

CERTIFIED MAIL

September 16, 1983

Mr. Frederick Frenz
Frank's Foods, Inc.
1141 Kawaiilani Street
Hilo, HI 96720

Dear Mr. Frenz:

Variance Application (V83-27)
Variance For Expansion of Non-conforming Use
Tax Map Key 2-4-03:16

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 expansion of a non-conforming use, specifically for the construction of a chill box addition on the Frank's Foods, Inc.'s meat plant site in the Waiakea Homesteads, South Hilo, Hawaii.

The approval is based on the following:

Special and Unusual Circumstances

The existing meat plant facility was approved through a variance from the Traffic and Planning Commission in 1955. Since 1955, three other variances and a Special Permit was approved to expand the meat plant operation.

A condition of the variance granted in 1958 stated that the variance would be allowed for a term of 30 years or its prior abandonment. The expiration date of this condition is May 2, 1985.

In the 1974 State Land Use Boundary Review, the subject property was reclassified from the "Agriculture" to the "Urban" district. The subject property also has been dedicated for "agricultural" purposes since 1971.

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The petitioner also has made extensive investment into the development of the facility since 1955. The usage of which would be severely affected, if the expiration date of the variance were not considered. Therefore, we have determined that the proposed chill box addition to the existing meat plant facility should be approved.

Based on the special and unusual circumstances cited above, we have also determined that if the variance were to be denied, the petitioner would be deprived of property rights which would otherwise be available and to a degree which would inhibit the best manner of development of the subject property.

Alternatives

The petitioner is faced with alternatives, three of which are:

- 1) relocating the facility to the industrial area;
- 2) the maintaining of the present facility without any further expansion; and
- 3) redesigning the present facility within the existing walls to incorporate the proposed change.

In evaluating these alternatives, the reasonableness of these alternatives have to be weighed against the physical, visual and social impacts that the proposed chill box addition may have in this area.

The petitioner is making the proposed chill box addition to improve the function of the meat plant facility. In this instance, the chill box addition is a one story, 22 by 40 feet and 880 square feet in size, located to the rear of the existing meat plant. It is a relatively minor structural development in contrast to the existing structural development.

Therefore, although other alternatives are available, we have determined that the most reasonable alternative is the one proposed by the petitioner. Based on these considerations, we have determined that the denial of the variance would foreclose all of the petitioners options, when a more reasonable solution is available.

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Intent and Purposes

The intent and purpose of the Non-Conforming provisions of the Zoning Code is to legitimize "Grandfathered uses" and to assure amortization of these uses over a period of time to conform to the requirements of the Zoning Code. The Zoning Code permits "Non-Conforming Uses" to legally continue under certain conditions. The existing meat plant has satisfied all of the conditions which certify it as a "Non-Conforming Use" and permit the subject use on the property.

The meat plant facility has been in full operation since 1955 and the proposed chill box addition will assist in improving that process. The petitioner is also attempting to comply with the Department of Agriculture's recommendation to improve the operation of the meat plant with the proposed chill box addition.

The agricultural character of the subject property and the commercial activity associated with it, will at some time be conflicting with the residential uses in this area. However, with the present amount of development, this business establishment in its present size will still not have any adverse physical, visual or social impacts to the residential properties or to the district. The large size of the property is attributed in mitigating some of these impacts.

The 880 square foot size of the proposed chill box is not a large physical structure which would emit any odor or noise which would affect the adjacent residential lands. The chill box addition is to be utilized more for the storing of beef carcasses. The nearest single family dwelling is approximately 140 feet away and the nearest property line is approximately 120 feet away. Therefore, with appropriate landscaping elements for buffering purposes, any adverse visual or physical impacts can be mitigated.

Based on the evaluation of these issues, we have determined that the granting of the variance shall be consistent with the general purpose of the zoning district, the intent and purposes of the Zoning Code and the General Plan.

