

October 26, 1973

Mr. Jeffrey Choi
Attorney at Law
Cook, Choi & Yuda
100 Pauahi St., Suite 204
Hilo, HI 96720

Re: Variance Application
Tax Map Key 2-2-50:15
Applicant: Masaru Shindo dba Hilo Soda Works

The Planning Commission at its preliminary hearing on October 25, 1973 reviewed your application for a variance to allow no rear yard and no side yard building setbacks for a proposed addition to an existing building at 270 E. Kawili Street, Kanoelehua Industrial Lots, Waiakea, South Hilo, Hawaii.

This is to inform you that the Commission voted to deny your request based on the following considerations:

1. Approving this variance application would be a grant of special privilege. Similar building sites with industrial uses in this industrial tract have and are continuing to meet the building setback requirements. The applicant's request is based on the particular preference to build up to the property line and is not found to be the result of a physical hardship related to the land itself.
2. The owner is not presently being denied from building even a substantial addition because of the imposition of the setback requirement; there is ample space to approximately double the 5,700 square foot floor area and still incorporate setback features and parking.
3. Granting this variance would also mean no landscaping or parking, loading and unloading stalls which installations are a requirement of any additional floor space being created. That is - a variance from these requirements would be additionally required if the variance as submitted were granted.

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As your request has been denied, you may appeal the decision of the Planning Commission if you find that the action of the Planning Commission was based on an erroneous finding of a material fact, or that the Commission has acted in an arbitrary or capricious manner, or had manifestly abused its discretion.

Should you decide to appeal the decision of the Commission in the denial of your variance request, a petition setting forth the following shall be submitted to the Board of Appeals within fifteen (15) days from the date of action and accompanied by a filing fee of ten dollars (\$10.00):

1. Name, mailing address and telephone number;
2. Identification of the property and interest therein;
3. The particular provision of the Zoning Ordinance or Subdivision Ordinance or regulation in question;
4. All pertinent facts;
5. The action of the Commission; and
6. Reasons for the appeal, including a statement as to why the appellant believes that the Commission's action was based on an erroneous finding of a material fact, or that the Commission has acted in an arbitrary or capricious manner, or had manifestly abused its discretion.

Inasmuch as no public hearing will be held on this matter, we will be returning your filing fee as soon as the refund is processed. We will be forwarding you a certified copy of the Order as soon as the document is prepared.

Should you have any questions regarding the above, please feel free to contact Donald Tong or Norman Hayashi of the Planning Department at 935-5721, extension 221.



Ed C. Watt
Chairman

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cc Hilo Soda Works
Corporation Counsel
Building Department

PLANNING COMMISSION OF THE PLANNING DEPARTMENT

COUNTY OF HAWAII

In the Matter of the Appeal)
 of)
 MASARU SHINDO)
)
Tax Map Key 2-2-50:15)

Variance Application

No. 362

FINDINGS OF FACT

CONCLUSIONS OF LAW

AND

DECISION AND ORDER

PLANNING COMMISSION OF THE PLANNING DEPARTMENT

COUNTY OF HAWAII

In the Matter of the Appeal)
of)

MASARU SHINDO)

Tax Map Key 2-2-50:15)
_____)

Variance Application

No. 362

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND
DECISION AND ORDER

The above-entitled matter was brought on for a preliminary hearing before the Planning Commission of the Planning Department, County of Hawaii, on the 25th day of October, 1973, in the County Council Room, County Building, Hilo, Hawaii, at which hearing Jeffrey Choi appeared in behalf of the applicant. The Planning Commission having heard the testimony and having examined the exhibits does hereby declare its Findings of Fact, Conclusions of Law, and Decision and Order.

FINDINGS OF FACT

1. An application requesting a variance from the minimum side and rear yard building setbacks was received on October 10, 1973.
2. A preliminary hearing on the above matter was held on October 25, 1973.
3. The requested variance was to allow no rear and side yard building setback in lieu of the required fifteen (15) foot rear yard building setback and ten (10) foot side yard building setback for a proposed addition to the existing Hilo Soda Works building.
4. The property under consideration is a 24,200 square foot parcel zoned ML-20 (Limited Industrial - 20,000 square feet) located within the Kanoelehua

Industrial Lots, Waiakea, South Hilo.

5. The existing 5,880 square foot Hilo Soda Works building was constructed in 1964, which was prior to the adoption of the Zoning Code. The building is presently situated approximately three and one-half (3½) feet from the side property line.

6. In request of the variance, the applicant had stated the existing property is not large enough to accommodate the present needs, thus, requests the addition to be constructed up until the property line. Furthermore, the property is situated such that easy access is provided to both the rear and side even if the addition is built up to the boundary. The need for the normal setback space is therefore, eliminated with construction of property fire walls.

7. It was recommended by staff that the request be denied based on the following consideration:

- a. Approving this variance application would be a grant of special privilege. Similar building sites with industrial uses in this industrial tract have and are continuing to meet the building setback requirements. The applicant's request is based on the particular preference to build up to the property line and is not found to be the result of a physical hardship related to the land itself.
- b. The owner is not presently being denied from building even a substantial addition because of the imposition of the setback requirement; there is ample space to approximately double the 5,700 square foot floor area and still incorporate setback features and parking.
- c. Granting this variance would also mean no landscaping or parking, loading and unloading stalls which installations are a requirement of any additional floor space being created. That is, a variance from these requirements would be additionally required if the variance as submitted were granted.

8. It was moved and seconded that the request be denied. Motion was carried.

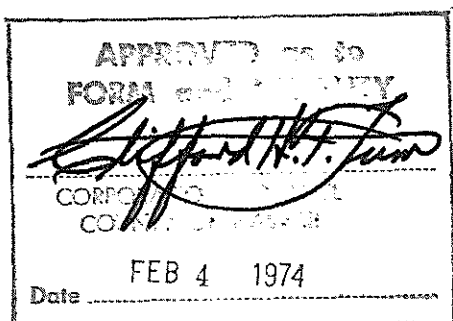
CONCLUSIONS OF LAW

1. Pursuant to Section 5-4.3(g) of the County Charter, the Planning Commission has jurisdiction to hear and determine appeals requesting variances from the Subdivision and Zoning Codes.
2. All procedural requirements as prescribed by law have been complied with.
3. Under Section 5-4.3(g) of the Hawaii County Charter, a variance may not be granted unless there are special or unusual circumstances applying to the subject property which would result in unnecessary hardship if the ordinance were literally enforced, and the granting of the variance would not be contrary to the public interest.
4. The requirements for the granting of a variance have not been met.

DECISION AND ORDER

Based upon the testimony and exhibits introduced at the hearing and the foregoing Findings of Fact and Conclusions of Law, it is the decision of the Planning Commission and it is hereby ordered that a variance from the requirements of Article 14, Section 7 of the Zoning Code (Chapter 8), pertaining to minimum setback requirements, of Tax Map Key 2-2-50:15, located in the Kanoelehua Industrial Lots, Waiakea, South Hilo, Hawaii, be and is hereby denied on its merits.

Dated at Hilo, Hawaii, this 9th day of February 1974.




Arthur W. Martin, Chairman