant submitted a recent survey map/site plan and supplemental plans which identify the location of the existing building location(s) and proposed roof (awning) encroachments within the affected front yard and front yard open space area. "The Applicant's intent was to create some form of a protective device for his customers with the installation of the existing roof awnings".

Therefore, considering the applicant's submittals, findings, existing building location(s) and building orientation and property circumstances, and approval of the proposed building improvements by the KVDC members, it is felt there are special or unusual circumstances applying to the subject property which exist either to a degree which deprives the applicants of substantial property rights that would otherwise be available, or to a degree which obviously interferes with the current and best use of the subject property.

ALTERNATIVES

At this time there are no reasonable alternatives in resolving the difficulty of the applicant or current owner(s). Alternatives available to the current owner(s) or applicant to address and correct the existing building encroachments include the following actions:

1. Disallow building or proposed attendant roof (awning) eaves that will encroach into the respective "clear space" within subject property's front yard.
2. Redesign and relocate the existing buildings or reorient the building(s) or uses to change existing building character and other design and remedial building alternatives.
3. Allow the proposed building improvements subject to variance conditions and further conditions imposed by Plan Approval of the Zoning Code and the KVDP.

The selected option is Alternative Item No. 3. This alternative recognizes the desirability and the applicant's intent to make the "village core" within the Kailua-Kona Village a more pedestrian-oriented place and make needed building improvements within the "village core" in consonance with the objectives of the Kailua Village Design Plan (KVDP).

The Planning Department acknowledges there may be other design or building alternatives available to the applicants and owners beyond those cited above. However, these design and building alternatives may be unreasonable at this time and would place excessive demands on the applicant and current owners 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 setbacks and building limits within a resort zoned area are to assure that adequate air circulation and exposure to light are available between permitted structure(s) and boundary/property lines. It appears that the existing building or commercial resort building development was constructed under building permit(s) issued to allow the development to occur. The applicant and current owners are trying to resolve existing building limitations and address recent changes to the visitor business beyond weather conditions.

The existing property and building circumstances to consider the proposed building improvements at variance with the Zoning Code are unique.

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It appears that the proposed building encroachments will not be physically and visually obtrusive from adjacent TMK property(s) or the rights-of-way. It appears that the location of the existing building and terrace improvements do not depreciate or detract from the character of the surrounding village "core" and the existing and surrounding land patterns. Proposed improvements in the vicinity of the terrace will integrate and buffer a nearby electric "HELCO" power transformer enclosure along the existing sidewalk. Therefore, it is felt that the proposed awning encroachments within the respective front yard open space area required by the Zoning Code will not detract from the character of the immediate neighborhood or other surrounding resort area/Kailua Village Design Plan.

Furthermore, the nature of the business is dependent on "walk in" visitors and local foot traffic and will not impact the development's existing parking space or loading/unloading requirements.

The subject variance application was acknowledged by certified letter dated June 13, 2001. The applicant's agent agreed to extend the variance decision date to December 14, 2001, whereupon on or before said decision date, the Planning Director shall render a decision on the subject variance.

Based on the foregoing findings, this 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.

VARIANCE DECISION AND CONDITIONS

The variance request is approved subject to the following conditions:

1. The applicant/owner(s), their assigns or successors shall be responsible for complying with all stated conditions of approval effective **December 14, 2001**.
2. The applicant/owner(s), 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 applicants/owners, their successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.

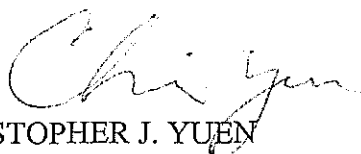
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3. Portions of the proposed awning will encroach into the subject TMK property's minimum fourteen (14) feet front yard clear space (area) required between the building "projection" and the front boundary line along Alii Drive. The approval of this variance allows these building improvements (awning) to be constructed up to the affected front boundary line according to the variance application's "PLOTPLAN" and in substantial conformance with plans approved by the KVDC and with no additional off-street parking spaces normally required for additional floor area.
4. The requirements and conditions of SMM No. 98 and Final Plan Approval pursuant to Chapter 25, Zoning, Article 2, Division 7, Plan Approval shall be met.
5. The proposed interior and exterior (awning) improvements to the existing HulaBean Coffee shop shall be completed on or before July 12, 2006.
6. The status of existing DPW building permits issued to the subject TMK property and any further review under Plan Approval of the Zoning Code and building permits required by the DPW to allow the awning addition/improvements shall be addressed by the current owner(s)/lessee or applicant. All DPW building permits and associated construction permits issued to the subject TMK property shall be "finaled" or closed prior to any change in management, business rents/leases, and change in property title.
7. Future building improvements and permitted uses on subject TMK property shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy and are subject to review under SMA, KVDC, and Plan Approval of the Zoning Code.

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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,



CHRISTOPHER J. YUEN
Planning Director

WRY/RRT:cps
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xc: Real Property Tax Office - Kona
Planning Dept. - Kona
SMM NO. 98
PA 2372

Douglas Ward, Chairman
Board of Trustee-
MOKUAIKAUA CHURCH