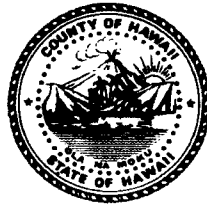


Harry Kim  
Mayor



Michael Yee  
Director

Daryn Arai  
Deputy Director

West Hawai'i Office  
74-5044 Ane Keohokalole Hwy  
Kailua-Kona, Hawai'i 96740  
Phone (808) 323-4770  
Fax (808) 327-3563

**County of Hawai'i**  
**PLANNING DEPARTMENT**

East Hawai'i Office  
101 Pauahi Street, Suite 3  
Hilo, Hawai'i 96720  
Phone (808) 961-8288  
Fax (808) 961-8742

August 31, 2017

Michael J. Riehm, President  
Riehm Owensby Planners Architects, LLC  
P.O. Box 390747  
Keauhou, HI 96739

Dear Mr. Riehm:

**SUBJECT: Application: Variance - VAR 17-000431**  
**Applicant: MICHAEL J. RIEHM/RIEHM OWENSBY PLANNERS ARCHITECT LLC**  
**Owner: DEREK A. HIGA**  
**Request: Variance from Chapter 25, Zoning, Article 5 Division 10, Section 25-5-106 Minimum Yards, Article 4, Division 4, Section 25-4-44(a) Permitted Projections into Yards and Open Space Requirements (Encroachment into Northwest Side Yard Setback)**  
**Tax Map Key: 5-4-006:009**

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The Planning Director certifies the **approval** of Variance No. 17-000431, subject to conditions. The variance will allow portion of the existing meat market building to remain with a minimum 4.5-foot side (northwest) yard setback and associated roof eave projection resulting with a 3.5-foot side (northwest) yard open space. These exceptions are in lieu of the required 10-foot side yard setback and the 5-foot side yard open space requirement as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-10, Minimum yards and Section 25-4-44 (a), Permitted projections into yards and open space requirements.

**BACKGROUND AND FINDINGS**

1. **Location.** The subject property, consisting of approximately 1.654 acres (72,048.24 sq. ft.) of land, is situated at Hanaula-North Kohala, Hawai'i. The subject property's street address is 54-3785 Akoni Pule Highway.
2. **Zoning.** Neighborhood Commercial – 10,000 square feet (CN-10).
3. **State Land Use.** Urban.

4. **Required Setback.** Front and rear yards, fifteen feet; side yards none, except where the adjoining building site is in a RS, RD, RM, RCX or V district. Where the side yard adjoins the side yard of a building site in a RS, RD, RM, RCX or V district, there shall be a side yard which conforms to the side yard requirements for dwelling use of the adjoining district.
5. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on January 3, 2017, and other submittals related to the variance request and variance application. The variance application's site plan, drawn to scale and prepared by Michael J. Riehm (Riehm Owensby Planners Architects, LLC), denotes the portions of the meat market were built into the side (northwest) yard setback and side (northwest) yard open space. (See attached site map – Exhibit A)

The survey map shows that portion of the existing meat market building encroaches 5.5 feet into the 10-foot side (northwest) yard setback and associated roof eave encroaches 1.5 feet into the 5-foot side (northwest) yard open space requirement.

Based on the encroachment, the existing meat market building remains with a minimum 4.5-foot side (northwest) yard open space and the associated roof eave projection resulting with a minimum 3.5-foot side (northwest) yard open space.

6. **County Building Records.** Hawai'i County Real Property Tax Division records indicate that the meat market building was constructed in 1933.

Building Permit 881094 was issued on July 01, 1988, and finalized on July 26, 1988, to repair damages by an automobile to the front of building. In addition, Building Permit 925410 was issued on March 13, 1992 and finalized on May 15, 1992 for removal of an existing wall and door to increase size of the retail area, new exterior wall, concrete floor, and metal roof extension.

