

CERTIFIED MAIL

May 17, 1983

Mr. Robert J. Crudele
275 Ponahawai Street, Suite 201
Hilo, Hawaii 96720

Dear Mr. Crudele:

Variance Application (V83-9)
Variance From Minimum Rear Yard Setback Requirement
Tax Map Key 2-2-40:89

After reviewing your application and the information submitted in behalf of it, the Planning Director by this letter hereby certifies the approval of your variance request to allow the existing Food Fair and Family Variety Fair building to straddle over the rear property line in lieu of the minimum 15-foot rear yard setback as required in the Neighborhood Commercial (CN-10) zoned district in Waiakea Homesteads, South Hilo, Hawaii.

The approval is based on the following:

1. The original Food Fair Supermarket was constructed in 1967, prior to adoption of the present Zoning Code. The Family Variety Store, which was the former Wigwam Store was given Final Plan Approval on February 25, 1970, and building permit issued on March 3, 1970, was completed in 1971. The Neighborhood Commercial zoning for the area was granted in 1968 and 1979. The addition to the Food Fair Supermarket was granted approval in 1981, with the condition that consolidation maps were to be submitted for approval prior to issuance of any occupancy permits. The petitioner has shown an effort to comply with this condition by the submittal of the consolidation maps for the properties which have agreed to such action. The only parcels not agreeing to the consolidation action have a long term lease with the petitioner which will expire in August 2032, and January 2034, respectively. As such, the petitioner still retains some development rights relative to these properties although, they are not being consolidated with the rest of the existing development.

MAY 17 1983

These are special and unusual circumstances which apply to the existing shopping center development. Thus, recognizing the chronology of events which led the petitioner to this point, they are faced with a situation that neither they nor the government has any control over in terms of meeting the minimum rear yard setback requirements for Tax Map Key 2-2-40:35 and 89. The setback violation of the existing development could be attributed to the petitioner's own negligence, however, they have made all attempts to resolve this matter, but to no avail. Therefore, the denial of the variance would also impose an undue economic, as well as a design hardship on the petitioner.

In consideration of the above issues, we have determined that the the petitioner would be deprived of substantial property rights that would otherwise be available and to a degree that interfere with the best use or manner of development of the property.

2. That there are no other reasonable alternatives to resolve the difficulty. The alternative to relocate the building to comply with the minimum rear yard setback requirements would be putting excessive demands upon the petitioner, when a more reasonable solution is available. Any relocation alternative would be unreasonable and burdensome to the petitioner, as the structural development already exists and that the petitioner has made every attempt to purchase the properties in order that they all could be consolidated to one parcel. Being denied the right to purchase the affected parcels, has created a dilemma for the petitioner, in that they are unable to satisfy the minimum rear yard setback requirement for a structure which has already been constructed and completed.

The petitioner has already submitted consolidation plans for all of the other parcels involved in the development. Therefore, it is concluded that at this point, all efforts to resolve the difficulties have been exhausted. As such, the denial of the variance would not further the cause of government's responsibility in imposing a requirement on the petitioner, when a more reasonable solution is available.

3. The granting of the variance is consistent with the general purpose of the zoning district, the intent and purpose of the Zoning Code, and the General Plan. The property on which the development is situated is considered a

Mr. Robert J. Crudele
Page 3
May 17, 1983

neighborhood shopping center and zoned as such. The existing development was designed as to physically be represented as one development and the proposed development design scheme is one which is directed towards this objective. The proposed improvements which attempt to achieve this goal would be disrupted if the design concept of a one store functional layout of the retail establishments could not be provided. It should be noted that the long term leases of the parcels not being consolidated do permit the petitioner certain development rights which will allow them to achieve their stated improvement goal. Additionally, the two retail establishments (which are separately operated because of the previous design constraints) are being redesigned into one center to improve shopping convenience. As such, the approval of the variance would also contribute to the convenience of the general public, who is the primary beneficiary user of this facility.

The intent and purpose of the setback requirements is to ensure that light, air, physical and visual circulatory functions are available between structures and property lines. In this particular application, the location of the existing development will still provide for these functions, although it would not meet the minimum as required by the Zoning Code. Additionally, the existing location of the development would still employ and afford the air, light and circulatory functions that are the basis of requiring setbacks.

However, it should be noted that the unusual circumstances concerning the existing development do affect the approval of the variance for the dwelling. It should also be clarified that the determination of the qualification of the setbacks for the development is one which is made in view of the unusual circumstances concerning the development. In view of the above issues, it is further determined that the granting of the variance would not be considered to be materially detrimental to the public's welfare nor cause any substantial or adverse impact to the area's character or to adjoining properties.

The variance request is approved, subject to the following conditions:

1. The petitioner, its successors or its assigns shall comply with all of the stated conditions of approval.

Mr. Robert J. Crudele

Page 4


May 17, 1983

2. The plans for the proposed renovations and improvements shall be submitted for "Plan Approval" within one year from the effective date of approval of the Variance Permit.
3. Construction of the proposed improvements shall commence within one year from the date of receipt of Final "Plan Approval" and be completed within two years thereafter.
4. The Department of Public Works' requirements shall be complied with.
5. All other applicable State and County Rules and Regulations shall be complied with.

Should any of the foregoing conditions not be complied with, the Variance Permit shall be automatically voided.

If you have any questions on this matter, please feel free to contact us at 961-8288.

Sincerely,


SIDNEY M. FOKE
Planning Director

RHY:gs

cc: Planning Commission
Eijiro Kaneshiro, President
Kaneshiro & Sons Enterprises, Ltd.