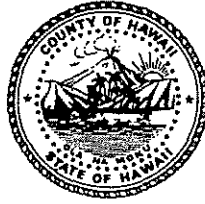


William P. Kenoi
Mayor



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

October 18, 2010

Mr. Gregory R. Mooers
Mooers Enterprises, LLC
Post Office Box 1101
Kamuela, Hawai'i 96743

Dear Mr. Mooers:

SUBJECT: **VARIANCE: VAR 10-021**
Applicant: MOOERS ENTERPRISES, LLC
Owner: ROMAN CATHOLIC CHURCH OF HAWAII
Request: Variance from Chapter 25, Zoning,
Height Limit
Tax Map Key: 7-5-008:006

After reviewing your submitted variance application and information, the Planning Director certifies the **approval** of VARIANCE-VAR 10-021 subject to variance conditions. The variance allows proposed Saint Michael the Archangel Church Bell Tower and Cross to be permitted upon subject property or project site off of Ali'i Drive to be constructed to maximum 73 feet building height in lieu of the property's maximum 45 feet height limit. The variance is from Chapter 25, Zoning, Article 5, Division 1, Section 25-5-4, Height Limit.

BACKGROUND AND FINDINGS

1. **Location.** The subject property (TMK: 7-5-008:006) contains approximately 3.2 acres and is located on the east (mauka) side of Ali'i Drive. The property is zoned Resort-Hotel -7,500 square feet (V-7.5) by the County and designated Urban or "U" by the Land Use Commission (LUC).
2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on July 7, 2010. The variance application's site plan map and other drawings are drawn to scale and prepared by the Lively Architects. According to the exterior elevation drawings, the proposed "Saint Michael the Archangel Church's Bell

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Tower and Cross” will be constructed to a building height of 73 feet.

3. **Variance Application (VAR 10-021)-Agency Comments and Requirements:**
 - a. The State of Hawai‘i-Department of Health (DOH) memorandum dated July 30, 2010 (memorandum in Variance file).
 - b. The Department of Public Works (DPW) memorandum dated August 17, 2010 (memorandum in Variance file).
4. **Notice to Surrounding Property Owners.** The applicant submitted copy of notices sent to surrounding property owners including affidavits stating notices were sent or mailed to surrounding property owners by USPO. According to these submittals, the first and second notice(s) were mailed by the applicant to a list of surrounding property owners on July 31, 2010 and August 3, 2010, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on August 5, 2010.
5. **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 proposed Saint Michael the Archangel Church facility will replace the original church, which was recently demolished after sustaining significant structural damage during the 2006 earthquake.

The original church was constructed circa 1850, approximately 160 years ago. The new church is designed to maintain that style and proportion, utilizing many materials from the original church and maintaining the color palate.

Given the location of the project site, which is located within a 3.19 acre parcel, the height of the proposed church’s bell tower and cross are appropriate to the site and other large buildings within the subject neighborhood. It is felt that the proposed church, bell tower and cross requiring additional building height will not be out of character with other buildings within the mixed use visitor-related neighborhood.

The design of the church, including the proposed height of the bell tower and cross, was reviewed by the Kailua Village Design Commission and received a favorable recommendation

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(copy of approval letter filed in TMK file).

ALTERNATIVES

The applicant has cited that "The new church could be designed to comply with the height limit of 55-feet. This would result in a structure completely different in design and function from the original church. Other design alternatives would render the church non-proportional and not serve the parishioners and owners in a manner expected. We believe the most viable alternative is to allow the structure with the 18-foot height variance for the bell tower and cross."

The requirement for a 55-foot height limit for the bell tower and cross would be creating excessive demands on the petitioner when a more reasonable alternative is available.

INTENT AND PURPOSE

The intent and purpose to limit building height are to assure that adequate air circulation and exposure to light is available between buildings and boundary/property lines.

The height limit variance for the bell tower and cross is a small portion of the overall development of the property. The church, which is the major portion of the development, is under the required height limit. Therefore, it will not compromise the overall open space, air, and light flow between the structures and property lines sought by the zoning height regulations.

Based on the foregoing findings, the approval of this application for variance 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 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 request is **approved** subject to the following 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 Hawai'i 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/

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- 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. Saint Michael the Archangel Church shall submit an Application for Plan Approval and required submittals to the County of Hawai'i Planning Department for review and secure Final Plan Approval (FPA) before submitting detailed building plans and specification for a County Building Permit.
 4. Building improvements on the subject property are subject to State law and County ordinances and regulation pertaining to building construction and building occupancy. The proposed Saint Michael the Archangel Church shall be constructed in accordance with approved building plans and building specifications.
 5. Applicant shall comply with all conditions of the Special Management Area Use Permit (SMA-10-000044).

Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare Variance-VAR 10-021 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

LHN:kwr

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xc: Real Property Tax Office-Kona (Ltr. Only)
Planning Commission Division (SMA-10-000044)