The analysis of the above issues also has concurred that granting of the variance will not be materially detrimental to the public's welfare nor cause any substantial or adverse impact to the area's character or to adjoining properties.

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

1. The petitioner, its successors or assigns shall be responsible for complying with all stated conditions of approval.
2. The conditions listed under the previous variances granted to this property shall still be effective.
3. The plans for the proposed chill box addition along with a detailed landscaping plan shall be submitted for final "Plan Approval" review within one year from the date of receipt of this Variance Permit.
4. The detailed landscaping plan shall include as a minimum mature hedge and tree type plantings between the chill box addition and the east side property line, for buffering purposes. This landscaping shall be planted prior to the issuance of the occupancy permit for the chill box addition.
5. The 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.
6. All other applicable State and County rules and regulations be complied.

Should any of the above conditions not be complied with, the variance shall automatically be deemed void.

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

Sincerely,



SIDNEY M. RUBE
Planning Director

RHY:gs
Enc: Background Report
cc: Planning Commission

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September 16, 1983

Mr. Frederick Frenz
Frank's Foods, Inc.
1141 Kawaiilani Street
Hilo, HI 96720

Dear Mr. Frenz:

Variance Application (V83-27)
Variance for Future Projects
Tax Map Key 2-4-03:16

We regret to inform you that after reviewing your application and the information presented in its behalf, the Planning Director is hereby denying your variance request. The reasons for the denial are as follows:

Chapter 25 (Zoning Code), Division 4, Section 25-22 states that "Variances from the provision of this Chapter may be granted; provided that a variance shall not allow the introduction of a use not otherwise permitted within the district; and provided further that a variance shall not primarily effectuate relief from applicable density limitations."

As such, the variance process is designed to allow deviations from the literal enforcement of the requirements of the Zoning Code. Moreover, the granting of a variance is related to the land. It is not a process which is used to convey additional personal property rights to a landowner on a "carte blanche" basis. The petitioner has not specified the so-called "future projects." Additionally, the petitioner is not requesting relief from a particular requirement of the Zoning Code and therefore, has no justification in requesting for this variance.

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Since, the variance request cannot be viewed against the criteria test for a variance, it would not be consistent with the general purpose of the Zoning District and the intent and purpose of the General Plan. Furthermore, the granting of a variance without any substantiation of proof in conjunction with the criteria test for variances would be setting precedences for the rest of the area to request for the same type of relief.

Based on the foregoing considerations, the Planning Director has no other option but to deny the variance request.

The Director's decision is final, except that within ten (10) working days after receipt of this letter, you may appeal the decision in writing to the Planning Commission in accordance with the following procedures:

1. Non-refundable filing fee of one hundred dollars (\$100.00); and
2. Ten (10) copies of a statement of the specific grounds for the appeal.

Should you decide to appeal, the Planning Commission shall conduct a public hearing within a period of ninety (90) days from the date of receipt of a properly filed appeal. Within sixty (60) days after the close of the public hearing or within such longer period as may be agreed to by the appellant, the Planning Commission shall affirm, modify or reverse the Director's action. A decision to affirm, modify or reverse the Director's action shall require a majority vote of the total membership of the Planning Commission. A decision to defer action on the appeal shall require a majority vote of the Planning Commission members present at the time of the motion for deferral. If the Planning Commission fails to render a decision to affirm, modify, or reverse the Director's action within the prescribed period, the Director's action shall be considered as having been affirmed.


All actions of the Planning Commission are final except that, within ten (10) working days after notice of action, the applicant or an interested party as defined in Section 7.05 of this article in the proceeding before the Planning Commission may appeal such action to the Board of Appeals in accordance with its rules.

All actions of the Board of Appeals are final except that they are appealable to the Third Circuit Court in accordance with Chapter 91 of the Hawaii Revised Statutes.

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Should you have any questions on this matter, please feel free to contact our office at 961-8288.

Sincerely,


SIDNEY M. DUKE
Planning Director

RHY:gs

cc: Planning Commission