

PLANNING DEPARTMENT
County of Hawaii
Hilo, Hawaii

APPLICATION FOR ADMINISTRATIVE VARIANCE)
by)
FOODLAND SUPERMARKETS, LTD.) ADMINISTRATIVE
from) VARIANCE NO. 5
Minimum Setback Requirements)
in)
Kailua Village, Keopu, North Kona, Hawaii)
_____)

ADMINISTRATIVE VARIANCE PERMIT

An administrative public hearing was held by the Planning Director of the County of Hawaii Planning Department on February 7, 1980, on the application of Foodland Supermarkets, Ltd. for a variance from the minimum setback requirements; more specifically, to allow the retention of the present village market building with front and rear yard setback of 19.23 and 7.66 feet in lieu of the minimum requirements of 20 and 8 feet, respectively, at Kailua Village, Keopu, North Kona, Hawaii, Tax Map Key 7-5-07:33-40 and 65.

After hearing the case, the Planning Director has found:

1. That there are unusual circumstances applying to the construction of the existing supermarket building at its present location which do not generally apply to surrounding properties or improvements.

Final Plan Approval was granted for the supermarket project in July of 1978. The approved plans indicated that the minimum setback requirements would be complied with. Furthermore, the structure passed all of the government's inspection requirements without any indication that a violation had occurred. In fact, the encroachment into the minimum setback area was not identified until the owners own certification survey was conducted in August of 1979. The owners then informed the Planning Department of the apparent violation and submitted the application for a setback variance.

Apparently, a misunderstanding between the building contractor and the construction survey crew resulted in the violation of the minimum setback requirements. The misunderstanding probably involved the placement of the construction pins for the building which could have been placed for the center of the footing or for the corner of the building. Therefore, both the survey crew and the contractor were under the impression that they had done their work in compliance with all of the applicable regulations. The resulting encroachment was so negligible that it was not detected by the contractor or the government inspector. The encroachment was detected only after an instrument survey was made by a registered professional surveyor.

Although representatives of the applicant were negligent in failing to verify the placement of construction pins, it would appear that, in this particular case relative to inspection, government also may have contributed to the error at hand. In

this particular case, it is felt that an honest mistake was made by the contractor and/or the construction survey crew, as well as government, in misinterpreting the placement of the construction pins.

Based on the above, it is determined that there were unusual circumstances which led to the situation at hand, and the placement of the supermarket structure at its present location.

2. That the granting of this particular request will not be detrimental to the public welfare nor be injurious to improvements or property rights related to the adjacent and surrounding properties. None of the projections beyond the exterior walls of the building encroach upon sidewalks, streets, alleys or other property. In addition, the encroachment of 9", 6", and 4", respectively, into the minimum setback area is not readily perceptible without the benefit of survey equipment. Therefore, it is felt that the granting of this particular variance with appropriate conditions will not violate the spirit and intent of the minimum setback requirements which are to provide for light, air and circulation nor impede on surrounding improvements.

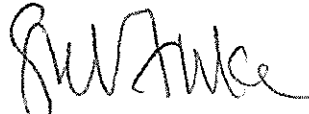
Therefore, the Planning Director hereby grants to the applicant a variance to allow the retention of the present village market building with front and rear yard setback of 19.23 and 7.66 feet in lieu of the minimum requirements of 20 and 8 feet, respectively, at Kailua Village, Keopu, North Kona, Hawaii, Tax Map Key 7-5-07:33-40 and 65, pursuant to the authority vested in him by the County Charter, subject to the following conditions:

1. That all future improvements shall comply with the minimum setback requirements. No setback variance shall be granted for any future improvements.
2. That all applicable rules, regulations and requirements shall be complied with.

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

The effective date of this permit shall be from February 12, 1980.

Dated at Hilo, Hawaii, this 11th day of April, 1980.



SIDNEY M. FUKU, Director
Planning Department

APPROVED AS TO FORM
AND LEGALITY:


Deputy Corporation Counsel
County of Hawaii

Date: 21 Mar 80

CERTIFIED MAIL

February 12, 1980

Mr. M. J. Sullivan
Foodland Super Market, Ltd.
P. O. Box 22099
Honolulu, HI 96822

Dear Mr. Sullivan:

Variance Application
Minimum Setback Requirements
TMK: 7-5-07:33-40 and 65

After review of your application and the information presented at the administrative public hearing on February 7, 1980, the Planning Director is hereby certifying the approval of your variance request to allow the retention of the present village market building with front and side yard setbacks set 19.23 and 7.66 feet in lieu of the minimum requirements of 20 and 8 feet, respectively.

Approval of this request is based on the following findings:

- 1. That there are unusual circumstances applying to the construction of the existing supermarket building at its present location which do not generally apply to surrounding properties or improvements.

Final Plan Approval was granted for the supermarket project in July of 1978. The approved plans indicated that the minimum setback requirements would be complied with. Furthermore, the structure passed all of the government's inspection requirements without any indication that a violation had occurred. In fact, the encroachment into the minimum setback area was not identified until the owners own certification survey was conducted in August of 1979. The owners then informed the Planning Department of the apparent violation and submitted the application for a setback variance.

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Apparently, a misunderstanding between the building contractor and the construction survey crew resulted in the violation of the minimum setback requirements. The misunderstanding probably involved the placement of the construction pins for the building which could have been placed for the center of the footing or for the corner of the building. Therefore, both the survey crew and the contractor were under the impression that they had done their work, in compliance with all of the applicable regulations. The resulting encroachment was so negligible that it was not detected by the contractor or the government inspector. The encroachment was detected only after an instrument survey was made by a registered professional surveyor.

Although representatives of the applicant were negligent in failing to verify the placement of construction pins, it would appear that, in this particular case relative to inspection, government also may have contributed to the error at hand. In this particular case, it is felt that an honest mistake was made by the contractor and/or construction survey crew, as well as government, in misinterpreting the placement of the construction pins.

Based on the above, it is determined that there were unusual circumstances which led to the situation at hand, and the placement of the supermarket structure at its present location.

2. That the granting of this particular request will not be detrimental to the public welfare nor be injurious to improvements or property rights related to the adjacent and surrounding properties. None of the projections beyond the exterior walls of the building encroach upon sidewalks, streets, alleys or other property. In addition, the encroachment of 9", 6" and 4", respectively, into the minimum setback area is not readily perceptible without the benefit of survey equipment. Therefore, it is felt that the granting of this particular variance with appropriate conditions will not violate the spirit and intent of the minimum setback requirements which are to provide for light, air and circulation nor impede on surrounding improvements.

The conditions of approval are as follows:

1. That all future improvements shall comply with the minimum setback requirements. No setback variance shall be granted for any future improvements.

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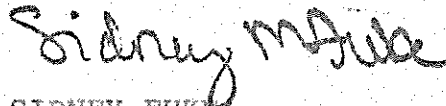
2. That all applicable rules, regulations and requirements shall be complied with.

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

Please be informed that the official Variance Permit will be forthcoming under separate cover.

Should you have any questions in the meantime, please feel free to contact us.

Sincerely,



SIDNEY FUKU
Planning Director

NH:wkm

cc: Planning Commission
Jerry Nakagawa

bcc: Masa Onuma