

Parking Variance: New Legal Paradigm for Bangkok Real Estate Development

Ponn VIRULRAK, Thailand

Key words: Parking Variance, Hotel Development, Building Law, Zoning

SUMMARY

Tourism has been a major economic sector of Thailand since the early 1980's. The growth of industry has not only contributed to the nation's development but has also been responsible for the creation of jobs, income and career paths of many who work in related businesses within the industry. One of the most important businesses that depend on tourism is hotels. Considered one of the favorite choices of businesses for Thai entrepreneurs, the number of hotels in the country has increased along with the soaring popularity of Thailand as a world renowned destination. Along with such growth, the government has to impose certain regulations in order to keep the standard of services high and to protect the country's reputation for tourism which eventually helps maintain the growth of domestic economy. These regulations are continually updated with higher and more stringent requirements. In Thailand today, if one wants to operate a hotel business, they must obtain a hotel business license first. In order to do so, the hotel property that they own has to follow all the requirements. This poses as an obstacle for some hotel owners, especially owners of small businesses, therefore creating the phenomenon of "Outlaw Hotels" which are hotels that operate without license. This phenomenon has become a major problem of the tourism industry. The majority of outlaw hotel owners do not originally intend to act criminally but it is highly unfeasible for them to upgrade their properties to match the stringent regulations required. The toll of the regulations is even more obvious for hotel owners of very small properties with less than 20 rooms. Thai hotel businesses that have become famous and are globally recognized by the very top service minds end up being the businesses which require a large sum of capital to initially invest in the company. This phenomenon, along with the growth of the tourism industry, forces small time entrepreneurs to go underground and operate illegally. One of the most difficult issues for upgrading their standard is the parking requirement for hotel properties. In Thailand, parking requirements are only based on building usage typologies. There is no consideration of parking reduction in any way, even though, in reality, the parking space for hotels that are geared to tourists is hardly utilized. This paper will present the concept of "parking variance," which is a familiar concept in urban planning from the Western world. The concept of regulations that can be negotiated is very new to Thailand. However, if implemented appropriately, it has the potential to be a great tool that can be beneficial to both hotel developers and the national economy.

SUMMARY (Thai Language)

การท่องเที่ยวเป็นอุตสาหกรรมที่มีความสำคัญต่อเศรษฐกิจของประเทศไทยมาตั้งแต่ยุคทศวรรษ 1980 ความเติบโตของอุตสาหกรรมท่องเที่ยวไม่เพียงส่งเสริมความก้าวหน้าของชาติแต่ยังสร้างงาน สร้างรายได้ และสร้างวิชาชีพขึ้นมาให้กับประชาชนนับแสนคนที่ทำงานในอุตสาหกรรมดังกล่าว

ธุรกิจหนึ่งที่มีความสำคัญยิ่งภายในอุตสาหกรรมการท่องเที่ยวคือธุรกิจโรงแรม ด้วยความที่เป็นหนึ่งในธุรกิจที่เป็นที่นิยมมากของคนไทย

จำนวนโรงแรมในประเทศไทยได้มีการเพิ่มขึ้นอย่างต่อเนื่องไปพร้อมๆกับชื่อเสียงของประเทศไทยที่โด่งดังมากขึ้นในฐานะเมืองท่องเที่ยวอันดับต้นๆของโลก ในขณะเดียวกันรัฐบาลก็ได้มีการออกกฎหมาย เพื่อให้การบริการมีมาตรฐานที่สูง และเป็นการปกป้องชื่อเสียงทางการท่องเที่ยว โดยเป็นการรักษาความเติบโตของเศรษฐกิจในภาพรวม

ซึ่งกฎหมายหลายฉบับได้ถูกนำมาบังคับใช้และทำให้เกิดความเข้่างวุ่นมากขึ้นอย่างต่อเนื่อง ในปัจจุบันหากผู้ใดต้องการเปิดโรงแรม ต้องทำการสมัครเพื่อขอใบอนุญาตประกอบธุรกิจโรงแรม

การได้มาซึ่งใบอนุญาตดังกล่าวมีข้อกำหนดมากมาย ซึ่งกลายมาเป็นอุปสรรคสำหรับ เจ้าของโรงแรมหลายคน โดยเฉพาะเจ้าของโรงแรมที่เป็นขนาดเล็ก ซึ่งทั้งหมดนี้ทำให้เกิดปรากฏการณ์ในวงการที่เรียกว่า “โรงแรมเถื่อน” ซึ่งหมายถึงโรงแรมที่เปิดให้บริการโดยที่ไม่มีใบอนุญาต เป็นปัญหาใหญ่ของอุตสาหกรรมท่องเที่ยว

เจ้าของโรงแรมเถื่อนเหล่านี้ ไม่ได้มีเจตนาที่ต้องการจะกระทำผิดกฎหมาย แต่การทำโรงแรมให้ถูกกฎหมายเพื่อให้ได้ใบอนุญาตเป็นสิ่งที่ไม่สามารถกระทำได้เนื่องจากต้องมีการใช้ต้นทุนในการพัฒนาปรับปรุงสภาพแวดล้อมที่สูงจนไม่คุ้มค่ากับการที่จะทำ

