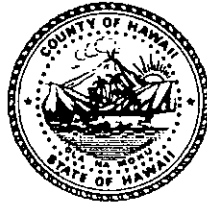


William P. Kenoi  
Mayor



BJ Leithead Todd  
Director

Margaret K. Masunaga  
Deputy

West Hawai'i Office  
74-5044 Ane Keohokalole Hwy  
Kailua-Kona, Hawai'i 96740  
Phone (808) 323-4770  
Fax (808) 327-3563

**County of Hawai'i**  
PLANNING DEPARTMENT

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

February 15, 2013

Mr. Steven Gajadhar  
K&G ARCHITECTS  
67-1159 Mamalahoa Highway  
Kamuela, Hawai'i 96743

Dear Mr. Gajadhar:

**SUBJECT: VARIANCE APPLICATION -VAR-12-000109**  
**Applicant: K&G ARCHITECTS on behalf of**  
**THE MARINE MAMMAL CENTER**  
**Owner: STATE OF HAWAII**  
**Lessee: NATURAL ENERGY LAB OF HAWAII AUTHORITY**  
**Request: Variance from Chapter 25, Zoning Standards and**  
**Improvements to Off Street Parking Spaces**  
**Tax Map Key: 7-3-043:042 (portion)**

After reviewing your submitted variance application and information, the Planning Director certifies the **approval** of VARIANCE-VAR 12-000109 subject to variance conditions. The variance will allow for compacted gravel pavement in lieu of asphalt pavement or concrete for the access road and parking lot (excluding ADA parking spaces) for the proposed Monk Seal Facility to be operated by the Marine Mammal Center located on the campus of Natural Energy Lab of Hawaii Authority (NELHA). The variance is from Chapter 25, Zoning, Article 4, Division 5, Section 25-4-54(c), Standards and improvements to off-street parking spaces.

The intent and purpose of parking and loading standards is to minimize street congestion and traffic hazards, and to provide safe and convenient access to residences, businesses, public services and places of public assembly.

**BACKGROUND**

1. **Request.** The applicant requests a variance from Chapter 25, Zoning, Article 4, Division 5, Section 25-4-54(c), Standards and improvements to off-street parking spaces, which requires that parking spaces in the V, CN, CG, CV, MCX, ML, MG, RG, RM and RCX districts be paved.

The applicant proposes to pave one ADA parking stall and access aisle per ADA requirements; the access road and all other parking spaces will be paved with compacted gravel similar to existing roads and parking areas at NELHA.

The applicant's variance application was acknowledged by letter dated November 15, 2012 and additional time to review the application was required. The applicant granted the Planning Department and Planning Director an extension of time for decision on the variance application to February 15, 2013.

2. **Location.** The subject application area consists of 2.604 acres within a 166.278-acre parcel and is located on the grounds of the Natural Energy Lab of Hawaii Authority. The subject property address is 73-970 Makako Bay Drive.
3. **State Land Use:** Urban and Conservation
4. **County Zoning District:** General Industrial – 1 Acre (MG-1a).
5. **County General Plan Designation:** Industrial and Open.
6. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments and filing fee on November 8, 2012. The variance application's site plan and other drawings are drawn to scale and were prepared by K&G Architects.
7. **Agency Comments and Requirements (VAR 12-000109):**
  - a. The State of Hawaii-Department of Health (DOH) memorandum dated December 7, 2012 (see attached).
  - b. No comments from the Department of Public Works have been received.
8. **Notice to Surrounding Property Owners.** The applicant filed a transmittal letter with copy of the notices sent to surrounding property owners via USPS. According to USPS certificate of mailing receipts and affixed postal receipts, the first and second notices were mailed on November 13, 2012 and January 11, 2013, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on November 27, 2012.
9. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or the general public were received.

#### ANALYSIS OF GROUNDS FOR VARIANCE

A variance may only be granted if the following is found:

- (a) There are special or unusual circumstances applying to the subject real 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 property; and

- (b) There are no other reasonable alternatives that would resolve the difficulty; and
- (c) The variance is consistent with the general purpose of the district, the intent and purpose of this chapter, and the general plan, and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or to adjoining properties.

### **Special and Unusual Circumstances**

- (a) There are special or unusual circumstances applying to the subject real 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 property.

The applicant submitted a variance application requesting relief from the Zoning Code, Section 25-4-54(c), Standards and improvements to off-street parking spaces, which require all parking spaces in the V, CN, CG, CV, MCX, ML, MG, RD, RM and RCX districts be paved.

The applicant is proposing compacted gravel pavement for the driveway and parking areas (excluding ADA parking spaces) which is consistent with other existing roadways and parking areas within the Natural Energy Lab of Hawaii Authority campus. The required ADA parking stall and access aisle will be paved in compliance with ADA requirements.