The existing meat market building was constructed in 1933 prior to the adoption of the Zoning Code in 1967, which means that there were no minimum yard setbacks at the time the meat market building was constructed. However, Hawai'i County Real Property Tax Office records indicate that the original meat market building consisted of 284 square feet and presently consists of 1,562 square feet in area. As mentioned above Building Permit 925410 was issued on March 13, 1992 and finalized on May 15, 1992 for removal of existing wall and door, increase size of retail area, new exterior wall, concrete floor, metal roof extension, therefore, forfeiting its legal non-conforming status. (See attached Tax Office sketch Exhibit B & C).

7. **Agency Comments and Requirements.**

- a. State Department of Health (DOH) memorandum dated July 7, 2017: *"The Health Department found no environmental health concerns with regulatory implications in the submittals."*

- b. No comments received from the Department of Public Works Building Division. (Kona)
8. **Notice to Surrounding Property Owners.** The applicant submitted a copy of notices mailed to surrounding property owners (including affidavits) by USPS. According to these submittals, the first and second notices were mailed on June 22, 2017 and July 23, 2017, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on July 19, 2017.
9. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or general public were received by the Planning Department.

#### **ANALYSIS OF GROUNDS FOR VARIANCE**

**No variance will be granted unless it is found that:**

*(a) There are special or unusual circumstances applying to the subject real property which exist either to a degree which deprives the owner or applicant of substantial property rights that would otherwise be available, or to a degree which obviously interferes with the best use or manner of development of the property.*

**The variance application meets criteria (a) for the following reasons:**

No evidence has been found to allow indifference or premeditation by the owners or builders to deliberately create or intentionally allow the single-family dwelling encroachments problem to occur.

The existing meat market building was constructed in 1933 prior to the adoption of the Zoning Code in 1967 which means that there were no minimum yard setbacks at the time the meat market was built. However, Hawaii County Real Property Tax Office records indicate that the original meat market consisted of 284 square feet and presently consists of 1,562 square feet in area. The records also indicate that the original wall facing the northwest boundary was 24 feet in length and has been lengthen to its current length of 41 feet, therefore, forfeiting its legal non-conforming status. (See attached Tax Office sketch Exhibit B & C).

The owner was unaware of any encroachment violation, especially when the owners complied with the building permit process and were under the impression that the meat market building was in compliance with all County requirements.

Therefore, based on the above-mentioned information, special and unusual circumstances do exist to an extent that building permit were issued without setback requirements. Requiring compliance today would deprive the owner of substantial property rights that would otherwise be available, or which unreasonably interfere with the best use or manner of development of the subject property.

***(b) There are no other reasonable alternatives that would resolve the difficulty.***

**The variance application meets criteria (b) for the following reasons:**

Alternatives available to the current owners to correct and/or address the existing meat market building encroachment constructed into the affected side yard setback and side yard open space of the subject property include the following actions:

Remove the building encroachments and/or redesign the original meat market building to fit within the correct building envelope denoted on the recent survey map as prescribed by the Zoning Code. Requiring the owner to remove the encroachment area to meet setback requirements and create a smaller version of the meat market building would diminish the overall functionality of the meat market. This alternative would be deemed unreasonable, especially when the encroachment has been in existence since 1933.

Because the encroachments are within the side yard setback, one alternative would be to consolidate the subject property with the adjoining side property which is owned by someone else, and resubdivide the property to modify property lines and adjust minimum side yard setbacks. Both of these alternatives are not practical. Therefore, there are no reasonable alternatives to resolve the difficulty.

***(c) The variance is consistent with the general purpose of the district, the intent and purpose of this chapter, and the general plan, and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or to adjoining properties.***

**The variance application meets criteria (c) for the following reasons:**

The intent and purpose of requiring building setbacks within a subdivision are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines.

No evidence has been found to show indifference or premeditation by the owners or builders to deliberately create or intentionally allow the building encroachment problems to occur.

Also, no comments or objections were received from the surrounding property owners or general public in response to the Notification of Surrounding Property Owners.

Based on the foregoing findings and unusual circumstances, the applicant's request for variance would be consistent with the general purpose of the zoning district and the intents and purposes of the Zoning Code, Subdivision Code, and the County General Plan. Furthermore, the variance request will not be materially detrimental to the public's welfare and will not cause substantial adverse impact to the area's character and to adjoining properties.

