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## County of Hawaii

### PLANNING DEPARTMENT

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CERTIFIED MAIL  
P 417 370 124

August 19, 1998

Mr. James K. Anderson  
NF Inc.  
1022 Bethel Street, Fourth Floor  
Honolulu, Hawaii 96806

Dear Mr. Anderson:

Planned Unit Development Application (PUD 98-01)  
Planned Unit Development No. 59  
Applicant: NF, INC.  
Request: Multi-Plex Theater Development  
Tax Map Key: 7-5-07: 5, 7, 8, 12, 13, 15, 16, 23

After reviewing your application and the submittal, the Planning Director certifies the approval of the Planned Unit Development (PUD) application to allow the construction of a Multi-plex theater in the Kona Marketplace Complex with deviations from the minimum number of required parking spaces for the complex; from the off-street loading requirements; from the minimum yard requirements (setbacks) from Kakina Road and from an interior lot line between parcels 7 & 8; and from minimum landscaping requirements of the Zoning Code.

The project site is situated mauka of Alii Drive at its intersection with Sarona Road and Kakina Road, Kailua Village, Keopu 2nd and Honuaula 1st, North Kona, Hawaii, TMK: 7-5-07: 5,7,8,12,13,15,16,23.

#### FINDINGS:

1. In accordance with Article 5, Division 1, Section 25-5-3 of the Zoning Code, the proposed theater is a commercial use permitted by the existing Resort zoning of the property. In accordance with requirements of Article 6, Division 1, Section 25-6-6 (Actions by director on P.U.D. permit applications).

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2. **The construction on the project shall begin within a reasonable period of time from the date of full approval and shall be completed within a reasonable period of time.**

The proposed development timetable for the Planned Unit development will be is construction upon issuance of required permits. The construction timetable is approximately 4 months.

3. **The proposed development substantially conforms to the General Plan.**

The following General Plan elements goals, policies and standards of action are in conformance with the proposed Planned Unit Development.

- **ECONOMIC ELEMENT**

- **GOALS**

- Economic development and improvement shall be in balance with the physical and social environments of the island of Hawaii.
- The County of Hawaii shall strive for diversity and stability in its economic system.
- The County shall provide an economic environment which allows new, expanded, or improved economic opportunities that are compatible with the County's natural and social environment.

- **POLICIES**

- The County of Hawaii shall strive for an economic climate which provides its residents an opportunity for choice of occupation.
- The County of Hawaii shall encourage the development of a visitor industry which is consistent with the social, physical, and economic goals of the residents of the County.

- **LAND USE ELEMENT**

- **GOALS**

- Designate and allocate land use in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the County.

- **POLICIES**

- Promote and encourage the rehabilitation and use of urban and rural areas which are serviced by basic community facilities and utilities. The County shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.
- **Land Use Element ( COMMERCIAL)**

**GOALS**

- Provide for commercial developments that maximize convenience to users.
- Provide commercial developments that complement the overall pattern of transportation and land usage within the island's regions, communities, and neighborhoods.

**POLICIES**

- In an effort to assist existing commercial developments, urban renewal rehabilitation, and/or redevelopment programs shall be undertaken in cooperation with communities, businesses and governmental agencies. The key to the success of these kinds of programs is active and sustained participation from communities and businesses.
- Commercial facilities shall be developed in areas adequately served by necessary services, such as water, utilities, sewers, and transportation systems. Should such services not be available, the development of more intensive uses should be in concert with a localized program of public and private capital improvements to meet the expected increased needs.
- Distribution of commercial areas shall be such as to best meet the demands of neighborhood, community and regional needs.
- Existing strip development shall be converted to more appropriate uses when and where it is feasible.
- The development of commercial facilities should be designed to fit into the locale with minimal intrusion while providing the desired services. Appropriate infrastructure and design concerns shall be incorporated into the review of such developments.
- Applicable ordinances shall be reviewed and amended as necessary to include considerations for urban design, aesthetic quality and the protection of amenities in adjacent areas through landscaping, open space and buffer areas.
- Commercial development shall be located in areas adequately served by transportation, utilities, and other amenities. Commercial developments shall provide for adequate internal circulation amongst commercial facilities in the area.
- Off-street parking and loading facilities shall be provided.
- Commercial development shall maintain or improve the quality of the present environment through the consideration of visual, access, landscaping, and other design elements in their development.
- Preference shall be given to commercial lands with a reasonably level topography.

