

October 4, 1979

Mrs. Jean Madden  
511 W. Kawai'ani Street  
Hilo, HI 96720

Dear Mrs. Madden:

Variance Application  
TMK: 2-4-19:25

The Planning Commission at its regular meeting of September 27, 1979, considered your request for a variance to allow the construction of a saran shade structure with a zero (0) front yard setback in lieu of the minimum requirement of fifteen (15) feet as stipulated within the Neighborhood Commercial - 10,000 square foot (CN-10) zoned district at Wai'alea Homesteads, 1st Series, South Hilo, Hawaii.

The Commission voted to approve your application effective September 27, 1979, subject to the following conditions:

1. That the saran shade structure with wall and lattice fence surrounding the proposed planted display area along the north property line shall not extend more than 11 feet beyond the front of the main commercial structure to accommodate the anchoring of the structure and fence.
2. That within 30 days from the effective date of the Variance Permit, the affected saran shade structure, lattice fence and hollow tile wall shall be removed.
3. That all other applicable rules, regulations and requirements shall be complied with.

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Should any of the foregoing conditions not be met, this Variance Permit may be deemed null and void by the Planning Commission.

We will be forwarding the official Variance Permit as soon as the document is prepared. In the meantime, should you have any questions, please feel free to contact the Planning Department at 961-8288.

Sincerely, .



William F. Mielcke  
Chairman, Planning Commission

lgv

cc Mr. Clifford Lum  
Building Division, Public Works

bcc Masa's division

OCT 6 1979

PLANNING COMMISSION OF THE PLANNING DEPARTMENT

COUNTY OF HAWAII

In the Matter of the Appeal	)	
of	)	VARIANCE APPLICATION
JEAN S. MADDEN	)	
	)	NO. 554
Tax Map Key 2-4-19:25	)	
	)	

PROPOSED FINDINGS OF FACT  
AND  
CONCLUSIONS OF LAW

The above-entitled matter was brought on for a public hearing on August 15, 1979, in the Council Room, County Building, South Hilo, Hawaii, at which time the matter was scheduled for a public hearing.

The Planning Commission having heard the testimony and having examined the facts does hereby declare its Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. An application for a variance to allow a zero (0) front yard setback in lieu of the minimum requirement of fifteen (15) feet as stipulated within the Commercial Neighborhood 10,000 square feet (CN-10) zoned district was received on September 14, 1978.

2. The property involved consists of 34,595 square feet and is located at the eastern corner of the Kawaihine Street - Ainaola Drive intersection, Waiakea Homesteads, 1st Series, South Hilo, Tax Map Key: 2-4-19:25.

3. The request was to allow the construction of a 750-square foot plant display area within the front yard setback area as part of a Home and Garden Center. The display area was to consist of a 6-foot high redwood lattice enclosure with

an umbrella type shade cloth cover over a 1-1/2 inch galvanized pipe frame. The shade cloth was to be 8 feet high.

4. In support of this request, the petitioner submitted the following:

"The objective in obtaining the requested variance would be to provide an outside display area for ornamental plants which would be an integral part of the planned home and garden center.

"In order to display ornamental plants it would be necessary to construct a portable system for shading the plants and controlling the water intake.

"The method proposed to accomplish the above objective would be to construct portable independent sections of umbrella type shade cloth covers and set them throughout the outside setback area on the Hamakua side of the building running the length of 59' and covering the width of 15'. The construction would be of 1-1/2" galvanized pipe and saran cloth and each section would be 14' wide, 20' deep and 8' high. The individual sections would be placed between the existing building wall and the property line wall as shown on the attached plan.

"If the subject site is to be utilized for a home and garden store then the necessity for the outside plant area is essential to the proposed operation.

In view of the outlined objectives, I respectfully submit the following reasons for granting my request for subject variance.