ทั้งหมดนี้ทำให้ธุรกิจที่เป็นความใฝ่ฝันของผู้ประกอบการขนาดเล็กในประเทศไทยกลายเป็นธุรกิจที่ต้องใช้เงินทุนมหาศาล ซึ่งเป็นการผลักดันให้เจ้าของโรงแรมขนาดเล็กต้องลงใต้ดิน และทำผิดกฎหมาย

ประเด็นหนึ่งที่เป็นเรื่องที่ยากมากสำหรับเจ้าของโรงแรมที่จะปฏิบัติตามคือเรื่องเกี่ยวกับข้อกำหนดเรื่องจำนวนที่จอดรถในประเทศไทย จำนวนที่จอดรถขึ้นอยู่กับประเภทการใช้งานในอาคารเท่านั้น

โดยที่ไม่มีมีการพิจารณาในเรื่องอื่นๆแม้ว่าในความเป็นจริง

ที่จอดรถสำหรับโรงแรมที่ต้อนรับนักท่องเที่ยวเป็นหลักแทบจะไม่ได้ถูกใช้งานเขียนขึ้นนี้จะนำเสนอแนวคิดเกี่ยวกับ “การขอลดข้อกำหนดเรื่องจำนวนที่จอดรถ”

ซึ่งเป็นแนวคิดทางการผังเมืองที่ได้รับการใช้อย่างต่อเนื่องในโลกตะวันตก

หลักคิดเกี่ยวกับการเจรจาเพื่อขอลดข้อกำหนดทางกฎหมายเป็นเรื่องใหม่มากสำหรับประเทศไทย

แต่หากได้รับการนำไปใช้อย่างเหมาะสม

ก็จะสามารถเป็นเครื่องมือที่สามารถสร้างประโยชน์ให้กับทั้งเจ้าของธุรกิจโรงแรม และเศรษฐกิจของประเทศ

Parking Variance: New Legal Paradigm for Bangkok Hotel Development

Ponn VIRULRAK, Thailand

1. TOURISM INDUSTRY: A SIGNIFICANT CONTRIBUTION TO THAI ECONOMY

- 1.1 Amazing Thailand** – In 1990, the Tourism Authority of Thailand launched the national campaign “Amazing Thailand” with the intention of starting up a tourism industry in addition to strong agricultural and manufacturing capabilities. Twenty years later, Thailand now stands as a major tourist destination in the world. The work force, resources, and intellectual property have been developed to feed the growing industry. In the past decades, the tourism industry was considered one of the major contributions to the national economy. Within the tourism industry, the major type of business that has a significant impact is the hotel industry.
- 1.2 Hotel Industry of Thailand** – Based on the 2007 Survey by the **National Statistics Office**, the hotel industry of Thailand employed 122,000 people. The total accumulated number of guests to Thai hotels is 47.8 million guests, of which 22.5 million are foreigners. The extensive size of the industry is accompanied by support systems such as hotel schools which are many and located in various places around the country. Some even provide a master degree level of education for Hotel Management. The hotel related degree has become one of the most popular degrees. Hence, it draws in high quality students who will eventually become high quality staff.
- 1.3 Nation of Hospitality** – Thai people are world famous for being service minded. There are many awards that have been given to the Service-based Thai Corporations. Thai Airways was voted the number one airline in the world in terms of service quality several times and the Oriental Hotel was also voted one of the best hotels for many years. Due to that unique characteristic of Thai people, there are many local and foreign investors that are confident in investing in building top quality hotel properties in Thailand. This greatly contributed to the growth of the industry. For locals, a hotel business may be considered one of the favorite choices of businesses. Most of the entrepreneurs in Thailand start their life in the biggest service industry of the county, the restaurant industry. They work as a waiter, or as a chef in the kitchen. They learn the craft then they move out to sell food in food stands on the streets. After they save up enough money, they expand their business by renting a space to open a restaurant. In most cases it is a ground floor of a shop house. Eventually, if they are successful, they purchase a building, convert it into several rooms and open a small hotel that provides good food. That was the original path of Thai Hotelier.
- 1.4 Hotel Parliamentary Act** - With the common practice of room and boards, the government of Thailand enacted a law to control the practice of Hotel business since 1935. It was called the “Hotel Parliamentary Act of 1935”. This first hotel law was focused on registering all hotel businesses then the later version focused on licensing the hotel businesses, standards of hotel business practice, hotel service standards, building standards and visitor safety. The latest version of Hotel Act was passed by the House of

Representatives in 2004. This version was the most stringent. It imposed many requirements for acquiring a hotel license, demanding a substantial investment from hotel owners or operators. This act also included significant penalty and punishment. It gave the power to the authorities to separate the legal hotels (operate with license) from “outlawed hotels.”