- **Land Use Element ( RESORT)**

**GOALS**

- Maintain an orderly development of the visitor industry.
- Provide for resort development that maximizes conveniences to its users and optimizes the benefits derived by the residents of the County.
- Ensure that resort developments maintain the social, economic, and physical environments of Hawaii and its people.

**POLICIES**

- Promote and encourage the rehabilitation and the optimum utilization of resort areas which are presently serviced by basic facilities and utilities.
- The County shall encourage the visitor industry to provide resort facilities which offer an educational experience of Hawaii as well as recreational activities.

The proposed Planned Unit Development will implement the above goals and policies of the applicable element of the General Plan, in particular with the above cited elements.

4. **Any commercial development shall not create traffic congestion which exceeds that which would have been produced under conventional development patterns, practices and standards in the district or interfere with any projected public improvements, shall provide for proper entrances and exits along with proper provisions for internal traffic and parking, and be an attractive center which does not adversely impact upon adjacent and surrounding existing or prospective developments.**

The applicant proposes to demolish two existing structures and erect a single story multiplex theater in their place. The siting of the theater necessitates the redesign of the existing parking lot and the relocation of the existing loading zones. The theater also requires a new water line for an automatic sprinkler system that will be tapped into the existing water main at Alii Drive. The existing center is not sprinkled. The two structures that will be demolished consist of a single story 420 s.f. commercial building and a two story 8,228 s.f. commercial building presently housing a bar, an ice cream shop and a dive shop on the ground floor and two movie theaters on the second floor."

- a. "The new building will be a single story 5 theater complex that incorporates stadium tiered seating which is the state of the art design for movie theaters. A mezzanine level above the central lobby will house the projection equipment and a manager's office. The total area of the theater including the mezzanine is approximately 10,800 s.f.. The operator of the existing theaters will operate the new facility. The new theater will be attached to the existing shopping center and will be oriented along Kakina Road. The parking lot will be reconfigured and the

total stall count shall be increased from 103 stalls to 111 stalls. The entry/exits will continue to be from Sarona Road. The main entry/exit will be in line with the parking lot entrance that leads to Hanama Place.

- b. "The architecture of the new building is in keeping with the spirit of the traditional image of the movie theaters of the past with the grand marquee and the tall vertical signage boldly proclaiming the name of the theater. Recognizing the fact that the theater will be part of Kailua Kona however, we have greatly softened or toned down the traditional theater design while keeping the important visual element so that there is still that image of the old theater that conveys the fun and entertainment to be had within. Bright neon and exposed theater light bulbs will be replaced by recessed lighting at the marquee. Large vertical signs will be non-existent and in its place will be a more subdued vertical element that will convey the theater look. Decorative architectural embellishments based abstractly on tropical ginger and heliconia plants will be placed above the marquee as well as along the fascia of the building to lend a Hawaiian feel and provide visual interest for the building. The stucco wall finish and the corrugated metal siding, two materials used in the existing shopping center, will also be used here to help blend the new structure with the existing buildings. The colors of the theater will consist of rich tropical hues blended in with the off white stucco and warm grey corrugated siding of the existing structures.
- c. "The landscaping is designed to compliment the shopping center. Hedges at the perimeter of the parking lot will buffer the views of the cars. Canopy trees within the parking areas will provide shade. The yard area between the new theater and Kakina Road will be heavily landscaped to soften the building appearance. Additional landscape planting areas at the walkways between the existing structures and parking will be introduced to provide a pleasant frontage at the parking area.

#### **VARIANCES REQUESTED FOR PLANNED UNIT DEVELOPMENT**

5. The petitioner has requested the following variances and states in part the following:

##### **Variance from Minimum Off-Street Parking - Section 25-4-51**

- a. "We presently have 196 stalls located on site, on two adjacent sites across Sarona Road and at the Kona Plaza Condominium that meets all of the present parking requirements for Kona Marketplace. The new theater requires an additional 57 stalls (500 seats - 274 seats = 226 seats/4 seats = 57 stalls. We receive credit for

existing commercial space that will be demolished (3,814 s.f./200 s.f. = 19 stalls), existing outdoor tables and chairs that will be removed 2,000 s.f./200 s.f. = 10 stalls) and an existing dining area at the old Fez's Pizza that will also be removed (5 stalls) to bring the total required to 23 stalls. By redesigning the parking lot we gained an additional 8 stalls and by adding 25 bike stalls, we've reduced the required additional stalls to 10. As such, we request that the parking requirement be reduced by 10 from a total required of 214 (including the above mentioned credits) down to a total of 204.