- "(1) The special or unusual circumstances applying to the subject property and building use which do not generally apply to surrounding properties or improvements in the same district are as follows:
- (a) The subject property is the only commercial property in the district.
  - (b) All surrounding property is residential.
  - (c) Subject property is boarded on one side by Ainaola Street and on the other side by Kawailani Street, therefore no other construction or improvements will ever be built adjacent to the property in question.
  - (d) It is not a high dense commercial area with retail business running together such as the downtown area, thus minimizing the fire problem.

"(2) The inability to grant requested variance in view of the unusual circumstances would deprive the owner and lessee of property rights which would otherwise be available and the best use of subject property in the following manner:

- (a) The owner and developer have concluded in conjunction with the lessee that based on county demographics, traffic counts and other available statistics that the best use of the property would be a home and garden center which would best suit the development as well as the community needs.
- (b) Without the requested variance the space will be rendered unusable for a home and garden center, thereby depriving all parties concerned as well as the community which requires the services of a home and garden center.

"(3) The granting of the requested variance will not constitute a grant of personal or special privilege that would be inconsistent with the limitations upon other properties under identical district classification for the following reasons:

- (a) This will be the only home and garden store located outside of the main commercial districts.
- (b) It will be located in a free standing community shopping center.
- (c) The surrounding area is primarily residential.
- (d) It is bordered by two main streets, not commercial business.
- (e) The lessee has insured complete portability of the proposed umbrella type shade cloth covers by designing special portable sections that would be continuous for the 59' long, 15' wide area but would be constructed in independent sections 14' wide, 8' high, 20' deep. The cost incurred by lessee in constructing the independent portable sections is far greater than the standard application for a similar cover.

"(4) Approval of the requested variance will not detract from the general purpose of the district or the intent and purpose of the subdivision and or zoning codes nor will it militate against the County General Plan, nor will it be detrimental to the public welfare nor be injurious to improvements or property rights related to property in the near vicinity. The construction of the portable umbrella shade will not in any way impede traffic visibility".

5. The six (6) foot high fence as well as the proposed plant display use are permitted within the setback area. Consequently, the variance request is limited to only the construction of the saran shade structure.

6. The plant display area extends 20 feet beyond the front of the commercial structure, into a portion of the parking area. Furthermore, according to the overall site plan, the front of the display area encroaches to within one (1) foot of the driveway onto Kawaiilani Street while the south side of the enclosure would abut the parking area fronting the main commercial building.

7. Surrounding land uses are primarily residential with a few vacant parcels. These areas are situated in the Single Family Residential zoned district.

8. Access to the subject area is from both Kawaiilani Street and Ainaola Drive. Kawaiilani Street has a 55-foot right-of-way and a 20-foot pavement while Ainaola Drive has a 60-foot right-of-way and a 24-foot pavement.

9. Upon review of the subject request, the Department of Public Works submitted the following comments:

"1. Shade cover shall be 10-foot minimum from the rear property otherwise a one-hour fire rated exterior wall is required.

"2. Where is the location of the proposed driveway in relation to the saran area? Proposed structure should not obstruct sight distance."

10. The Department of Water Supply commented that, "We have no objections to the subject request. Water is available from a 10-inch waterline along Kawaiilani Street."

11. All other cooperating agencies had no comments on or objections to the subject request.

12. The preliminary hearing on this matter was conducted on October 12, 1978, at which time the matter was scheduled for a public hearing.

13. At the public hearing of October 20, 1978, the staff recommended approval of the application based on the following findings:

That the granting of this request would not be inconsistent with the general purpose of the district or with the purpose and intent of the setback provisions of the Zoning Code. The purpose and intent of these setback provisions are to provide adequate light, air circulation and fire protection for the property involved. In addition these buffer areas assist in the reduction of noise transmission to surrounding areas as well as in providing privacy. The Zoning Code allows the establishment of certain activities within this setback area, provided they are basically open in nature. Consequently, both the proposed plant display use and the construction of the fence may be allowed in this front yard setback area of the subject property. The variance request is limited only to the impacts and implications resulting from the construction of the saran shade structure itself. This shade structure, which will be open in character, is intended to protect the plants from direct sunlight as well as to provide a covered space where the plants can be displayed and sold as part of the home and garden center. The sides of the display area will be open except for the already permitted fence. Furthermore, the saran covering will not significantly reduce the available light or air circulation to the plant display area or to the main commercial structure. Consequently, it is determined that the construction of this portable 8-foot high saran shade structure will not significantly inhibit the ability of this setback area from fulfilling its intended function. Furthermore, because of the open character of the structure, and its location along Kawaiilani Street between the fence and the main commercial structure, it is determined that the visual impacts resulting from the establishment of the proposed improvements will be minimal.

That there are unusual or special circumstances applying to the subject area which do not generally apply to surrounding properties or improvements in the same district. The 34,595-square foot subject area is triangular in shape, fronting on both Kawaiilani Street and Ainaola Drive. As a result, when the required setback areas are applied, approximately 24,600 square feet of land or 70% of the subject area is available for development. In addition, another 5,500 square feet of land, not in the setback area, is also unavailable for development because of the configuration of the subject area. According to the plans submitted for "Plan Approval", the majority of these 15,500 square feet of the subject area which are undevelopable will be grassed and landscaped, although portions in the setback area will be paved and developed with parking. Consequently, the triangular configuration of the subject area results in a buildable area which is relatively restrictive in terms of the overall development.

Therefore in light of these restrictions on the buildable area, the retention of the proposed open and/or landscaped areas and the minimal impacts of the shade structure, it is determined that the construction of the proposed improvement within the setback area will not constitute a grant of personal or special privilege inconsistent with the limitation upon other properties in the same zoned district.

That the traffic and sight distance considerations resulting from the proposed development can be adequately mitigated through the conditions of approval. Under the petitioner's proposed development plan, the plant display area will extend approximately 20 feet in front of the commercial structure, abutting the driveway to Kawaihani Street on the east and the parking area on the south. Should this occur, the sight distance of the cars entering the property as well as those reversing from the parking stalls fronting the commercial structure would be severely reduced. This could result in an extremely hazardous situation where cars leaving the parking stalls adjacent to the plant display area would have to blindly reverse into the interior traffic pattern, slowing or stopping all traffic movements. A reduction of the plant display area and fence whereby these improvements shall not extend more than 9 feet beyond the front of the commercial structure will effectively mitigate this traffic concern in that the sight distance of the vehicles entering the property from Kawaihani Street as well as those exiting from the parking stalls adjacent to the proposed plant display area will be preserved.

14. At the hearing held on August 15, 1979, the staff recommended that the saran shade structure and the lattice portion of the fence surrounding the proposed plant display area along the north property line shall not exceed more than 11 feet beyond the front of the main commercial structure or such distance needed to accomodate the anchoring of one gate and fence.

15. Mr. Clifford H. F. Lum, attorney for Petitioner, presented Petitioner's proposal that the fence be cut back diagonally in order to avoid having to remove solid structures already in place against the wall, while at the same time satisfying visibility concerns.

16. Furthermore, the staff recommended approval of this variance application subject to the following conditions:



1. That the saran shade structure and the lattice fence surrounding the proposed plant display area along the north property line shall not extend more than 11 feet beyond the front of the main commercial structure to accomodate the anchoring of the structure and fence.
2. That the proposed development shall substantially conform to the plans submitted and representations made by the petitioner, except as conditioned above.
3. That the petitioner or his authorized representative shall submit plans for Plan Approval within one year from the effective date of the variance. Furthermore, the petitioner or his authorized representative shall be responsible for receipt of Final Plan Approval.
4. That all other applicable rules, regulations and requirements shall be complied with.

Should any of the foregoing conditions not be met, this variance permit may be deemed null and void by the Planning Commission.