1.5 Obtaining a Hotel License – In Thailand, if ones wants to obtain a hotel business license, that person has to go through steps of permit. The documents that are required to apply for hotel licenses are many. However there are certain documents that are involved with built environment issues which have impact on the cost of hotel investment. Such documents are as follows, with the simple wording in translation (Interior, Ministerial Proclamation regarding Principles and Methods for Considerations in Application and Issuance of Hotel Business Licenses 2009).

- (1) Drawings and Specifications of the hotel building
- (2) Site Plan that presents the perimeter and location of the hotel including surroundings.
- (3) Proof that the Building that will be utilized as a hotel was given a “Permit for Occupation” under the Building Control law, or, “The Certification of Building Inspection” issued by Licensed Civil Engineer under Engineer Law in case that the building was out of Building Control Zone.
- (4) Environmental Impact Assessment Report (If required)

The hotel owner needs to submit the documents to the local “Hotel Registrar”. The Hotel Registrar can deny the permit for many reasons, two of which are related to the built environment:

- (1) The building that will be utilized as a hotel does not comply with the provisions in the Ministerial Regulations regarding Hotel Business Operations.
- (2) The building that will be utilized as a hotel within the jurisdiction of Building Control Law was not constructed property under the Building Control Law, Urban Planning Law, Law regarding Protection and Response of Public Hazard, Law regarding Public Health, Law Regarding Promotion and Maintaining the National Environment.

Reduced to its simple meaning, the hotel owner needs to obtain the “Building Permit” first which means that the owner must have construction drawings and specifications signed by architects and engineers based on the legal requirements in most jurisdictions (...). Then the owner has to obtain the “Certificate of Occupation” which means the building construction has to be completed and inspected. Then the owner may proceed to apply for a Hotel License. The main problem lies with step one as there is many reasons why a hotel owner can not obtain building permit.

1.6 Outlawed Hotel – The phenomenon of Outlawed Hotel or “Rong-Raam (Hotel) – Tuan(Illegal)” in Thai, is a known problem. The meaning of Outlawed Hotel is basically a hotel that operates without license. On Kaosan Road, a famous tourist destination in Bangkok, most of the hotels, or known by term “guest houses” are operated without licenses. It can be considered as another aspect of the “gray” area in Thai society. There is a Thai contemporary proverb, “Pid-Ta-Kang-Deaw” or “Close one eye” meaning that

the officials and everyone knows that it is illegal but it is socially acceptable. Most of these hotels operate with good or sometimes excellent services at very cheap prices which make Thailand become a paradise for “Back-Packers” or Low-Budget Tourists. In Phuket, more than 40% of the hotels are operated without licenses (....). The local businessmen tried to find a way to lobby for a law that can make such hotels legal but the process is deadlocked under building laws.

1.7 Evasion of Law – In Thailand, “liang-kod-mai” or evasion of law is quite a well known concept. Its meaning is that people will focus on avoiding jurisdiction which confronts them with financial disadvantages or hardship. For example, the law requires a building with 10,000 Square-meters of construction area to have certain safety features such as two egress stairs instead of one, as well as provide sprinklers which will increase the costs for the building owner. Therefore, the owner will decide to construct the building with 9,999 square-meters to save on all those costs. That is the legal way to evade the law; however, there are also other methods. Hotel business owners find that complying with Building Permit requirements and Hotel Law requirements makes it difficult, or in some cases impossible, to invest in a hotel building. For the new businessman, after the feasibility study, it is easier to just turn back and explore other business possibilities instead. But for the businesses that have already been around for decades before the law was enacted, in some cases for three whole generations, they have no other choice but to keep operating without the possibility of major renovations (since a building permit is required to proceed). The fact remains that law enforcement parties hardly come down to them since the police forces have other more serious crimes to deal with. What these outlawed hotel owners do are (1) Operate the Business as an apartment which requires much less stringent rules than a hotel. Then they charge the guests daily instead of monthly. (2) Bribe the local officials (3) Proceed with the major renovations in construction without any permit. Obviously, these activities are all illegal. In case of raids by officials, the hotel owner can hire an attorney to defend the case and stall the case for years, sometimes up to a decade before they get shut down by the court’s order. This phenomenon makes the whole enforcement system become almost ineffective and discourages the officials from pursuing such cases. It becomes an “in your face” illegal situation that people recognize as a crime without victims which is a logical belief in a normal circumstances. However, when there is an emergency situation, for example, fire that causes the death of tourists because there is no proper fire exits, or the building collapses because of improper renovation, or the building was illegally modified to support human trafficking activities or sexual slavery, then the victims appear resulting in damage to the reputation of the country as a tourist destination.

