

PLANNING COMMISSION

Planning Department
County of Hawaii
Hilo, Hawaii

Application for VARIANCE)
by)
NANCY KERR)
from)
MINIMUM SIDE YARD SETBACK)
REQUIREMENTS)
in)
Waimea, South Kohala, Hawaii)

Variance No. 466

VARIANCE PERMIT

The County Planning Commission at a duly held public hearing on April 22, 1976 considered the application of NANCY KERR for a variance from Chapter 8 (Zoning Code), Article 7, Section 8, Hawaii County Code, as Amended, more specifically to allow a ten (10) foot side yard setback in lieu of the minimum required fifteen (15) feet for the construction of a rumpus room addition to the existing single family dwelling. The subject property is located in the Puukapu Homesteads, Waimea, South Kohala, Tax Map Key 6-4-01:111.

The Commission has found that:

1. The land involved was originally 14,067 square feet in size. However, as a result of a consolidation/resubdivision action in July, 1975, an additional 17,441 square feet of land area was acquired by the petitioner from an adjacent property owner; thus, resulting in the increase in lot size to 31,508 square feet.

Prior to the acquisition of this additional land area, the proposed addition to the dwelling would have conformed to the minimum 10-foot side yard setback requirement. Not realizing that the setback requirement had changed to fifteen (15) feet as a result of the increased land area, the petitioner poured the concrete foundation for the addition at the proposed location on the property.

Under normal conditions, within a particular zoned district, the minimum setback requirements do not change even if the land area is increased. In this instance, however, the 14,067 square feet was non-conforming relative to size for lands situated within the Agricultural 40-acre (A-40a) zoned district.

According to the Zoning Code, in cases where the legal building site within the Agricultural zoned district is less than one-half (1/2) acre in area, the setback requirements would be the same as for

a Single Family Residential (RS) zoned district having an area requirement nearest that of the building site in question. In light of this, under the original 14,067 square foot land area, the side yard setback would have been ten (10) feet. As such, the existing dwelling was constructed with the 10-foot side yard setback. However, due to the increase in land area of the property to 31,508 square feet, another set of setback requirements had to be used. In this instance, the Code also states that if the legal building site in an Agricultural zoned district has an area of less than one (1) acre, the setback requirements of the Residential-Agricultural (RA) zoned district shall be used. As such, based on the RA requirement, the side yard setback is increased to fifteen (15) feet because of the added land area acquired.

In light of these circumstances, it is determined that unusual circumstances do exist to the degree that they would deprive the petitioner of certain property rights which otherwise would have been available; and

2. Based on the layout of the existing building, it is felt that to construct the addition at its proposed location would seem more practical from a functional standpoint as the living room is located adjacent to the proposed rumpus room addition. Furthermore, it will follow the existing building line which is presently situated ten (10) feet from the side property line. It will also not be visible from the main roadway.

Again, in view of the present physical layout of the various rooms in the dwelling, it would be unfeasible and perhaps impractical to locate the proposed addition elsewhere. The bedrooms are situated to the rear of the building. To construct the addition further back, to meet the minimum fifteen-foot requirement, would in fact lessen the possibility of providing light, air and circulation to the bedrooms, which are the basic purposes for the setback requirements.

Furthermore, the cesspool is situated at the opposite side of the dwelling. The construction of the additional room on that side may violate the setback requirement for ten (10) feet between the building and the cesspool. As such, it is quite evident that, although there seems to be ample land area to construct the addition at another location, the most feasible location for the rumpus room, in this particular case, is the area being proposed.

Therefore, it is determined that to deny the variance under these circumstances would in essence interfere with the best use or manner of development of the proposed addition.

Therefore, the Commission hereby grants to the applicant a variance to allow a ten (10) foot side yard setback in lieu of the minimum required fifteen (15) feet for the construction of a rumpus

room addition to the existing single family dwelling, pursuant to the authority vested in it by Section 7 of said Code, subject to the following conditions that:

1. Construction of the addition be completed within two (2) years from the effective date of approval of the Variance Permit; and
2. All other applicable rules and regulations be complied with.

Should any of the foregoing conditions not be met, the Variance Permit shall be deemed null and void.

The effective date of this permit shall be from April 22, 1976.

Dated at Hilo, Hawaii, this 27th day of April, 1976.

for Y. Haku Okurakami
Leon K. Sterling, Jr., Chairman

