

PLANNING COMMISSION

Planning Department  
County of Hawaii  
Hilo, Hawaii

Application for VARIANCE	)	
by	)	
BERNABE CORTEZ AND CESARIA GUIEB	)	
from	)	Variance No. 490
MINIMUM SIDE YARD SETBACK	)	
AND MINIMUM BUILDING SITE	)	
AVERAGE WIDTH REQUIREMENTS	)	
in	)	
Waiakea, South Hilo, Hawaii	)	
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VARIANCE PERMIT

The County of Hawaii Planning Commission at a duly held public hearing on April 14, 1977, considered the application of BERNABE CORTEZ AND CESARIA GUIEB for a variance from Chapter 8, Article 3, Sections 6 and 7, Hawaii County Code, as amended, to allow the creation of two (2) lots with building site average widths of 68.38 feet and 61.62 feet in lieu of the required seventy (70) feet as stipulated within the Single Family Residential - 10,000 square foot (RS-10) zoned district. Also requested is a variance to allow the retention of a single family dwelling with no side yard setback and a carport with a 3-foot side yard setback in lieu of the required ten (10) feet. The property involved is located within the Waiakea Homesteads House Lots, South Hilo, Hawaii, Tax Map Key 2-2-40:portion of 11.

The Commission has found:

1. That there are special or unusual circumstances applying to the subject request which do not generally apply to surrounding properties or improvements in the same zoned district. The reason for the proposed 2-lot subdivision, which necessitates the request for the variance, results from a Court Judgement which was rendered. The Judgement rendered designated the division of Lot 9-A and Lot 9-B, and approved the division by reason of the peculiar and unique circumstances and facts pertaining to the affected property and the affected parties (Cortez and Guieb). Mrs. Guieb had bought that portion of land identified as Lot 9-B from Mr. Cortez on an Agreement of Sale in 1953. However, no subdivision was applied for during that period. Both parties have been occupying their improved portions of land divided by existing fences and foliage since 1953; a period of twenty-four (24) years. The boundaries have not changed during this period. In light of the above, it is quite evident that unusual circumstances exist to a degree which would deprive the parties involved of substantial property rights which would otherwise be available and to a degree which obviously interferes with the best use or manner of development of the subject property.

2. That the affected structures, namely, the Guieb dwelling and the Cortez carport, have been in existence at their present locations for many years. In fact, the dwelling was constructed over fifty (50) years ago and is considered to be in very poor condition. Even if the variance request is not granted, the location of the affected structures will still be the same. The present situation will not change or be altered in any way. As such, it is therefore determined that the granting of this particular variance request will not be materially detrimental to the public welfare nor will it be injurious to improvements or property rights related to properties in the near vicinity. Furthermore, since the buildings already exist on the property, even if the land is subdivided, the character of the area and neighborhood will not change. Thus, it is further felt that the granting of this particular variance request will not constitute a grant of special privilege inconsistent with the limitations placed upon other properties under identical district classification.

Therefore, the Commission hereby grants to the applicant a variance to allow the creation of two (2) lots with building site average widths of 68.38 feet and 61.62 feet in lieu of the required seventy (70) feet, and the retention of a single family dwelling with no side yard setback and a carport with a 3-foot side yard setback in lieu of the required ten (10) feet, pursuant to the authority vested in it by Section 7 of the Zoning Code, subject to the following conditions:

1. That the petitioners or their authorized representative(s), obtain tentative approval of the proposed subdivision within one (1) year from the effective date of approval of the Variance Permit. The petitioners/representative(s) shall also be responsible for securing final subdivision approval.
2. That all future improvements, including structural additions to the dwelling and the carport, shall conform to the minimum setback requirements as spelled out in the Zoning Code.
3. That all other applicable rules and regulations be complied with.

Should any of the foregoing conditions not be met, the Variance Permit may be deemed null and void by the Planning Commission.

The effective date of this permit shall be from April 14, 1977.

Dated at Hilo, Hawaii, this \_\_\_\_\_ day of \_\_\_\_\_, 1977.

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(Mrs.) Lorraine R. Jitchaku  
Chairman

