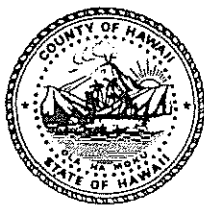


William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

County of Hawai'i

PLANNING DEPARTMENT

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

November 30, 2009

Mr. Kory Bellmont
UNIVERSITY OF THE NATIONS
75-5851 Kuakini Highway #53
Kailua-Kona, HI 96740-2199

Dear Mr. Bellmont:

SUBJECT: VARIANCE-VAR 07-058
Applicants: KORY BELLMONT, ET AL.
Owner: UNIVERSITY OF THE NATIONS
Request: Variance from Chapter 25, Zoning
Required Off-Street Parking Stalls
Tax Map Key: 7-5-010:003

After reviewing your variance application and revised site plan-parking summary, the Planning Director certifies the approval of Variance-VAR 07-058 subject to variance conditions. The variance is from minimum 901 off-street parking spaces calculated for current and proposed buildings and uses for University of the Nations-Phase I and Phase II according to data cited on site plan dated "01/05/09" and other current information provided by the applicant. The variance permits construction of minimum 555 new off-street parking spaces to be provided upon subject TMK property in lieu of minimum 901 stalls required for buildings and uses permitted within Phase I and Phase II calculated under Plan Approval of the Zoning Code by the Planning Department (Kona). The variance is from Chapter 25, Zoning, Article 4, Division 5, Off-Street Parking and Loading, required pursuant to Section 25-4-50 and/or Section 25-4-51, Required number of parking spaces, (a), (20)(21).

BACKGROUND AND FINDINGS

1. **Location.** The referenced TMK property, containing approximately 40.342 acres, portion of Grant 1744 and portion of Land Court Application 1666, and situated within Puaa 2nd. and 3rd., North Kona, Hawaii. The referenced TMK property is within the Kailua Village Special District (KVSD).

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The property is zoned Multiple-Residential (RM-4) by the County and designated Urban or "U" by the Land Use Commission (LUC). The project is located within the Kailua Village Special District (KVSD).

2. **Variance Application-Site Plan**. The applicant submitted the variance application, attachments, and filing fee on July 25, 2008. The original and revised variance application's site plan map are drawn to scale and prepared by licensed professional engineer. The revised variance site plan map, dated March 7, 2008, includes parking information or summary of parking requirements for buildings and uses within Phase I (1982-present) and parking information for proposed buildings and uses within Phase II.

The applicant's background information dated July 25, 2007 states in part:

"The reasons for a parking variance are the same as listed in the previously approved variance request (V82-35) which is attached. Twenty five years of experience has proved that the unusual circumstances that apply to this campus have remained accurate. The existing parking has been consistently underutilized due to the pedestrian nature of the student population. Even though the campus provides housing for up to 500 students at any given time, only 4 students currently hold parking permits. Nearly all the students come from international locations or the mainland and the typical student stays for three months and then travels to another international location for field training. All students are required to live on the campus which provides their housing, classroom and dining needs. The campus offer (sic) regularly scheduled trips to points of interest outside the campus such as shopping or recreational activities by their fleet of vans. For these reasons nearly all the parking demands are made by faculty, staff and occasional community event."

Note: The applicant submitted a current variance site plan map or preliminary campus master plan and dated "01/05/09" including revised parking data or summary of off-street parking space requirements. The applicant is requesting variance from minimum off-street parking spaces calculated for the buildings and uses identified on the site plan map submitted circa January 20, 2009. The applicant is not requesting variance from minimum off-street accessible (ADA) stalls required for buildings and uses within Phase I or Phase II and/or minimum off-street parking spaces required for or reserved for apartment units reserved for faculty or specifically identified with Phase II on the preliminary master plan. In addition, the variance request does not address the location or position of fencing, and landscaping, etc. along or straddling common boundary lines.

3. **County Building Records:**

Hawaii County Real Property Tax Office building records show 29-Building Permits and numerous Electrical Permits, and Mechanical or Plumbing Permits issued to subject TMK property between 1965 to 2007. The campus buildings within Phase I and related campus improvements e.g. off-street parking stalls including ADA stalls, and landscaping features for the uses have been constructed according to County permits.

4. **Agency Comments and Requirements-VAR 07-058:**

- a. The State Department of Health (DOH) memorandum is dated October 4, 2007. Refer to State-DOH memorandum in variance file.
- b. The County of Hawaii-Hawaii Fire Department memorandum dated October 19, 2007 states:

“We have no comments to offer at this time in reference to the above mentioned Variance application request.”

5. **Notice to Surrounding Property Owners.** The applicant submitted copy of notice(s) and proof of mailing notices to the Planning Department. According to the submittals, the applicant mailed notices on August 3, 2007 and November 28, 2007, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on October 9, 2007.

6. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written comments or objections from surrounding property owners or the general public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant is requesting variance from the minimum number of parking spaces required Zoning Code for new buildings and uses identified within Phase I and II on a recent variance site plan maps. The variance application's site plan maps denote the location of existing and proposed campus buildings within Phase I and Phase II, driveways, and existing and proposed off-street parking spaces, pursuant to later revised site plan map dated "01/05/09" and parking calculation summary. The Planning Department (Kona) calculated determined 901 stalls are required for the proposed buildings and uses identified on current plan for Phase I and Phase II

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according to the parking summary notes. Accordingly, the applicant is requesting variance to provide or construct minimum 555 to 600 individual paved off-street parking stalls throughout the campus or Phase I and Phase II; and, these stalls will be provided in accordance with Plan Approval review of buildings or uses within the respective phases and meet Final Plan Approval conditions. The applicant shall provide and assign stalls including ADA spaces for apartment buildings meeting with the Zoning Code at the time of Plan Approval, e.g. any units rented or owned by faculty within "1" (24 Units) and "2" (32 Units) shall meet Final Plan Approval Conditions prior to issuance of occupancy or review of campus building phase improvements and uses under Plan Approval of the Zoning Code.

To date, it appears that the campus buildings within Phase I and subsequent campus building improvements within Phase I have been constructed according to building permits and other associated construction permits issued by the County and previous parking variance granted by the Planning Director in the circa 1982.

ALTERNATIVES

Alternatives available regarding the minimum off-street parking spaces for further campus buildings and uses within Phase I and Phase II include the following actions:

1. Provide minimum off-street parking stalls upon the project site for the proposed new campus buildings or provide minimum off-street parking spaces for new campus buildings and uses in accordance with the Zoning Code and current Master Plan submittal.
2. Enter into an agreement to construct or utilize any available or surplus off-street stalls constructed upon appropriately zoned property, consolidation of the current TMK with abutting appropriately zoned property to increase property size to accommodate parking spaces, etc.

INTENT AND PURPOSE

Section 25-4-50 of the Zoning Code or "Off-street parking and loading: purpose" states:

- (a) Parking and loading standards are intended to minimize street congestion and traffic hazards, and to provide safe and convenient access to residences, businesses, public services and places of public assembly.
- (b) Off-street parking and loading spaces shall be provided in such number, at such location and with such improvements as required as set forth in this division."

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The Planning Director in 1982 approved a variance from off-street parking for the campus or the "Pacific and Asian Christian University" renamed the "University of Nations". The variance dated November 18, 1982 (V82-35) for PACU campus or project (constructed in phases) states in part:

"The whole basis of the campus design is focused on a pedestrian and on-campus population. The Zoning Code parking assessment process, if followed, for this type of pedestrian oriented campus development would be hindering the minimization of the vehicle's impact in the village. As such, the imposition of the Zoning Code's method of evaluating and assessing the minimum parking requirements for this type of development are considered to be unreasonable and contrary to the intent and purpose of the design concept of the Kailua Village Design Plan.

Additionally, the imposition of the Zoning Code's minimum parking requirements for this university, acknowledging the pedestrian, transit and vehicle ownership policies of the university is considered to be an unreasonable alternative for the reasons as described."

The applicant is seeking variance for Phase I and Phase II or current master plan for the UON campus upon the subject TMK property. The applicant will provide the minimum ADA parking spaces and necessary parking spaces for faculty apartment housing in accordance with Plan Approval.

The applicant's variance application was acknowledged by letter dated September 27, 2007 and additional time to consider previous background information and earlier variances from parking for the campus and time to evaluate the current variance site plan map including parking data from the proposed buildings and uses was necessary. The applicant granted the Planning Director an extension of time to complete the variance background report and render a decision on the subject variance to December 4, 2009.

Based on the findings in 1982 and continuation of the campus development, the current 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.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

This variance application is approved subject to the following variance conditions:

1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
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.
3. The approval of this variance permits the proposed campus building and associated site improvements to be constructed in accordance to variance site plan maps and parking calculation summary calculated by the Planning Department. The applicant-UOTN shall apply and secure Final Plan Approval for buildings and uses identified on site plan map dated January 5, 2009. Permitted buildings and uses and any associated parking or site improvements within Phase I and Phase II shall be constructed in accordance with variance from off-street parking requirements and Final Plan Approval conditions.

The minimum off-street parking spaces for faculty apartments in area "1" and "2" shall comply with minimum Zoning Code requirements and constructed in accordance with Final Plan Approval and following:

- a. The Planning Director may increase the required number of parking spaces for any use during plan approval if the director reviews the proposed use and its impact to the immediate area and finds that the increase will further the public safety, convenience and welfare.
 - b. The Planning Director retains jurisdiction to impose additional parking in the event the uses and need for off-street parking are not as requested in this application. If there is any doubt as to the requirements for off-street parking for any use not specifically mentioned or for any other reason, the director shall determine the required number of parking spaces for such use.
4. Future or new building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

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

Sincerely,



BJ LEITHEAD TODD
Planning Director

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xc: Real Property Tax Office-(Kona)
Planning Department-Kona