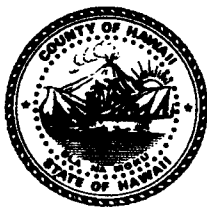


William P. Kenoi
Mayor



Duane Kanuha
Director

Joaquin Gamiao-Kunkel
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August 22, 2016

Rex C. Kuhlmann, Consultant
P. O. Box 787
Mountain View, HI 96771

SUBJECT: VARIANCE DECISION - VAR 16-000379
Applicant: REX C. KUHLMANN, CONSULTANT
Owners: PRIEST (MONK) OF BANG SAN HO TEMPLE
**Request: Variance from Chapter 25, Zoning, Article 5, Division 7,
Section 25-5-73, Height Limit**
Tax Map Key: 1-8-007:036; Portion of Lot 220

The Planning Director certifies the **approval** of Variance No. VAR-16-000379, subject to variance conditions. The variance allows a Shrine/Statue (Monument) to be built, having an overall maximum height of 108 feet measured from adjoining finished grade to head/crown in lieu of the 45 foot maximum height limit permitted for "all other structures" in the Agricultural Zoning District pursuant to the applicant's variance site plan map drawing. The variance request is from the maximum height requirements of the Hawai'i County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-73, Height limit.

BACKGROUND AND FINDINGS

1. **Location.** The subject property being Lot 220, contains approximately 29.56 acres and is situated in 'Ōla'a Reservation Lots, Kea'au, Puna, Hawai'i.
2. **County Zoning.** Agricultural – 5 acres (A-5a).
3. **State Land Use Designation.** Agricultural.
4. **Setback Requirements.** 30-foot front; 20-foot for sides; Section 25-4-42, Corner building sites: (a) on any corner building site, the interior lines shall be side lot lines and all rear yard regulations shall be inapplicable.

5. **Height Requirements. Section 25-5-73 Height Limit.** The height limit in the agricultural district shall be thirty-five for any residential structure, including any single-family dwelling or farm dwelling, and forty-five feet for all other structures. The director may, however, permit by plan approval, any nonresidential agricultural structures to be constructed to a height of one hundred, if the director determines that the additional height above the forty-five foot height limit is necessary. The variance application is submitted to cover the additional eight feet height above one-hundred feet.
6. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on June 20, 2016. The variance application's site plan, prepared by Rex C. Kuhlmann, Consultant denotes the location and elevation of the proposed Shrine/Statue to be constructed onto the subject property. **(See Exhibit A & B)**
7. **County Building Records.** None – Vacant Land.
8. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated July 13, 2016, states:
"The Health Department found no environmental health concerns with regulatory implications in the submittals."
 - b. No comments received from the Department of Public Works Building Division.
9. **Public Notice.** 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 June 23, 2016 and July 15, 2016, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on August 4, 2016.
10. **Comments from Surrounding Property Owners or Public.** None.

GROUNDS FOR APPROVING VARIANCE

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 Variance application meets criterion (a) for the following reasons:

The subject property is zoned Agricultural – 5 acres (A-5a). The height limit in the agricultural

district shall be thirty-five for any residential structure, including any single-family dwelling or farm dwelling, and forty-five feet for all other structures.

The elevation plan shows that the proposed shrine/statue will have a height of 108 feet, which exceeds the maximum allowable 45-foot height limit for accessory structures.

The shrine/statue is part of a proposed development for a Temple and Religious Retreat, which is permitted under Special Permit 919.

According to the applicant, the number 108 has special significance in the Buddhist Religion. Examples are the malas and prayer beads, which are used for mantra repetition and consists of 108 beads. Also, many monuments throughout Asia reflect the importance of the number 108 through their size and height. The number 108 is linked to the 84,000 delusions, which is why Sok Ga Mo Ni Buddha created the 84,000 sutras to save the human being.

Therefore, based on the information stated above, special and unusual circumstances do exist on the subject property which would interfere with the overall functionality of the school and its curriculum.

Alternatives

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

The Variance application meets criterion (b) for the following reasons:

The shrine/statue could be designed to comply with the height limit of 45 feet. However, the applicants would not be able to build the shrine/statue to a height of 108 feet, for which the number 108 has historical and significant meaning to the Buddhist Religion.

As mentioned earlier, the number 108 has special significance. The malas and prayer beads used for mantra repetition are made up of 108 beads. Throughout Asia, monuments further reflect the importance on the number 108 through their size and height.

A no-action alternative or denial of this variance would maintain status quo and not provide the applicants to build a shrine/statue for private worship to a height that has historical and significant meaning within the Buddhist Religion.

There are no reasonable alternatives to resolve the height issue.

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 Variance application meets criterion (c) for the following reasons:

The intent and purpose of requiring building setbacks, for a lot, are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines.

The shrine/statue is part of a proposed development for a Temple and Religious Retreat, which is permitted under Special Permit 919 and adjacent to the subject property. It is felt that the proposed shrine/statue design and size requiring additional building height will not be out of character with the other core temple buildings. Therefore, it will not compromise the overall open space, air, and light flow between the structure and property lines sought by the zoning height requirements. It should be noted that the surrounding properties are of large acreage and owned by the Bang San Ho Temple.

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

Based on the variance application's site plan, the proposed shrine/statue to be constructed on the subject property (Lot 220), will not meet the maximum height requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

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 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 shrine/statue shall comply with the Hawai'i County Code, Chapter 25, (Zoning) and be subject to State law and County ordinances and regulations pertaining to building construction occupancy.
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.

Rex C. Kuhlmann, Consultant

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Should any of the foregoing variance conditions not be complied with, the Planning Director may initiate proceedings to null and void Variance-16-000379.

Sincerely,

A handwritten signature in black ink, appearing to read 'Duane Kanuha', written in a cursive style.

DUANE KANUHA
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone1\VAR16-00079TMK1-8-007-036Bang San Ho Temple.doc.rtf

xc: Real Property Tax Office (Hilo)
Gilbert Bailado, GIS