

Stephen K. Yamashiro
Mayor



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County of Hawaii

PLANNING DEPARTMENT

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CERTIFIED MAIL
P 417 370 204

January 21, 1999

Steven S.C. Lim, Esq.
Carlsmith Ball
121 Waianuenue Avenue
Hilo, Hawaii 96721-0686

Dear Mr. Lim:

PLANNED UNIT DEVELOPMENT APPLICATION WH(PUD98-002)
Planned Unit Development No. 60
Applicant: Brian Anderson
Owners: Patricia G. Greenwell, Trustee and Eugene K. Gregory
Request: Variance from the Minimum Side Yard and Open Space Setbacks
Between Existing Two-Story Structures
Tax Map Key: 7-5-009: 25 and 27

After reviewing your application and the submittal, the Planning Director certifies the approval of the Planned Unit Development (PUD) application to allow the construction of a 204 square foot stairway leading to an above-grade open deck and seating area of approximately 882 square feet and an above grade ADA approved ramp of approximately 85 square feet which will connect the two existing commercial buildings and cross over the common side property line between parcels 25 and 27, resulting in a request for a variance from the minimum side yard requirements of Ordinance No. 96-160 (Zoning Code), Article 5, Division 9, Section 25-5-106.

The project site is situated on the mauka side of Alii Drive directly mauka of Oneo Bay in Kailua Village, Auhuakea'e 1st and 2nd, North Kona, Hawaii, TMK: 7-5-009: 25 and 27.

FINDINGS:

1. In accordance with Article 5, Division 1, Section 25-5-3 of the Zoning Code, the proposed improvements are part of a commercial use permitted by the existing Resort

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zoning of the property. In accordance with requirements of Article 6, Division 1, Section 25-6-6 (Actions by director on P.U.D. permit applications).

2. **The construction on the project shall begin within a reasonable period of time from the date of full approval and shall be completed within a reasonable period of time.**

The proposed project timetable for the Planned Unit development will be construction upon issuance of required permits. The construction timetable is approximately one month.

3. **The proposed development substantially conforms to the General Plan.**

The following General Plan elements goals, policies and standards of action are in conformance with the proposed Planned Unit Development.

ECONOMIC

GOALS

- o Economic development and improvement shall be in balance with the physical and social environments of the island of Hawaii.
- o The County of Hawaii shall strive for diversity and stability in its economic system.
- o The County shall provide an economic environment which allows new, expanded, or improved economic opportunities that are compatible with the County's natural and social environment.

POLICIES

- o The County of Hawaii shall strive for an economic climate which provides its residents an opportunity for choice of occupation.
- o The County of Hawaii shall encourage the development of a visitor industry which is consistent with the social, physical, and economic goals of the residents of the County.

LAND USE ELEMENT

GOALS

- o Designate and allocate land use in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the County.

POLICIES

- o Promote and encourage the rehabilitation and use of urban and rural areas which are serviced by basic community facilities and utilities. The County shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

LAND USE ELEMENT (COMMERCIAL)

GOALS

- o Provide for commercial developments that maximize convenience to users.
- o Provide commercial developments that complement the overall pattern of transportation and land usage within the island's regions, communities, and neighborhoods.

POLICIES

- o In an effort to assist existing commercial developments, urban renewal rehabilitation, and/or redevelopment programs shall be undertaken in cooperation with communities, businesses and governmental agencies. The key to the success of these kinds of programs is active and sustained participation from communities and businesses.
- o Commercial facilities shall be developed in areas adequately served by necessary services, such as water, utilities, sewers, and transportation systems. Should such services not be available, the development of more intensive uses should be in concert with a localized program of public and private capital improvements to meet the expected increased needs.
- o Distribution of commercial areas shall be such as to best meet the demands of neighborhood, community and regional needs.
- o Existing strip development shall be converted to more appropriate uses when and where it is feasible.
- o The development of commercial facilities should be designed to fit into the locale with minimal intrusion while providing the desired services. Appropriate infrastructure and design concerns shall be incorporated into the review of such developments.