**Variance from Minimum Off-Street Loading - Sections 25-4-56 to 25-4-59**

- b. "Although the shopping center's total building area is 45,724 s.f. including the new theater, all of the shops are small operators averaging less than 1500 s.f. in total area. None of the operators require large deliveries. Even the theater, by far the largest tenant in the complex, would not require deliveries by large vehicles. In fact the theater will have deliveries once every two weeks by a vehicle no larger than a passenger type van. The additional loading zones and required maneuvering spaces would not only be used but would also take away valuable space that could be used for parking. We have presently two 10' by 20' loading zones on site. We propose to relocate these loading zones adjacent to the mauka side of the new theater directly off of Kakina Road with direct access from this road. Only two properties, an adjacent hotel and our property are serviced by this road. However, the parking lot for the adjacent hotel is blocked off for security purposes. Thus only our site has access although for the same reasons even our access has been chained. As a result Kakina Road is not used for any vehicular traffic at the present time. However, by locating the two loading zones here we propose to use the road as a service drive and since this would be the only traffic on the road direct access should be allowed since there should be no impact on traffic congestion or traffic hazards. The request is to eliminate the additional loading zone requirement of two loading zones with the required maneuvering spaces and the requirement for an on site access driveway to the proposed loading spaces.

**Variance from minimum side yard requirements - Section 25-9-96**

- c. The variance request is to have no side yard setback and have the new theater building straddle the side property line between TMK: 7-5-07: 7 and TMK: 7-5-07: 8. In addition, a variance is being requested to allow the new theater building with an 8 foot front yard in lieu of the minimum 20 foot front yard. The logical location for the new theater would be adjacent to the existing shopping center

buildings. This insures continuity with pedestrian traffic as opposed to locating the new building across the parking lot on the mauka end of the site. However, due to the size of the new building and the area constraints in attempting to meet parking and loading requirements, the siting of the building necessitates the straddling of the existing property lines. Also by connecting the new building to the existing complex both buildings will be considered as one and the 15' distance between building requirement under Section 25-4-47 does not govern. Although all of the properties are leased or owned in fee by the applicant and managed as one entity by the applicant's management company, the leased properties have separate owners and therefore, consolidation into one is not feasible. It should be noted that all of the properties are bound together due to parking requirements. As such, none of the properties could be spun off and meet zoning requirements. As a result we feel that although the shopping center consists of separate parcels, due to the building and parking layout and zoning requirements these separate parcels should not be considered as one entity and consequently encroachment on interior property lines should be allowed. Kakina Road is not a through thoroughfare but dead ends at the parking lot to the adjacent hotel. The entry to this lot is blocked off. The road can also service the parking for Kona Marketplace, but that entrance has also been chained since all of the entry and exits for the Marketplace parking come off of Sarona Road. As such, the road presently serves no purpose although we are proposing to utilize it as a service lane for our loading zones. As a result we don't feel it is unreasonable to treat the Kakina Road frontage as a side yard instead of a front yard. This would give us an additional 12 feet of depth to devote to parking on the Sarona side of the building.

**Variance from minimum landscaping - Section 25-5-97**

- d. The Zoning Code requires a minimum of 20 percent of the land area to be for landscaping purposes. The existing shopping center was built years ago when there were no landscaping or minimum lot coverage requirements. As a result the complex is short of open space and landscaping areas. Placing the burden on this new development to meet the present codes would be unfair and impractical and would be impossible to meet. We do intend to meet all code regarding the landscaping for the parking lot and we are introducing additional landscaping areas between the parking lot and the adjacent marketplace building. In addition, we are providing screening hedges at the mauka and south property lines which we are not required to do."

5. **The development of a harmonious, integrated whole justifies exceptions, if required, to the normal requirements of the Zoning and Subdivision Codes, and the contemplated arrangements or use make it desirable to apply regulations and requirements differing from those ordinarily applicable under the district regulations.**

The proposed PUD will foster a design objective that will complement the existing shopping center. The revitalization of an existing resort development with new development to enhance the shopping centers image and services. The landownership and development of the shopping center over time and on different properties and with off-street parking on adjacent properties in this case are unique as, the properties were not able to be consolidated. In view of all the considerations in this application, the addition of the multi-plex theater will serve to enhance the Kona Marketplace and the surrounding community, providing a modern theater complex for the comfort and convenience of the community and visitors. The requested variances do not adversely affect the surrounding areas and the result justifies the exceptions do the normal requirements ordinarily applicable under the present Zoning Code. The proposed Planned Unit Development is a development of a harmonious, integrated whole which justifies exceptions to the normal requirements of this chapter, as the contemplated arrangements and the new multi-plex theater and shopping center use make it desirable to apply regulations and requirements differing from those ordinarily applicable under the district regulations.