1.8 Government Policy to support SME – The majority of the owners of these ‘outlaw hotels’ do not want to remain illegal. Most of them are actually upstanding businessmen. They certainly want to obtain a hotel license and operate the business under the protection of the law plus other incentives that the government provides. Besides that, there are many funds and many subsidy programs that they can obtain if they have hotel business license. The government has large funds for SMEs loans, however, all laws regarding hotels drove SMEs away from the opportunity to become involved in the hotel business. The Thai Hotel Association would prefer to have all these illegal hotels receive licenses

so they can be a part of the system and help detect the villains which are ruining the reputation of the country (...). But to this date, the effort is still fruitless.

2. BANGKOK: HEART OF THE COUNTRY

2.1 Evolution of Public Transportation in Bangkok – After the inception in 1782 Bangkok or “Krungthep” as Thai people know it. Has been a city of water-based transportation. It is once called Venice of the East (...) because of its sophisticated network of canals. Use of water transportation network has been a way of life from the beginning of Thai history because of its speed and convenience compare to trekking through the deep tropical jungle or through swamp which are character of land-based transportation. In the Reign of King Rama IV, with the vision that Siam has to be developed towards the western standard as a strategy to counter imperialism, there are many initiative ideas of the public projects, one of the project is the first paved road in the Kingdom, Charoenkrung Road. In King Rama V Reign, at the beginning of the 20th Century, Kingdom of Siam was introduced to the western invention called “Automobiles”. It was, at first, the ultra luxury item of the royals or aristocrats. Then later became an affordable item for the upper class. At the same period of time, Thailand was developing towards American way of life as USA starts to have major influences in South East Asia. More roads were built, super highway and freeways started to appear in Bangkok Landscape. Bangkok traffic problems, especially in the 1980s and 1990s became atrocious. People normally spent up to 2 hours to commute from residents to workplaces (...). Such statistic was one of the worst in the world. People only had two options of commute in Bangkok which are (1) public bus or (2) private automobiles. Because the unacceptable condition of hardware and services from the public bus system, many families with children will save up money to purchase an automobile as the first major item of the household with the purpose of making family members more comfortable. For Thais, private automobile not only become a general sought-after commodity for comfort but also an image of personal success (...). More and more automobiles were sold, even in the time of economic hardship such as Asian Financial Crisis in 1997. At that time, the automobile loan was still considered a profitable business in Thailand (...). Such a large scale of automobile ownerships drove the government to legislate building law that enforces the building to provide adequate number of parking stalls. This came as a mean to (1) protect consumer especially in the case of real estate for sale or lease, (2) help solve the traffic problems by creating off-street parking spaces since most of the citizen of Bangkok always park at their conveniences on the street, sometimes even on the sidewalk (...) In 2001 Bangkok House of District Representative issued the “.....” The minimum requirement regarding number of parking stalls for different building usages was enforced in this regulation. The parking area based on this regulation normally consume of up to 25% of allowable construction area in large building project. This also drove the unit cost of real estate investment higher because the developers had to cover the cost of construction for parking area. However, the real estate developers mostly complied gladly with this regulation since parking space was a major selling point. In some cases they provided more than the regulations required. However, such point of view started to change when the mass transit rail system was introduced to Bangkok citizens in late 2001.

2.2 Bangkok Mass Transit System The master plan for mass transit rail system of Bangkok Metropolitan area was developed in the 1980s. The first rail system was opened in 2001. Local corporations that owns the first system is Bangkok Transit System (BTS). Locals people called this system, “Skytrain”, as it is located approximately 20 meters above ground. Later in 2006, the Metropolitan Rapid Transit (MRT) system was opened to public. Thai people know it as “Subway” since all the stations located underground. In 2008, BTS network was expanded to Thonburi, the former capital across the Chaopraya River. And, lately, in mid 2010, the Airport Link was opened to public connecting Central Business District of Bangkok to Suvarnabhumi Airport. The purpose of Airport Link is to provide a mass transit for tourists. These rail system changes the behavior of Bangkok Citizens. 13 million people can now enjoy the economical and effective means of public transportation. They can control their travel time, which has a positive influences in their life style. With the soaring price of gasoline, expensive parking fee and only worsen traffic problems, many people give up on owning automobiles. With the public bus system that never improved, it will never be a preferred choice. With the higher price than public buses of mass transit rail system, upper class people who normally can afford to purchase automobiles starts to use the mass rapid transit more and more. Some of the left the automobile at the office when travel in the middle of the day. Some of the left the automobile at home altogether. Some have decided not to invest in automobiles but invest in the residential unit near the mass transit system as the first item in their life. That is actually a tagline for many real estate development corporations in Thailand. They encourage new workers in the market to invest in small condominium as the first major item rather than automobile (...). With such social phenomenon, the land price around the station of mass transit system increased rapidly. Such lands not only became attractive to Residential Real estate developers but also retail, office and hotel developer as well. Tourism industry also receives the benefit from this evaluation of Bangkok Transportation System. Because Tourist now can come to visit Bangkok and use this public transportation network to travel within the city. For overall effect, people start to learn that having automobiles in Bangkok becomes a liability rather than asset. Developers also slowly changed their perspective regarding number of parking stalls. They no longer view the parking spaces as the selling point especially in the case of hotel development. Parking space for certain types of hotel in Bangkok becomes a burden that is required by law to constructed and maintain.