17. At the conclusion of the testimony the Commission voted to defer action on the application of Jean S. Madden until Sept. 27, 1979, and that applicant's representative submit to the Planning Department Proposed Findings of Fact and Conclusions of Law by Sept. 20, 1979.

#### CONCLUSIONS OF LAW

1. Pursuant to Section 5-4.3 (g) of the Hawaii County Charter, the Planning Commission has jurisdiction to hear and determine appeals requesting variance from the Subdivision and Zoning Codes.

2. All prcedural requirements as prescribed by law have been complied with.

3. Under Section 5-4.3 (g) of the Hawaii County Charter, a variance may not be granted unless there are special or unusual circumstances applying to the subject property which would result in unnecessary hardship if the ordinances were literally enforced.

4. The Planning Commission has found that the subject request has met these criteria for the granting of a variance as follows:

The variance request is limited only to the impacts and implications resulting from the construction of the saran shade structure itself. This shade structure, which will be open in character, is intended to protect the plants from direct sunlight as well as to provide a covered space where the plants can be displayed and sold as part of the home and garden center. The sides of the display area will be open except for the already permitted fence. Furthermore, the saran covering will not significantly reduce the available light or air circulation to the plant display area or to the main commercial structure. Consequently, it is determined that the construction of this portable 8-foot high saran shade structure will not significantly inhibit the ability of this setback area from fulfilling its intended function. Furthermore, because of the open character of the structure, and its location along Kawaiilani Street between the fence and the main commercial structure, it is determined that the visual impacts resulting from the establishment of the proposed improvements will be minimal.

That there are unusual or special circumstances applying to the subject area which do not generally apply to surrounding properties or improvements in the same district. The 34,595-square foot subject area is triangular in shape, fronting on both Kawaiilani Street and Ainaola Drive. As a result, when the required setback areas are applied, approximately 24,600 square feet of land or 70% of the subject area is available for development. In addition, another 5,500 square feet of land, not in the setback area, is also unavailable for development because of the configuration of the subject area. According to the plans submitted for "Plan Approval", the majority of these 15,500 square feet of the subject area which are undevelopable will be grassed and landscaped, although portions in the setback area will be paved and developed with parking. Consequently, the triangular configuration of the subject area results in a buildable area which is relatively restrictive in terms of the overall development.

Therefore in light of these restrictions on the buildable area, the retention of the proposed open and/or landscaped areas and the minimal impacts of the shade structure, it is determined that the construction of the proposed improvement within the setback area will not constitute a grant of personal or special privilege inconsistent with the limitation upon other properties in the same zoned district.

That the traffic and sight distance considerations resulting from the proposed development can be adequately mitigated through conditions of approval. Under the Petitioner's proposed plan, the plant display area will extend diagonally not more than 11 feet in front of the commercial structure, abutting the driveway to Kawaiilani Street on the east and the parking area on the west to accomodate the anchoring of one gate and fence. Petitioner will remove the lattice portion of the wall as well as the saran shade to conform with this limitation.

A diagonal reduction of the plant display area, including the lattice fence and saran shade structure, whereby these improvements shall not exceed more than 11 feet beyond the front of the commercial structure will effectively mitigate the traffic concern in that the sight distance of the vehicles entering the property from Kawaiilani Street as well as those exiting from the parking stalls adjacent to the proposed plant display area will be preserved.

Commission has determined that Petitioner shall be subject to additional conditions as follows:

1. That the proposed development shall substantially conform to the plans submitted and representations made by the petitioner, except as conditioned above.
2. That the petitioner or his authorized representative shall submit plans for Plan Approval within 60 days from the effective date of the variance. Furthermore, the petitioner or his authorized representative shall be responsible for receipt of Final Plan Approval.
3. The alteration of the lattice fence and saran shade structure shall commence within 90 days from receipt of Final Plan Approval and shall be completed within 120 days thereafter.
4. That all other applicable rules, regulations and requirements shall be complied with.

Should any of the foregoing conditions not be met, this variance permit may be deemed null and void by the Planning Commission.