- o Applicable ordinances shall be reviewed and amended as necessary to include considerations for urban design, aesthetic quality and the protection of amenities in adjacent areas through landscaping, open space and buffer areas.
- o Commercial development shall be located in areas adequately served by transportation, utilities, and other amenities. Commercial developments shall provide for adequate internal circulation amongst commercial facilities in the area.
- o Off-street parking and loading facilities shall be provided.
- o Commercial development shall maintain or improve the quality of the present environment through the consideration of visual, access, landscaping, and other design elements in their development.
- o Preference shall be given to commercial lands with a reasonably level topography.

LAND USE ELEMENT (RESORT)

GOALS

- o Maintain an orderly development of the visitor industry.
- o Provide for resort development that maximizes conveniences to its users and optimizes the benefits derived by the residents of the County.
- o Ensure that resort developments maintain the social, economic, and physical environments of Hawaii and its people.

POLICIES

- o Promote and encourage the rehabilitation and the optimum utilization of resort areas which are presently serviced by basic facilities and utilities.
- o The County shall encourage the visitor industry to provide resort facilities which offer an educational experience of Hawaii as well as recreational activities.

The proposed Planned Unit Development will implement the above goals and policies of the applicable element of the General Plan, in particular with the above cited elements.

4. **Any commercial development shall not create traffic congestion which exceeds that which would have been produced under conventional development patterns,**

practices and standards in the district or interfere with any projected public improvements, shall provide for proper entrances and exits along with proper provisions for internal traffic and parking, and be an attractive center which does not adversely impact upon adjacent and surrounding existing or prospective developments.

- a. The applicant's "proposed project involves two existing two-story structures located on the southern corner of the Marketplace, mauka and along Alii Dive. The buildings are located on two separate parcels of land, which are owned by two separate landowners. Patricia G. Greenwell, Trustee of the Patricia G. Greenwell Trust, is the landowner of tax map key parcel 7-5-009:25 and Eugene K. Gregory, is the landowner of tax map key parcel 7-5-009:27.
- b. "The applicant is proposing to construct a 204 square feet stairway which leads to an above-grade unenclosed open deck and seating area of approximately 882 square feet, and an above-grade ADA approved ramp of approximately 85 square feet, which will connect the two existing two-story buildings. The deck and ramp will be approximately 15-feet above-grade."
- c. The proposed improvements will not interfere with any projected public improvements nor create additional traffic congestion, since the entry and exit of the Marketplace will continue from Kuakini Highway and Alii Drive and adequate on-site parking is available. Nor will the proposed improvements adversely impact adjacent or surrounding existing or prospective development since the improvements encroach upon the internal lot lines of the Marketplace.

VARIANCES REQUESTED FOR PLANNED UNIT DEVELOPMENT

5. The petitioner has requested the following variances and states in part the following:

Variance from Minimum Side Yard and Open Space- Section 25-5-96(2) and Section 25-4-44(a)

- a. The variance request is to have no side yard setback and open space and have the 204 square feet stairway and above grade ADA approved ramp of approximately 85 feet straddle the side property line between TMK: 7-5-009:25 and TMK: 7-5-009:27. By connecting the both existing buildings with the ADA ramp, the buildings will be considered as one and the 15' distance between building requirement under Section 25-4-47 does not govern. The properties are owned in fee or leased by separate owners and consolidation into one is not feasible. Encroachment of the interior property lines should be

allowed as the Marketplace is managed as one entity by the applicant's management company, and due to the siting of the buildings and parking layout and zoning requirements, these separate, but contiguous parcels designed as one project. In addition, the proposed improvements conform with the intent of the Planned Unit Development, which encourages comprehensive site planning that accommodates the design of development to the land, by allowing diversification in the relationships of various uses, structures, open spaces and yards in planned building groups, such as the Marketplace. As a result, although the Marketplace consists of separate parcels, due to the building and parking layout and zoning requirements these separate parcels should not be considered as one entity and consequently encroachment on interior property lines should be allowed. The applicant has stated that: "The proposed improvements will not interfere with any projected public improvements, nor create additional traffic congestion which would be produced under regular development patterns, practices and standards in the area, since the entry and exist points to the Marketplace will continue to be from Kuakini Highway and Alii Drive, and adequate on-site parking is available. In addition, the proposed improvements will not adversely impact upon adjacent surrounding existing or prospective development since it does not compromise the character and size with other Properties and surrounding area, is consistent in character and size with other resort improvements of Kailua Village, and does not substantially impact upon the scenic vistas and view planes of surrounding areas. Rather, the proposed improvements will enhance the quality of scenic and open space resources along the Kona Coast and view opportunities of Oneo Bay."