2.3 Bangkok Hotel Industry – Hotel in Bangkok has 18.4 Million guests in 2007. It is the only city in Thailand that has higher foreign guests compare to Thai guests in hotel business. Demands for hotel rooms still growing strong as the reputation of Thailand tourism still properly maintained. There is plenty of opportunity for the SME hotel entrepreneurs to starts the business. However, because of the land price, the building codes and the complicated hotel business license procedure, this growing industry became accessible only for big players who has a large sums of investment. There are many outlawed hotels in Bangkok hidden in a shophouses which is one the most typical building type in Thailand.

2.4 Shop House Hotel - “Shophouse” is a 3 to 4-story concrete structure building with brick walls covered with mortar. Most of them located next to the public right of way. Majority are built between 1950s-1980s. They still building them these days but mostly

in suburban area. The ground floor of a shop house is normally utilized as commercial space and upper levels as a residential spaces or office for rent. Many hotel owners from the past bought several shophouses unit and modify it into small hotels. One of the best examples can be found in the famous back-packing tourist district such as “Kao-Sarn” Road. Kongkrij Hiranyakij, former chairman of the Thailand Tourism Industry Council, on the personal interview, has mentioned that he is very confident that in Bangkok alone, there are more outlawed hotels than hotel that operated with hotel business licenses. These hotel owners has many issues regarding building codes that they violated. However, many issues can be solved if they can find the proper sources of funds for business loan. They can invest to improve their hotel buildings to match the acceptable standard. For example, they can invest in sprinkler system, fire-rated wall, mechanical system and other safety features. Once they upgraded those items, they can get closer to obtaining the building permit which, eventually, will help them step closer to obtaining hotel business license. However, there is one significant requirement in the building law that they will never be able to solved base on financial support alone which is “Required Number of Parking Stalls”

3. PARKING PROBLEMS FOR HOTEL BUSINESS IN BANGKOK

3.1 Thailand Parking Law – There are two types of parking laws in Thailand. The first is concerned with parking space construction. It is about how to build or design parking lots or structures properly. Another is the law regarding the minimum required number of parking stalls. Contrary to most countries in the world, the minimum required number of parking stalls in Thailand is not under zoning law or planning law. It is a part of the building law legislated by the power of the Building Control Act of 1979. In Thailand, the Urban Planning Act of 1975 is the most senior law regarding urban and city planning. There are a tremendous amount of ministerial proclamations, regulations, and other provisions that were imposed by the legislation of the Urban Planning Act of 1975. However, none of these mentioned the minimum required number of parking stalls, therefore, in the planning process, the factor of parking requirements is not considered. In Building Law, the minimum required number of parking stalls depends totally on the building’s usage typology. In a building, it is possible to have more than one type of usage. Therefore, these different usage typologies must be combined in the calculations in order to find the minimum required number of parking stalls. The result is predictable. The same type of building with the same area size, despite its location or real demands, will have an identical number of parking stalls. In fact, the location is supposed to be one of the main driving forces regarding how many parking stalls the building should have. For example, there is no reason for a 10,000 square meter hotel building in Bangkok located next to the mass transit system to provide the same number of parking stalls as another 10,000 square meter suburban hotel situated far away from mass transit system. Also, more importantly, the real demands are supposed to be factors that influence the owner’s decision whether to have the parking stalls or not. This is very different from many other places where the number of parking requirement is defined by planning issues based on the evaluation of external factors such as the distance

from public transportation, urban density, regional planning, and the Environmental Policy etc. Also the real demands can be studied, proof to authority and negotiated for reduction of parking.

3.2 Parking Ordinance in Bangkok for Buildings of the Hotel Type – The Bangkok Metropolitan Administration holds the power under law to legislate its own stipulations or ordinances under the existing Parliamentary Act for the benefit of health, safety, and welfare of the citizens. Among these ordinances is the *Bangkok Metropolitan Administration Stipulation 2001 regarding Building Control* (issued under the power of the Building Control Act of 1979), the minimum required number of parking stalls based on the type of usage was declared. Under Section 83, types of building that require parking stalls on site are:

Section 83 (2) Hotel

Section 83 (3) "Common Residential Building" or "Condominium" that has a unit area of more than 60 square-meters (including apartments)

Section 83 (11) Shophouses.

In this part, a problem was expressed for some apartment owners who originally built the property as an apartment with a living unit size of less than 60 square meters. In these cases, owners may obtain a building permit for apartment use without providing any parking spaces. However, transformation of the building to a hotel is impossible.

Section 84 (2) – Parking Requirement for the Hotel Type Buildings

- For the hotel that has less than 100 rooms
 - The first 30 rooms or less, the hotel must provide at least 10 parking stalls
 - For the next 30-70 rooms, the hotel must provide 1 parking stall for every 5 rooms.
- For the hotel that has more than 100 rooms
 - The hotel must provide 1 stall for every 10 rooms increment.

