

PLANNING COMMISSION

Planning Department
County of Hawaii
Hilo, Hawaii

Application for VARIANCE)	
by)	
WILLIAM C. EBERSOLE)	
from)	Variance No. 452
MINIMUM FRONT YARD SETBACK)	
REQUIREMENT)	
in)	
Olaa, Puna, Hawaii)	

VARIANCE PERMIT

The County Planning Commission at a duly held public hearing on October 2, 1975 considered the application of WILLIAM EBERSOLE for a variance from Chapter 8 (Zoning Code), Article 7, Section 7, Hawaii County Code, as amended, more specifically to allow a front yard setback of seventeen (17) feet for a workshop in lieu of the minimum requirement of thirty (30) feet as stipulated within the Agricultural zoned district at Olaa, Puna, Hawaii, Tax Map Key 1-8-10:11.

The Commission has found that:

1. There is an unusual circumstance applying to the situation under consideration. This unusual circumstance is the misunderstanding which occurred between the applicant and the County Department of Public Works' Bureau of Building and Construction. When the applicant's construction plans for a building permit were approved, a thirty (30) foot front yard setback was clearly indicated. However, since a portion of a nonconforming workshop/carport structure, which was partially destroyed by the April, 1973 earthquake, still remained, the applicant decided to reconstruct the new workshop at the location of the destroyed portion of the structure. The area to be reconstructed is set back seventeen (17) feet from the property line, while the undestroyed portion of the structure, which is a carport, is seven (7) feet from the front property line. According to the applicant, he decided to contact the Bureau of Building and Construction for clarification as to whether the 30-foot setback must be complied with. It was at this point that the misunderstanding between the applicant's intent and the Bureau of Building and Construction occurred. There appears to have been a misunderstanding of the applicant's intent on the part of the Bureau of Building and Construction, for a representative of that agency informed the applicant that the workshop could be rebuilt at its former location adjacent to the undestroyed portion of the nonconforming structure.

The unfortunate circumstance was that the applicant was not informed of the requirements of the Zoning Code, and instead was informed only of the Building Code requirements.

Further, when the applicant requested a foundation inspection, he was informed by the Building Inspector that as long as construction was according to approved plans, inspections were not necessary until such time that the framing inspection would be required. The plot plan submitted with the building permit application was stamped to reflect the minimum setback requirement of 30 feet by the Planning Department. The applicant proceeded with construction of the workshop 17 feet from the front property line. When the structure was nearly completed, the applicant was cited by the Building Inspector for a violation of the front yard setback requirement. It is felt that if the normal established procedures for inspection had been followed and if the applicant had complied with the approved plot plan, the existing situation could have been corrected and thereby avoided at the initial stage of construction.

In light of the misunderstanding that occurred, it is further determined that to deny the variance would constitute undue hardship to the applicant when, in fact, the existing situation is partially the result of a government action; and

2. Approval of the request will not have an adverse impact on surrounding properties or improvements. The area in which the subject property is located is characterized by agricultural uses such as grazing, family gardening and orchards. There are also vacant lands and scattered single-family residences in the general area. The area is considered to be rural in nature and is not expected to experience any substantial growth in the near or middle-range future. It is thus determined that the structure will not have an adverse effect on surrounding properties or on the general character of the area.

Further, the workshop is seventeen feet from the front property line and the nonconforming portion of the structure which was not destroyed by the earthquake is seven feet from the front property line. The use of the structure is for non-residential purposes and it is determined that there will be no adverse impact on such uses because of the distance to the front property line. These non-residential uses will not be adversely affected by the homestead road traffic. In addition, the homestead road is straight and it determined that the structure will not interfere with sight distance and other safety factors.

Therefore, the Commission hereby grants to the applicant a variance to allow a front yard setback of seventeen (17) feet for a workshop in lieu of the minimum requirement of thirty (30) feet as stipulated within the agricultural zoned district, pursuant to the authority vested in it by Section 7 of said Code.

The effective date of this permit shall be from October 2, 1975.

Dated at Hilo, Hawaii, this 9th day of October, 1975.


Arthur W. Martin, Chairman

