

COUNTY OF
HAWAII

PLANNING DEPARTMENT

25 AUPUNI STREET • HILO, HAWAII 96720

HERBERT T. MATAYOSHI
Mayor

SIDNEY M. FUKU
Director

DUANE KANUHA
Deputy Director

August 17, 1981

Mr. James E. Miles
James E. Miles Construction, Inc.
P. O. Box 4158
Hilo, Hawaii 96720

Dear Mr. Miles:

Appeal from Planning Director's denial
action on Variance Application
Tax Map Key 2-2-37:97

The Planning Commission has thoroughly reviewed the records on the appeal filed by you to the Planning Director's denial action of a variance request to allow a zero (0) rear yard setback for a proposed warehouse/office building in lieu of the minimum requirement of twenty (20) feet. At its meeting on August 13, 1981, the Planning Commission concurred with the Planning Director that a zero (0) rear yard setback is not warranted, but, voted instead to allow a ten (10)-foot rear yard setback based on the following findings:

That there is an unusual circumstance applying to the subject property which do not generally apply to surrounding properties in the same district. The subject property is an irregular shaped lot resulting from the angled alignment of Railroad Avenue. This is an unusual situation in comparison to other industrially zoned lots which basically have a rectangular configuration. The portion of the area along Railroad Avenue is considered to be the front property line. Rather than constructing an angled building following the alignment of Railroad Avenue, from a practical standpoint, the petitioner decided to shift the proposed building further to the rear of the lot. Technically, if the building were to be constructed along the front property line with the minimum requirement of

Mr. James E. Miles
Page 2
August 17, 1981

twenty (20) feet instead of the proposed 23 and 44 feet, it would amount to an additional floor area of about 638+ feet. In essence, what the petitioner intends to do is transfer this amount of floor area to the rear of the property. With the granting of the ten (10)-foot rear yard setback, the petitioner would be able to gain approximately 580 feet of floor area.

As an alternative, the petitioner could construct a 2-story warehouse/office building meeting with the minimum setback requirement. However, this would be functionally disadvantageous.

Based on the above, it is determined that special and unusual circumstances do exist to a degree which would deprive the petitioner of substantial property rights if the entire twenty (20)-foot rear yard setback is imposed, and also to a degree which would obviously interfere with the best use or manner of development of the subject property.

The granting of a 10-foot rear yard setback also will not constitute a grant of personal or special privilege inconsistent with the limitations placed upon other industrially zoned properties in the area. In fact, within the Kanoelehua Industrial area, the Planning Commission has previously granted such similar setback variance request.

The granting of a 10-foot rear yard setback will not be contrary to the purpose and intent of the minimum setback requirement as stipulated in the Zoning Code. Basically, the intent of the setback requirement is to provide for light, air, and circulation. With the allowance of a 10-foot setback from the building to the rear property line, the stated purpose of the minimum setback requirement would still be accomplished.

Finally, it can be concluded that the granting of such a variance which imposes a 10-foot rear yard setback will not be materially detrimental to the public welfare nor be injurious to improvements or property rights related to properties in the near vicinity.

The Planning Commission is further approving a 10-foot rear yard setback subject to the following conditions:

1. That the petitioner, James E. Miles Construction, Inc., shall be responsible for complying with all of the stated conditions of approval. The Variance Permit shall be non-transferable.

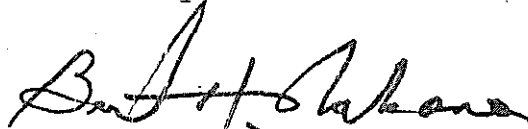
Mr. James E. Miles
Page 3
August 17, 1981

2. That plans shall be submitted to the Planning Department and Final Plan Approval, in accordance with Chapter 8 (Zoning Code), Hawaii County Code, secured within one (1) year from the effective date of the Variance Permit.
3. That construction commence within one (1) year from the date of receipt of Final Plan Approval and be completed within two (2) years thereafter.
4. That no portion of the proposed building, including the roof overhang, shall extend within the 10-foot rear yard setback area.
5. That all surface water runoff generated by the proposed development shall be disposed of on-site. The system of disposal, including the provision of the dry well sumps, shall meet with the approval of the Department of Public Works.
6. That all other applicable rules, regulations, and requirements be complied with.

Should any of the foregoing conditions not be met, the Variance Permit may be nullified.

We will be forwarding the official Variance Permit as soon as the document is prepared. In the meantime, should you have any questions, please feel free to contact the Planning Department at 961-8288.

Sincerely,



BERT H. NAKANO
CHAIRMAN, PLANNING COMMISSION

lgv

cc: Building Division, Public Works
P. Yoshimura, Inc.

CERTIFIED MAIL

February 25, 1981

Mr. James E. Miles
James E. Miles Construction, Inc.
P. O. Box 4158
Hilo, HI 96720

Dear Mr. Miles:

Variance Application (V80-42)
James E. Miles Construction, Inc.
Tax Map Key: 2-2-37:97

We regret to inform you that after re-evaluating your application, the information presented at the administrative public hearing on January 6, 1981 and the development potential of other properties in the immediate vicinity, the Planning Director is hereby denying your variance request. This transmittal replaces our letter of January 28, 1981 which was rescinded by our letter of February 6, 1981. The reasons for the denial are as follows:

That there are no special or unusual circumstances applying to the subject property, proposed building or use which do not generally apply to surrounding property or improvements within the same zoned district. There are no topographical or non-conforming conditions which particularly differentiate this parcel from others in the area. The subject property is relatively flat and there is ample room within the buildable area of the parcel to construct a reasonably sized structure.

That the denial of this variance request will not deprive the owner of substantial property rights which would otherwise be available. A building which measures 128 feet long and 58 feet wide could be constructed within the buildable area of the subject parcel. This compares with the petitioner's proposed structure which measures 144 feet long and 58 feet wide. In requesting the variance, the petitioner is seeking an increase in property rights through the construction of a building 16 feet longer than would ordinarily be permitted and which this request will not rectify any existing deprivation of rights.

That the granting of the subject request, in light of the circumstances described previously, will constitute a grant of personal or special privilege inconsistent with the limitations

FEB 26 1981

Mr. James E. Miles
Page 2
February 25, 1981

upon other properties under identical district classification. It should be noted that the building presently under construction on the adjacent parcel to the south, will have the required 20 foot rear yard setback.

That the granting of the subject request will be inconsistent with the intent and purpose of the Zoning Code and will materially be detrimental to the public welfare and injurious to improvements or property rights to surrounding properties. The setback requirement is intended to provide for light, air and circulation. The proposed building will cut down on the light, air, and circulation available to surrounding properties observing the minimum setback requirements.

Based on the reasons provided above, it is determined that the request to allow the construction of a warehouse/office building with a zero rear yard setback in lieu of the minimum requirement of 20 feet should be denied.

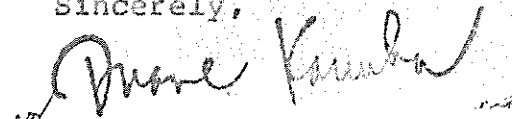
The Director's decision is final, except that within ten (10) working days after receipt of this letter, you may appeal the decision in writing to the Planning Commission in accordance with the following procedures:

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.

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

Sincerely,


Sidney M. Fuke
Planning Director

BN:gs