The subject neighborhood is Industrial in nature and character. Many other sub-lessees on the campus have not been required to pave parking spaces and driveways with other than compacted gravel. The property is located immediately adjacent to the shoreline, and installation of impermeable pavement may generate a detrimental runoff impact to the coastal environment. Further, requiring the Marine Mammal Center to pave the parking areas with asphalt or concrete would put unfair burden on the development and be of a substantial cost that would be an obstacle to developing the facility, which has not been required of other sub-lessees.

### **Reasonable Alternatives**

- (b) There are no other reasonable alternatives that would resolve the difficulty.

The monk seal facility is operated by the Marine Mammal Center, a non-profit organization solely dependent on private donations. The requirement of paving the driveway, which is approximately 400 feet in length, and parking areas will create additional expense and would be a financial burden that would impose a significant obstacle to completion of the proposed facility.

The first alternative is to take no action and leave the property undeveloped. The Hawaiian monk

seal is a critically endangered species on the verge of extinction; under the no action alternative, endangered Hawaiian monk seals would continue to lack a facility for the systematic, long-term care that regional and national recovery agencies believe is vital to the continued survival of the species.

The second alternative, as proposed by the applicant, is to pave the access roadway and non-ADA parking spaces with compacted gravel, similar to other sub-lessees on the NELHA campus, and to pave the ADA parking stall and access aisle in compliance with ADA requirements.

### **Intent and Purpose**

- (c) The variance is consistent with the general purpose of the district, the intent and purpose of this chapter, and the general plan, and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or to adjoining properties.

The intent and purpose of parking and loading standards are to minimize street congestion and traffic hazards, and to provide safe and convenient access to residences, businesses, public services and places of public assembly. The proposed Monk Seal Facility will be in use only when injured or rescued monk seals are being rehabilitated prior to the release back into the ocean. The facility is not an intensive use facility and will have extremely low levels of traffic, with no heavy trucks or equipment accessing the site. Therefore, the variance request is consistent with the intent and purpose of Chapter 25, Zoning, and will not be materially detrimental to the public's welfare nor cause substantial adverse impact to the area's character and to adjoining properties.

The property is located within the General Industrial (MG) zoning district and is designated Industrial according to the County of Hawai'i General Plan. Both "animal hospitals" and "aquaculture activities and facilities" are listed as permitted uses within the MG district (Section 25-5-152(a)(3) and (6), Hawai'i County Code). The County of Hawai'i General Plan makes specific reference to new endeavors in alternate energy and aquaculture activities at Keahole in the North Kona district, where NELHA is located (Section 14.4.1). Within this industrial area, many entry driveways and parking lots are similarly paved with compacted gravel, and parking spaces paved with asphalt or concrete would be out of character with surrounding facilities.

This office has not received any objections from surrounding property owners or the general public, which is further evidence that the requested variance is consistent with the character and general purpose of the area.

### **FINDINGS**

Based on the above analysis, the applicant's request for variance to allow compact gravel paving in lieu of asphalt or concrete for the access road and parking areas (excluding ADA parking spaces) for the proposed Monk Seal Facility at NELHA meets the three criteria for approving a variance.

Mr. Steven Gajadhar  
K&G ARCHITECTS  
Page 5  
February 15, 2013

**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/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 Marine Mammal Center 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 before submitting detailed building plans and specification for a County Building Permit.

Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare Variance-VAR 12-000109 null and void.

Sincerely,



BJ LEITHEAD TODD  
Planning Director

LHN:nci  
P:\Admin Permits Division\Variances From CoH02\Zone7\VAR12-000109\TMK7-3-043-042ParkingNELHARvised.doc

Attachment

xc: Planning Department (Kona)

NEIL ABERCROMBIE  
GOVERNOR

PLANNING DEPARTMENT  
COUNTY OF HAWAII

2012 DEC 10 AM 9:52



LORETTA J. FUDDY, A.C.S.W., M.P.H.  
Director of Health

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. BOX 916  
HILO, HAWAII 96721-0916

MEMORANDUM

DATE: December 7, 2012

TO: Bobby Jean Leithead Todd  
Planning Director, County of Hawaii

FROM: Newton Inouye  
District Environmental Health Program Chief

SUBJECT: VARIANCE APPLICATION-VAR 12-000109  
Applicant: K & G ARCHITECTS  
Owner: NATURAL ENERGY LAB OF HAWAII AUTHORITY  
Request: Variance from Chapter 25, Zoning, Article 4, Division 5,  
Section 25-5-54 Standards and Improvements to Off-  
Street Parking Spaces  
Tax Map Key: 7-3-043:042 (portion)

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

WORD: VAR-12-000109

082597