Michael J. Riehm, President  
Riehm Owensby Planners Architects, LLC  
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**PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS**

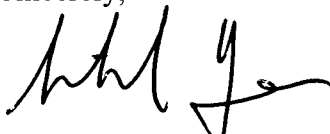
Based on the variance application's survey map, the existing meat market building constructed on the subject property (TMK: 5-4-006:009), will not meet the minimum side yard setback requirements pursuant to Hawai'i County Code, Chapter 25 (Zoning).

This variance request is **approved** subject to the following conditions:

1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawai'i harmless from and against any loss, liability, claim, or demand for the property damage, personal injury, or death arising out of any act or omission of the applicants/owners, their successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.
3. Should the existing meat market building built on the subject property be destroyed by fire or other natural causes, the replacement structure shall comply with the Hawai'i County Code, Chapter 25, (Zoning) and be subject to State law and County ordinances and regulations pertaining to building construction occupancy.
4. Future or new building improvements and permitted uses shall be subject to State Law and County Ordinances and Regulations pertaining to building construction and occupancy.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance VAR-17-000431 null and void.

Sincerely,



MICHAEL YEE  
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone5\VAR17-000431TMK5-4-006-0009 Higa.doc

Encl: Exhibits A-C

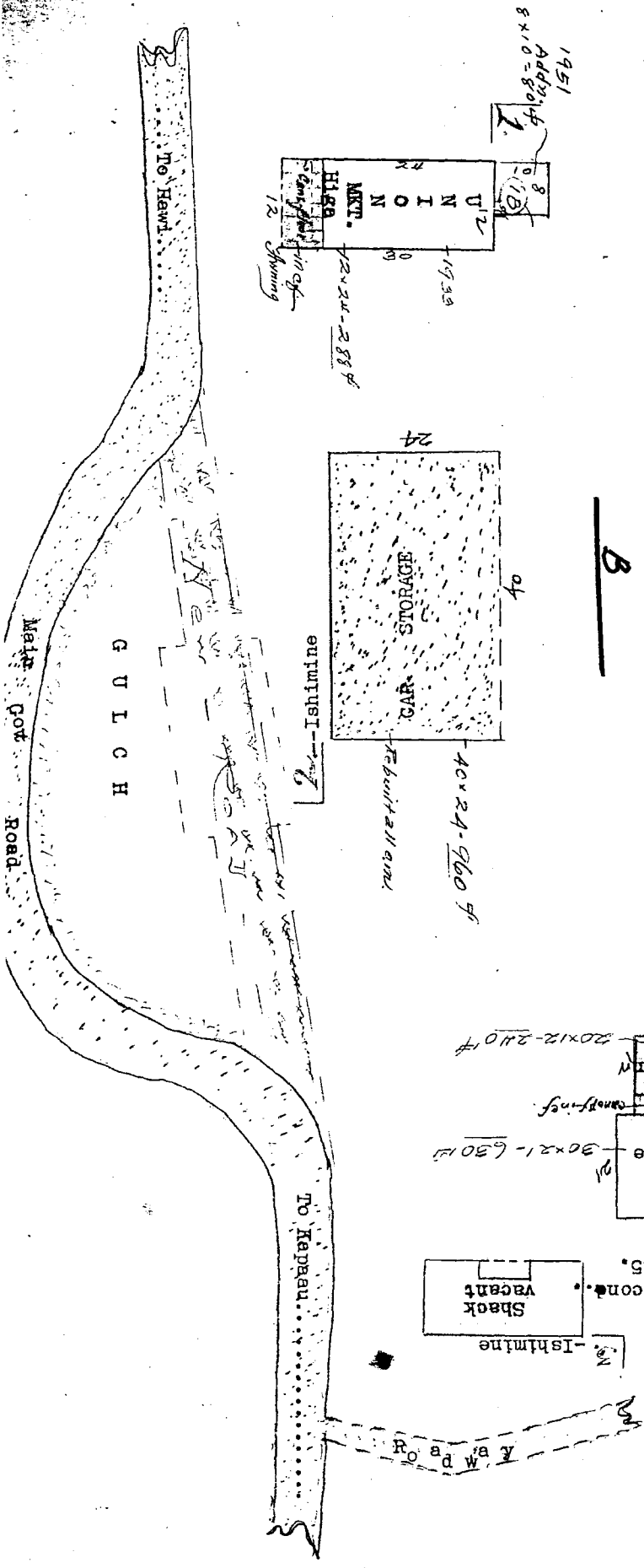
cc: Planning Department-Kona  
Real Property Tax Division-Kona  
Gilbert Bailado, GIS (via email)