For example, if the hotel has 120 rooms. For the first 30 rooms, the hotel has to provide 10 parking stalls. With the next 70 Rooms, the hotel must provide 1 parking stall for every 5 rooms, which makes 14 stalls. With the additional 20 rooms, the hotel must provide 1 stall for every 10 rooms, which equals to 2 stalls more. Therefore, the total parking stalls equals to $10+14+2 = 26$ stalls. This is quite substantial when the owner of the apartment building which has 120 units wants to obtain a hotel permit. He has to find the way to modify the building to be able to park 26 cars.

Section 84 (11) The Shophouse requires 1 parking space per shophouse unit

There are many cases that relates to this section. As mentioned before that many buildings in Thailand are the shop house type. If the owner has 4 shophouse units next to each other and

converts the interior spaces into 20 hotel rooms, the owner must provide 10 parking stalls instead of the 4 stalls that he currently has. For both apartment conversion or shop house conversion, the minimum required number of parking stalls is a major obstruction to obtaining a hotel permit.

3.3 Four Types of Hotels under Hotel Law – Under *Ministerial Regulations regarding Hotel Business Operations*, there are 4 types of hotels in Thailand.

Type 1: A hotel that has only guest rooms for services. This type must have less than 50 rooms.

Type 2: A Hotel that has guest rooms and food services.

Type 3: A Hotel that has guest rooms, food services, and "Service Venues" (entertainment venues) as defined by the Service Venue Act OR a conference and seminar facilities.

Type 4: A Hotel that has guest rooms, food services, and "Service Venues" (entertainment venues) under the Service Venue Act of 1966 AND conference and seminar facilities.

Based on this law, the hotel type 1 or 2 is normally a small hotel that falls into the group of "Outlawed Hotels". The hotel type 3 and 4 are generally big hotels with major investors. Since the law has already categorized the different types of hotel businesses, there is potential for revising the parking law in order to eliminate certain obstructions for small hotel owners to obtain the hotel business license.

3.4 Argument: No Parking is Needed for Certain Types of Hotels – Based on the information presented previously, if the small hotels in Bangkok only provides rooms and food services and only targets foreign tourist guests who rarely use private automobiles, there is no need for parking spaces for such a hotel business.

Furthermore, based on the direction of social development in Bangkok, people have begun to use less automobiles and this direction should continually be encouraged for the good of the environment and the urban quality of living.

However the steps taken in the direction to solve this problem cannot be to just simply eliminate the parking requirement sections from hotel usage all together and leave it to the market factor. Existing laws and regulations have been developed with a methodical process and under considerations of many committees. Therefore, it should not enact another law or eliminate other laws as this normally creates new problems in different dimensions. Instead, there should be room for official and open negotiations in different circumstances in which the result can benefit all, including the general public, investors, hotel owners, and the environment.

4. SOLUTION: PARKING VARIANCE

4.1 Concept – Based on Merriam Webster Dictionary, "Variance" is a license to do some act contrary to the usual rule, example: a zoning *variance*. It is almost like saying

how to break the law legally. In order to obtain variance, one has to go through the legal process which is transparent and all the request has to be reasonable not by the applicant financial gain alone but has to be for the greater good for the public such as overall economy or environment. It is such a concept that underline the importance of capitalism that the legal infrastructure try to give a leeway to accommodate the business as long as it helps the overall economy to grow. In this research paper, if the hotel can prove that the parking is not needed base on valid arguments (example: real use and distance from public transportation). Then, number of parking stalls should not be an issue to block small hotel owner from obtaining the hotel license. There should be no need for changes of law, only guidelines for requirement reduction should be structured. There are many cities in the world that utilized the concept of "Parking Variance" as follows.

4.2 Case Study 1: Las Vegas, Nevada, United States – In USA, each district or country has a legal power to issue their own planning law. City of Las Vegas, once of the fastest growing city in USA, has a Las Vegas Zoning Code that instruct clearly about parking requirement for hotel type plus other functions. (Las Vegas Zoning Code - CHAPTER 19.04 PERMISSIBLE USES). City of Las Vegas also have guidelines for Variance (Las Vegas Zoning Code CHAPTER 19.04 PERMISSIBLE USES). It is a process that has to go through Planning Commission and City Council. The whole procedure will go on public records. Under condition. B. Scope and Limitations, there shall not be variance granted in order to relieve a hardship which is solely personal, self-created or financial in nature. (...) The burden of proof is on applicant site. The variance applicant has to proof that there is a public benefit for this variance. The procedure is very clear and methodical. The City council has a power to impose penalty if the structure of variance was built before variance permit. For example if there are 500 stalls required for parking space and the owner has already built 300 parking stalls for the property while applying for such variance, such act is against the law. The fine can be up to 10% of construction value. The applicant can appeal. There are the notes from meeting minutes regarding parking variances:

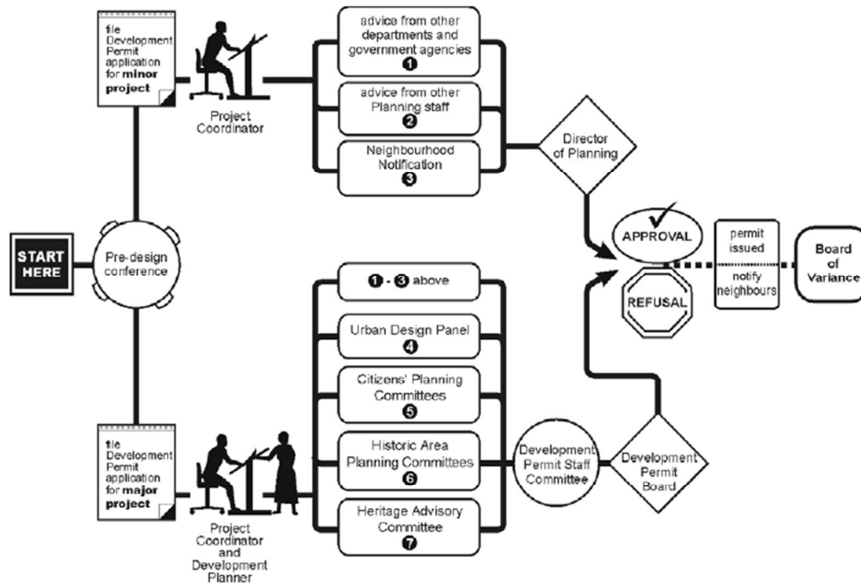
15. VAR-17741 - VARIANCE RELATED TO ZON-17740 - PUBLIC HEARING - APPLICANT/OWNER LARRY AND PATRICIA SCHEUSNER FAMILY TRUST, POULOS FAMILY TRUST, AND ASHTON BOYD FAMILY TRUST - Request for a Variance TO ALLOW 150 PARKING SPACES WHERE 425 SPACES ARE REQUIRED IN CONJUNCTION WITH A PROPOSED APARTMENT DEVELOPMENT on 1.38 acres on the north side of Bridger Avenue between 9th Street and 10th Street (APNs 139-34-712-026 through 028 and 041 through 043), R-4 (High Density Residential) Zone [PROPOSED: R-5 (Apartment) Zone], Ward 5 (Weekly).

24. VAR-17749 - VARIANCE - PUBLIC HEARING - APPLICANT/OWNER: HELP LAS VEGAS HOUSING CORPORATION II - Request for a Variance TO ALLOW 109 PARKING SPACES WHERE 205

SPACES ARE REQUIRED FOR A 125 UNIT MULTI FAMILY HOUSING COMPLEX on 4.84 acres at 1455 North Main Street (APN 139-27-502-015), C-V (Civic District) Zone under Resolution of Intent to R-5 (Apartment), Ward 5 (Weekly).

Based on the meeting minutes such variances, with large amount of reduction , in the City of Las Vegas jurisdictions are considered a routine business that comes in regularly for any development projects. It is a proof that the procedure is in place and was utilized regularly with public transparency. The system of variance allows business owners to have an option for their business and livelihood. They did not have to break the law, they come in the process to make their property legal and official. The aspect of law is negotiable in this case.

4.3 Case Study 2: Vancouver, Canada City of Vancouver has a code for parking requirement (City of Vancouver - By-law No. 6059 - Section 7 Off-street Passenger Space Regulation). City of Vancouver has “*The Board Of Variance And Parking Variance Board*”. *The Board of Variance* is an appeal body that hears and then decides upon appeals regarding zoning, development permit, signage and tree by-law matters. *The Parking Variance Board* is an appeal body that hears and then decides upon appeals regarding off-street parking and loading. Both Boards consist of the same five members, all of whom are appointed by City Council. Based on such organizational structure, ones can assume that parking issue is a major issue that needs to be dealt with as another entity eventhough they have the same member. Procedure for applications, document, appeal, public hearing is in placed for public to study and down load on the board’s website. Schedule and deadline for applications are regular. Sometimes are as often as twice a month. The application fee is minimal, around 380 Canadian dollars. Based on the over all information, Vancouver system, similar as City of Las Vegas, also express the “routine” nature of the variance process. There are some difference in the procedure of the applications. Appeal board, by nature, will only accept and appeal which means the permit must have been denied by the conventinal channel of the building permit (figure 1). Which is different from variance application in United States.



