

CERTIFIED MAIL

January 13, 1981

Messrs. John and James Hamano
518 Lanikaula Street
Hilo, HI 96720

Dear Messrs. Hamano:

Variance Application
Expansion of a Non-conforming Use and Setbacks
Tax Map Key: 2-2-49:27

We regret to inform you that after reviewing your application and the information presented at the administrative public hearings on October 9, 1980 and November 7, 1980, the Planning Director is hereby denying your variance requests. The reasons for the denial are as follows:

1. That there are no special or unusual circumstances applying to the subject property which do not generally apply to the surrounding properties within the same zoned district. There are no topographical or other unusual conditions which particularly differentiate this parcel from others in the area.

Although the property is zoned Single Family Residential, industrial use of the property was established in 1963. The non-conforming use provision of the Zoning Code stipulates, "Any non-conforming use of land or use of a building may continue to the extent it existed at the time of adoption of this Chapter. . ." The Zoning Code became effective in the City of Hilo in 1968. At that time, the industrial use of the property was limited to a portion of an existing garage which amounted to approximately 500 square feet.

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An area (which is the subject of this application) was issued a building permit as a carport addition in 1974. This structure was approved as an open carport with an area of approximately 1,886 square feet and was to be built in accordance with all setback requirements. On June 24, 1980, the petitioners were served notice by the Building Department that they were in violation of Building Code requirements because of building without a permit. The carport addition, approved in 1974, had been enclosed and expanded to an area of approximately 3,496 square feet without a subsequent building permit. It was also determined that the subject structure had side yard setbacks of 4+ and 1+ feet respectively, both of which violated the minimum requirement of 10 feet. Furthermore, the entire structure was apparently being used for industrial purposes. All of the above-described findings are inconsistent with the provisions of the building permit granted in 1974 for the subject structure.

The petitioners have not identified any special or unusual circumstance applying to the subject property which would justify favorable consideration of the violations to the Building and Zoning Codes described above.

2. That the granting of the variance, without any special or unusual circumstances, will constitute a grant of personal or special privilege inconsistent with the limitations upon other properties under identical district classification.
3. That the granting of the variance will be inconsistent with the non-conforming use provisions of the Zoning Code. The request to expand the industrial use of the property from 500 square feet to 3,496 square feet is a substantial deviation which exceeds the non-conforming provisions allowed for in the Zoning Code. As stated in the Zoning Code, "A non-conforming use may be enlarged within the building it occupies, but shall not be enlarged or increased to occupy a greater area of land..." While other variances were granted for expansion of non-conforming uses/structures, those variances did not amount to a practical expansion of the non-conforming use. They were generally for safety reasons.

Please be informed that the final denial order will be forthcoming under separate cover.

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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.

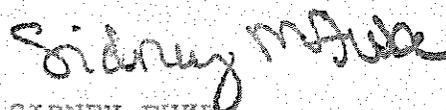
1. Non-refundable filing fee of one hundred dollars (\$100.00);
2. Ten (10) copies of a statement that clearly sets forth the legal and substantive bases for the appeal and that specifies the grounds which would support a finding that the Director's decision was in error; and
3. Any other plans or information required by the Planning Commission.

Upon receipt of the appeal, the Planning Commission shall conduct a public hearing within a period of ninety (90) calendar days, unless the time is waived by the appellant. 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 action from which the appeal was taken.

Please be informed that another possible alternative for resolving the problem may be to seek a rezoning of the subject property. Please understand, however, the mere submittal of a request should not be interpreted as an automatic approval.

Should you have any questions on the matter, please feel free to contact us.

Sincerely,



SIDNEY FUKU
Planning Director

BN:wkm

cc: Planning Commission
DPW - Building Division

bcc: Masa's section