PERMIT NO	DATE	AMOUNT	CONTRACTOR	SURVEY BY	DATE										
				A. F. Silva	AUG. 1939										
BUILD FOR NO	USE	STORY CLASS	ELEV.	NO OF ROOMS	CONSTRUCTION	FOUNDATION	ROOF	EXTERIOR	INTERIOR	FLOORING	BATHS	SHOW TR.	PUM.	WATER	GEN. DES.
1	MT. MANA	3	-	2	REPAIRS - REBUILD	CONCRETE	GRAB. G.I.	SH	SH	CONC	-	-	-	-	COND STE MEDIAN
2	SHACK	3	-	-	REBUILD	CONCRETE	GRAB. G.I.	SH	SH	CONC	-	-	-	-	1 - POOR REPAIRS
3	SHACK	3	-	-	REBUILD	CONCRETE	GRAB. G.I.	SH	SH	CONC	-	-	-	-	1 - POOR REPAIRS
4	SHACK	3	-	-	REBUILD	CONCRETE	GRAB. G.I.	SH	SH	CONC	-	-	-	-	1 - POOR REPAIRS
1	SHACK	3	-	-	REBUILD	CONCRETE	GRAB. G.I.	SH	SH	CONC	-	-	-	-	1 - POOR REPAIRS

# EXHIBIT

B



**DESCRIPTION OF IMPROVEMENTS**

- 9. USE TYPE**
- STORE  OFFICE
  - LOFT  BANK
  - SERV. STA.  THEATRE
  - MEAT MARKET**

- CEILING**
- CANEC
  - PINE
  - GYPSUM BOARD**

- 16. ROOF STRUCTURE**
- PLASTER
  - PLY BD
  - WOOD
  - STEEL
  - CONCRETE

- 17. ROOF DESIGN**
- GABLE
  - HIP
  - GAMB
  - SHED

- 18. ROOFING**
- METAL
  - COMP.
  - BUILT-UP
  - TILE
  - CONC.
- 26 GA. C.I.

- 10. CONSTRUCTION**
- WOOD FRAME
  - MASONRY FRAME
  - CONCRETE FRAME
  - STEEL FRAME

**11. UNITS AND ROOMS**

NO. OF STORIES: / HEIGHT: FT.

