

PLANNING COMMISSION

Planning Department
County of Hawaii
Hilo, Hawaii

Application for VARIANCE)
by)
MASAMI NIIMI dba HAWAIIAN)
FLOWER EXPORTS, INC.)
from)
MINIMUM SETBACK REQUIREMENT)
in)
Olaa Reservation Lots, Puna,)
Hawaii)
_____)

Variance No. 477

VARIANCE PERMIT

The County Planning Commission at a duly held public hearing on October 28, 1976, considered the application of MASAMI NIIMI dba HAWAIIAN FLOWER EXPORTS, INC. for a variance from Chapter 8 (Zoning Code), Article 7, Section 7-B, Hawaii County Code, as amended. The request is to allow an anthurium saran shade structure to straddle across property lines. Also requested was a variance to allow the saran shade structure with a five-foot sideyard setback in lieu of the minimum required ten (10) feet. The properties involved are located northwest of the Volcano Highway and Mt. View School, Olaa Reservation Lots, Puna, Hawaii, Tax Map Key 1-8-05:45 and 47.

The Commission has found:

That there are unusual circumstances applying to the subject properties which do not generally apply to surrounding properties or their improvements in the same zoned district. Prior to applying for a variance, the petitioner had sought other alternatives in trying to conform to the setback requirements, relative to the straddling of property lines; but to no avail. Under normal circumstances in cases such as this, the petitioner is required to consolidate the parcels to resolve the problem. In this particular case, however, the lots are owned by two (2) different parties. Parcel 47 is owned by the petitioner but Parcel 45 is owned by Eisei Oshiro and leased to the petitioner for a period of twenty (20) years. Since Mr. Oshiro is not willing to sell his property to the petitioner, the consolidation action of the two (2) lots cannot take place. As such, the petitioner is faced with a peculiar situation whereby he is willing to purchase Mr. Oshiro's property and consolidate it with his property, while Mr. Oshiro is not receptive to the

idea. In light of this, it is determined that there exist certain unusual circumstances which, in a way, deprives the petitioner of substantial property rights which would otherwise be available, and also to a degree which obviously interferes with the best use or manner of development of the properties.

Furthermore, since the existing lease for the use of Mr. Oshiro's property is for several more years, until March of 1994, the straddling of the building across these lots is not considered to be materially detrimental to the public welfare or injurious to improvements or property rights related to properties in the near vicinity. There would be very little, if any, adverse effects on other properties and their improvements in the area. In fact, it is determined that the granting of this particular variance will tend to improve the existing situation as it will maximize the efficiency of the building in terms of usage and usable area. Furthermore, according to the lease agreement, the petitioner is required to remove all buildings, saran houses, and all other structures placed on the property at the termination of the lease. This provision will also be made a condition of approval of the Variance Permit.

In regards to the area in which the saran shade structure encroaches five (5) feet into the side yard setback area, this was an oversight when that portion of the building was first constructed in 1973. At the time of construction, the petitioner thought that that portion of the structure did meet the minimum setback requirement of ten (10) feet. He had always thought that an existing gravel easement along the property line was, in fact, the property line. Only after a survey of the property in 1976 was done was it realized that the building was constructed with only a five-foot side yard setback in lieu of the required ten (10) feet. It is felt that since the petitioner did not intentionally encroach into the setback area and since the adjacent property is a large parcel of 266+ acres and is presently in sugar cane production, the granting of the setback variance for this particular portion of the structure also would not be materially detrimental to the public welfare nor be injurious to the existing land uses of the adjacent property.

Therefore, the Commission hereby grants to the applicant a variance to allow an anthurium saran shade structure to straddle across the property lines of parcels 45 and 47 of Tax Map Key 1-8-05. Also granted is a variance to allow the saran shade structure five-foot sideyard setback in lieu of the minimum required ten (10) feet, pursuant to the authority vested in it by Section 7 of said Code, subject to the following conditions:

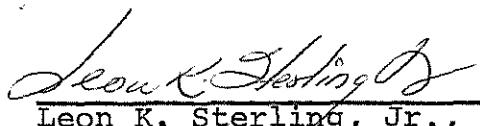
1. That that portion of the saran shade structure straddling the properties of Parcels 45 and 47 shall be removed upon termination of the lease or upon abandonment of the use of the structure, whichever occurs first.

2. That the petitioner shall relocate the roadway lot of Parcel 47, consisting of .3 acres, further to the north in order that the minimum 10-foot setback can be met.
3. That all other applicable rules and regulations be complied with.

Should these conditions not be met, the Variance Permit shall be deemed null and void.

The effective date of this permit shall be from October 28, 1976.

Dated at Hilo, Hawaii, this 15th day of November, 1976.


Leon K. Sterling, Jr., Chairman