6. **The development of a harmonious, integrated whole justifies exceptions, if required, to the normal requirements of the Zoning and Subdivision Codes, and the contemplated arrangements or use make it desirable to apply regulations and requirements differing from those ordinarily applicable under the district regulations.**

The proposed PUD will foster a design objective that will complement the existing Marketplace. The improvements will enhance the Marketplace's image and services. The landownership and development of the shopping center over time and on different properties and with off-street parking on adjacent properties in this case are unique as, the properties were not able to be consolidated. The improvements will serve to enhance the Marketplace and the surrounding community, providing a connecting complex for the comfort and convenience of the community and visitors. The requested variances do not adversely affect the surrounding areas and the result justifies the exceptions do the normal requirements ordinarily applicable under the present Zoning Code. The proposed Planned Unit Development is a development of a harmonious, integrated whole which

justifies exceptions to the normal requirements of this chapter, as the contemplated arrangements and the Marketplace use make it desirable to apply regulations and requirements differing from those ordinarily applicable under the district regulations.

7. **In accordance with Section 25-6-6 (Actions by director on P.U.D. permit applications), the Planning Director may approve an application for a P.U. D. subject to certain conditions. Any conditions imposed by the Planning Director upon approval of an application for P.U.D. shall bear a reasonable relationship to the P.U.D. permit issued, and to the approved uses, plans, and variances of district standards; provided, however, that no improvements or alterations off-site of the project shall be required as a condition of a P.U.D. permit. The conditions may include, but not be limited to the following: (1) Commencement and completion time frame for the project; (2) Boundary changes approved in the project; (3) Uses that are prohibited or limited; (4) Specifications for the minimum development standards; (5) Specifications for street improvement and dedication; (6) Utilities to be furnished; and (7) The extent and limitations upon the variances permitted. In accordance with Section 25-6-13 (Effect of P.U.D. permit on other zoning provisions), any P.U.D. permit issued shall be subject to all of the conditions imposed in the permit and shall be exempted from other provisions of this chapter only to the extent specified in the permit.**

Based on the above, the following list of variances are approved for this Planned Unit Development:

ZONING CODE:

1. A variance from Chapter 25, Section 25-5-96(2) (Minimum Yards) and Section 25-4-44(a) (Permitted projections into yards and open spaces) to allow a zero side yard and open space for the existing building improvements to straddle the property line between parcels 25 and 27.

Based on the above findings, the Planning Director has approved the Planned Unit Development Application subject to the following conditions:

- A. The applicant, its successors or assigns be responsible for complying with all of the stated conditions of approval.
- B. The plans for proposed development shall be submitted to the Planning Director within five (5) years from the effective date of the Planned Unit Development

(PUD). The plans shall identify structures and other improvements associated with the proposed use. The design of the structure shall be submitted for Final Plan Approval.

- C. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, paving, or walks be encountered, work in the immediate area shall cease and the DLNR-SHPD shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-SHPD when it finds that sufficient mitigative measures have been taken.
- D. The applicant shall confer with the Department of Public Works for the construction of the proposed improvements.
- E. Comply with all applicable laws, rules, regulations and requirements of affected agencies.
- F. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the Planned Unit Development (PUD) permit. The report shall include, but not be limited to, the status of the development and to what extent the conditions of approval are being complied with. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.
- G. An initial extension of time for the performance of conditions within the ordinance may be granted by the Planning Director upon the following circumstances:
 - 1. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicants, successors or assigns, and that are not the result of their fault or negligence.
 - 2. Granting of the time extension would not be contrary to the general plan or zoning code.
 - 3. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.

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4. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

Should any of the conditions not be met or substantially complied with in a timely fashion, the Director shall initiate the nullification of the Planned Unit Development Permit.

Sincerely,



VIRGINIA GOLDSTEIN

Planning Director

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xc: West Hawaii Office
DPW, Building Division
DPW, Engineering