NO. OF UNITS: /

NO. OF ROOMS: /

- 12. FOUNDATION**
- FOOTING
  - CONCRETE
  - MASONRY
  - WALLS
  - CONCRETE
  - MASONRY
  - PIERS
  - WOOD
  - CONCRETE

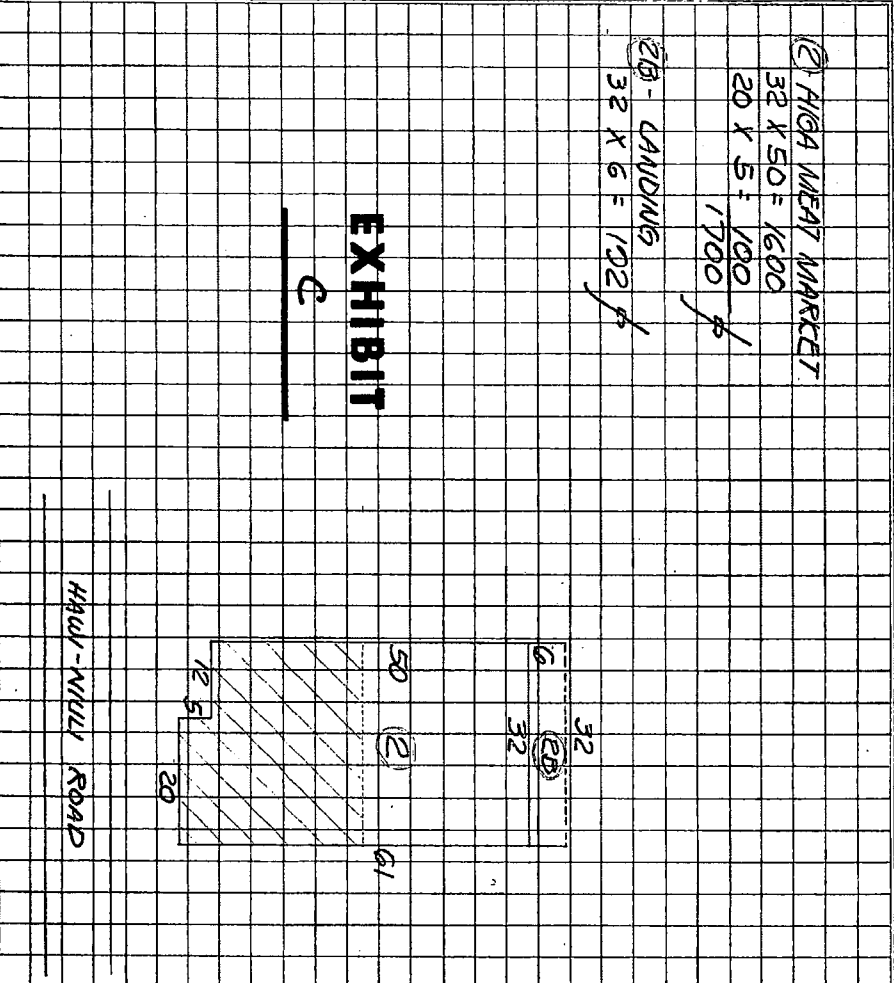
- 13. FLOORS**
- STRUCTURE
  - WOOD JOIST
  - CONCRETE JOIST
  - STEEL JOIST
  - CONCRETE SLAB
  - CONCRETE PILES
  - FLOORING
  - PINE
  - CONCRETE
  - CERAMIC TILE
  - ASPHALT

**14. EXTERIOR WALLS**

- STRUCTURE
- REINF. CONCRETE
- CONCRETE TILE
- STONE/ROCKS
- STEEL/METAL
- WOOD
- EXT. FINISH
- PLASTER
- FACE BRICKS
- STONE
- METAL
- PARTY WALL

GLASS/VITROLITE OR STORE FRONT: /

SET IN WOOD  METAL  HEIGHT: / L.F.



**21. ELECTRICAL**

- OUTLETS: FEW  STD  AMP
- FIXTURES CH  MED  GD

**23. REMARKS**

**24. CONDITION**

BETTER THAN AVER. %

AVERAGE (HOR. DEP)  %

BELOW AVER. %

**27. ADD'L IMP'T DETAILS**

ITEM	RF	WL	FL	AREA	VAL
BURNING C.I.	0	0	0	1928 (500)	269

**22. ADD'L FLOOR DET.**

2nd  3rd  4th

**25. CLASSIFICATION**

COMMERCIAL

CLASS M S/C 2+

BY G

ITEM	CH.	MED.	GD.	VAL.
TOILET				/
URINAL				/
BASIN				/
SH STALL				/
SINK				/
SUB TOTAL - PLUMBING				
TOTAL ITEMS 26 & 27				

CARD \_\_\_\_\_ OF \_\_\_\_\_ CARDS

ZONE 5 SEC. 4 PLAT 06 PARCEL 00

DATE 05/18/76

SURVEY BY G

**19. INTERIOR FINISH**

STRUCTURE FINISH

TYPE MASONRY MAT. H.T.

PARTITIONS: POR. OF H.T. WALLS OPENED W/ STAINLESS STEEL SHEETS

GLAZED WINDOWS SET IN WOOD  METAL

**20. MILLWORK**

WINDOWS  DOORS

WOOD  TRIM

METAL  METAL

**26. PLUMBING**

ITEM	CH.	MED.	GD.	VAL.
TOILET				/
URINAL				/
BASIN				/
SH STALL				/
SINK				/
SUB TOTAL - PLUMBING				
TOTAL ITEMS 26 & 27				