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5. RECOMMENDATION: IMPLEMENTATION OF PARKING VARIANCE POLICY IN BANGKOK

5.1 Principles – Thailand has its own culture and development for more than 700 years. The condition of Bangkok as a capital has been transformed through history for more than 200 years. There has been many cases that Thais have adopted the western technology directly without adjustment to the local culture and traditions and creates many problems afterwards. These technology and innovation including laws and regulations. As it is the product of local culture, tradition itself, the adoption of foreign law for the use of local has to be considered really carefully. The last thing Thai should do is repeat the same mistakes by eliminated the local law and replace it with the foreign law that has no connection with local backgrounds. In our case, the first step is for the authority to consider whether the concept of Variance is the appropriate concept for Thai Government System and Cultures. In Bangkok, there are existing sophisticated bureaucratic system of Bangkok Metropolitan Administration. If Parking Variance concept going to be introduced, there should be further researched whether how it will integrated into the system and what will be its impact. For example, in the case of building permit, how will the procedure changes and how many man power or government infrastructure that has to be in places before the policy can be implemented.

5.2 Urban Planning VS Building Control Issues – There has never been a research regarding whether the “required number of parking stalls” on the building project for Thailand should be a Planning Issues which will be under the jurisdiction of Planning Act of 1975 or it should remain the building issues under Building Control Act of 1979. In most of the country in the world, number of parkings are

planning issues. And there are many agendas in Thailand that support the idea that such issues should be related more to planning rather than building. In Fact, in the case of Thailand, such issue can be in both domains with the appropriate integration. For example, the number of parking stalls required in relation to the distances from the public transportation network can be a planning issue. And required number of parking stalls based on type of use, such as certain type of hotels, that should require no parking, as a main argument of this paper, can remain a building issue.

5.3 Transparency – Government Corruption in Thailand is a major social problems that has been around for a very long time. Many Thais believe that the sophisticated permit procedures are there to empower officials which ends up giving a lot of opportunity for them to ask for bribe in exchanges for expedition of permit process or to “turn off one eye” in case the are illegal activities. If Parking Variance policy will be implemented as a part of building permit, the transparency issues will be one of the major concerns. Or else, such an idea will be another channel for officials to extort the business owners. The way to enforce the transparency are many. For example: the radio or televised broadcast variance application and hearing procedure etc and the related documents that should be accessible to public.

5.4 Committee – The committee that consists of members from different organizations and backgrounds to decide the issues that impact public benefit is quite a new idea in Thailand, in the area of public participation of development policy or projects. The general practices are “public hearing” that becomes welknown and well utilized in the past decade. Implementing parking variance policy will be involved with saving a lot of money for real estate developments. Once there are large sums of money involved, there should be more than one single government agent who has power to issues a variance permit. The parking variance committee member can be formed by community leaders, NGOs, academics and other important stake holders.

5.5 Project Qualification – As mentioned before that not all projects should be eligible to apply for variance permit. For example, in case of hotel, there should be a proof that the reduction of parking stall requirement will not effect any public benefit or public safety. There should be a proof by guidelines. For example, is the hotel close enough to the public transportation access? Is most of the guest are foreign gust who do not use the private automobiles? If both answer is yes, then, there is no need for parking stalls. If the hotel got the parking variance permit and eventually, become official hotel business with license to operate. And then, hotel starts to generate car traffic and the guest starts to bring cars and park them on the street, causing more traffic problem. In this case, the whole variance process is ineffective because it only helps the hotel owner and harm the public.

5.6 Trade Offs – Under Variance Concept, many existing hotel can receive a building permit. It can help the “Outlawed Hotel” become legal as a main benefit to small hotel owner. However, in the case of new large scale hotel (if implemented), the variance can means saving large sums of project investment. The large hotel owners will be able change a lot of building area that use to be parking space in to

more profitable functions. In such circumstances, the variance guidelines should come with “Trade Off” policy. Based on the amount of money that they save or will potentially benefit. The important question is, how much the developers can give back to the society and in what way?

6. CONCLUSION

- 6.1 Win-Win situation** – One can see that even though the scope of this paper is focusing on the limitation of real estate development by law, the whole agenda is not only focus on the legality of the situation and the building issues alone. It is also involved many aspects of social landscape such as economy, history, culture, urban planning, and certainly environment. In any situation, there can be large number of stakeholders that holds the key to optimum solution for complex problems. Creating win-win situation is a theory of many business schools and conflict management course. If Parking Variance can be one of the policy towards such win-win situation, then there has to be as much stakeholder to be involved and as wide perspectives that has to be expanded. Much more than legal issues and development issues alone.
- 6.2 Practical Solution must be mixed between different ideas** – There is no single policy or procedure that fits all problems. In case of limitation for hotel development by parking requirements, the solution must not be a new legal procedure alone. Parking Variance should not be considered as a new legal channel to support economic development but should be viewed as social strategy or mechanism to gain public participation and generates new further ideas how to make the policy effective.
- 6.3 Potential implementation for other building types** – Hotel type is one of the type that was used as an example for this research paper regarding Parking Variance. There are other types of building that might be considered for variance permit if they can prove that there are less use of automobiles.
- 6.4 Potential Implementation for other planning issues** – The Concept of Variance do not have to be focus on parking alone. It can be utilized for other agendas such as Floor Area Ratio, Open Space Ratios, Height limits. However, the process of implementation for such variance has to be transparent and maintain the purpose for the greater good of the public.

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