

PLANNING COMMISSION

Planning Department  
County of Hawaii  
Hilo, Hawaii

Application for VARIANCE	)	
by	)	
HICKS CONSTRUCTION COMPANY	)	
from	)	
MINIMUM FRONT YARD SETBACK REQUIREMENT	)	Variance No. 467
in	)	
Kalaoa 2nd, North Kona	)	
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VARIANCE PERMIT

The County Planning Commission at a duly held public hearing on April 22, 1976 considered the application of HICKS CONSTRUCTION COMPANY for a variance from Chapter 8 (Zoning Code), Article 3, Section 7, Hawaii County Code, as Amended, more specifically to allow an eleven (11) foot front yard setback for a single-family dwelling in lieu of the required fifteen (15) feet. The subject property is located within the Kona Wonder View Lots Subdivision in Kalaoa 2nd, North Kona, TMK 7-3-14:6.

The Commission has found that:

1. There are unusual circumstances applying to the situation under consideration. In March of 1975, the petitioner obtained a building permit to construct a single-family dwelling on the subject property. The construction plans as submitted and subsequently approved showed a 15-foot setback from the property line fronting Kiekie Street. However, in approving the plot plan, the approving agency inadvertently made a notation at an incorrect location on the plan. The notation, "minimum eight (8) foot side yard setback required," was placed along Kiekie Street which, in fact, is the front of the property and required a minimum setback of fifteen (15) feet. Since the eight (8) foot side yard setback requirement was noted along Kiekie Street, the

petitioner had construed that that portion of the property to be the side. As such, the petitioner constructed the dwelling with an 11-foot setback, thinking that only an eight (8) foot setback was required.

Furthermore, since the subject property is a corner lot with two (2) road frontages, the areas along the roadways are deemed to be the front property lines. Unlike standard type lots with only one (1) road frontage, setbacks for corner lots are interpreted differently. This also may have contributed to the misinterpretation of the yard areas when the approving agency reviewed the plot plans. In light of these circumstances, it is determined that, to some degree, negligence on the part of government has contributed to the present violation. As such, it would impose undue hardship on the petitioner if the variance were denied; and

2. The granting of the variance will not be materially detrimental to the public welfare or injurious to improvements or property rights related to properties in the near vicinity. The land is sloped in such a manner that, between the dwelling and Kiekie Street, there is a change in elevation of seven (7) to ten (10) feet. The roadway is much higher than the subject property. As such, even though the dwelling encroaches into the setback area by four (4) feet, it is felt that the granting of this particular variance, under present circumstances, will not violate the spirit and intent of the setback requirements.

Furthermore, the dwelling is situated in such a manner below the finish grade of Kiekie Street that it would not fringe upon the rights of the surrounding properties and their dwellings, especially the dwelling located adjacent and across

of Kiekie Street which would have been affected the most. This adjacent dwelling is constructed on land which is about twenty (20) feet higher than the property in question. As such, the encroachment of the dwelling in question into the setback area would seem quite negligible from the standpoint of the adjacent dwelling.

Therefore, the Commission hereby grants to the applicant a variance to allow an eleven (11) foot front yard setback for a single-family dwelling in lieu of the required fifteen (15) feet pursuant to the authority vested in it by Section 7 of said Code, subject to the following condition that all other applicable rules and regulations be complied with.

Should this condition not be met, the variance 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 Harold Muradani*  
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LEON K. STERLING, JR., Chairman