6. **In accordance with Section 25-6-6 (Actions by director on P.U.D. permit applications), the Planning Director may approve an application for a P.U. D. subject to certain conditions. Any conditions imposed by the Planning Director upon approval of an application for P.U.D. shall bear a reasonable relationship to the P.U.D. permit issued, and to the approved uses, plans, and variances of district standards; provided, however, that no improvements or alterations off-site of the project shall be required as a condition of a P.U.D. permit. The conditions may include, but not be limited to the following: (1) Commencement and completion time frame for the project; (2) Boundary changes approved in the project; (3) Uses that are prohibited or limited; (4) Specifications for the minimum development standards; (5) Specifications for street improvement and dedication; (6) Utilities to be furnished; and (7) The extent and limitations upon the variances permitted. In accordance with Section 25-6-13 (Effect of P.U.D. permit on other zoning provisions), any P.U.D. permit issued shall be subject to all of the conditions imposed in the permit and shall be exempted from other provisions of this chapter only to the extent specified in the permit.**



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Based on the above, the following list of variances are approved for this Planned Unit Development:

**ZONING CODE:**

1. A variance from Chapter 25, Section 25-4-51 (Required number of parking spaces) to allow 204 stalls in lieu of the minimum required 214 stalls.
2. A variance from Chapter 25, Section 25-4-56 (Off-Street Loading requirements), Section 25-4-57 (Method of determining number of loading spaces), Section 25-4-58 (Dimension of Loading Spaces) and Section 25-4-59 (Location and Improvement of loading spaces) to allow direct access from Kakina Road.
3. A variance from Chapter 25, Section 25-5-96(1)(2)(Minimum Yards) to allow an 8 foot front yard in lieu of the minimum required 20 feet and to allow a zero yard side yard for the new theater building to straddle the property line between parcels 7 & 8.
4. A variance from Chapter 25, Section 25-5-97 to allow landscaping below the minimum 20 percent of the total land area as provided for in the Planned Unit Development Permit Application landscaping plan.

Based on the above findings, the Planning Director has approved the Planned Unit Development Application subject to the following conditions:

- A. The applicant, its successors or assigns be responsible for complying with all of the stated conditions of approval.
- B. The applicant, its successors or assigns shall indemnify and hold the County of Hawaii 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 applicant, its successors or assigns.
- C. The plans for proposed development shall be submitted to the Planning Director within five (5) years from the effective date of the Planned Unit Development (PUD). The plans shall identify structures, fire protection measures, paved and striped parking stalls and driveway, landscaping and other improvements

associated with the proposed use. The design of the structure shall be submitted for Final Plan Approval.

- D. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, paving, or walks be encountered, work in the immediate area shall cease and the DLNR-SHPD shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-SHPD when it finds that sufficient mitigative measures have been taken.
- E. Access, roadway and any drainage improvements shall be constructed in a manner meeting with the approval of the Department of Public Works.
- F. Obtain approval from the Board of Appeals for any Building Code Variances, if applicable.
- G. The applicant shall confer with the Department of Public Works for the construction of two designated pedestrian paths along Sarona Road fronting the subject property.
- H. Wastewater generated by the proposed development shall be disposed of meeting with the requirements and approval of the Department of Public Works and/or the Department of Health.
- I. Comply with all applicable laws, rules, regulations and requirements of affected agencies for the proposed multiplex theater and related improvements, including the Fire Department and the Civil Defense Agency.
- J. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the Planned Unit Development (PUD) permit. The report shall include, but not be limited to, the status of the development and to what extent the conditions of approval are being complied with. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.

Mr. James Anderson

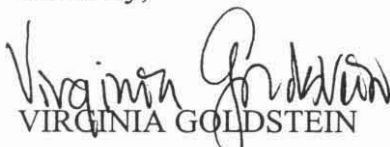
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- K. An initial extension of time for the performance of conditions within the ordinance may be granted by the Planning Director upon the following circumstances:
1. The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicants, successors or assigns, and that are not the result of their fault or negligence.
  2. Granting of the time extension would not be contrary to the general plan or zoning code.
  3. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
  4. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

Should any of the conditions not be met or substantially complied with in a timely fashion, the Director shall initiate the nullification of the Planned Unit Development Permit.

Sincerely,

  
VIRGINIA GOLDSTEIN  
Planning Director

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xc: West Hawaii Office  
DPW, Building Division  
DPW, Engineering