

PLANNING COMMISSION

Planning Department
County of Hawaii
Hilo, Hawaii

APPLICATION FOR VARIANCE)	
by)	
HARVEY E. & ALMA G. CARMACK)	VARIANCE NO. 523
from)	
MINIMUM SIDE YARD SETBACK &)	
CLEAR SPACE REQUIREMENTS)	
in)	
Ola'a Reservation Lots,)	
Ola'a, Puna, Hawaii)	
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VARIANCE PERMIT

The County of Hawaii Planning Commission at a duly held public hearing on February 23, 1978, considered the application of HARVEY E. & ALMA G. CARMACK for a variance from Article 7, Section 8, and Article 26, Section 4H, Chapter 8 (Zoning Code) of the Hawaii County Code, as amended, more specifically, to allow the retention of a single family dwelling with a 5' - 8 1/2" side yard setback and a 2' - 8 1/2" clear space in lieu of the requirements of eight (8) feet and four (4) feet respectively for an 8,346 square foot lot as stipulated within the Agricultural 5 acre (A-5a) zoned district in the Pacific Paradise Mountain View Manor Subdivision, Increment 3, Ola'a Reservation Lots, Ola'a, Puna, Hawaii, Tax Map Key 1-8-82:77.

The Commission has found:

That unusual circumstances exist in that the location of the house was based on an erroneous assumption as to the location of the property lines. The owner-builder of the house on the subject property assumed that the metal pins and wooden markers on the site were properly placed property pins. However, when the developer's surveyor did the final stakeout six (6) years after the date of final subdivision approval, it was found that the temporary wooden stakes were 5' - 5" off. The erroneous initial staking of the property and the reliance on these pins has caused the house in-place to be within the side yard setback area. Further, that by approving the location of the house foundation government may have contributed to the incorrect house location. While similar circumstances may exist for the other homes in the Pacific Paradise Mountain View Manor subdivision due to the late staking of the property lines, it is felt that in relation to the determination of setbacks in general, the present request is an unusual situation.

The petitioner has only two (2) alternatives to the requested variance. The petitioner could move the house, or he could acquire the adjoining property and consolidate the two (2) lots into one (1) lot. Consolidation of the two (2) lots and subsequent resubdivision into two (2) lots is not possible under current regulations. The combined area of the subject property and the adjoining lots is 0.38 acre. The entire Pacific Paradise Mountain View Manor subdivision is in the State Land Use Agricultural District, and Chapter 205, HRS, stipulates that the minimum lot size in the State Land Use Agricultural District is one (1) acre. Thus, consolidation and resubdivision of the two (2) lots is not permissible.

As the stakes initially on-site were erroneous and governmental action may have contributed to the incorrect location of the house on the subject property, it is deemed that to require the petitioner to either move the house or to acquire the adjoining lot would be an imposition of undue hardship on the petitioner.

That the granting of the variance will not cause safety problems to the adjoining property. The house on the subject property has a side yard setback of 5' - 8 1/2" and a clear space of 2' - 8 1/2". These distances are in compliance with the Housing Code requirements and thus it is determined that the granting of the variance will not pose safety problems to the adjoining property.

Therefore, the Commission hereby grants to the application a variance to allow the retention of a single family dwelling with a 5' - 8 1/2" side yard setback and a 2' - 8 1/2" clear space in lieu of the requirements of eight (8) feet and four (4) feet respectively for an 8,346 square foot lot as stipulated within the Agricultural 5 acre (A-5a) zoned district in the Pacific Paradise Mountain View Manor Subdivision, Increment 3, Ola'a Reservation Lots, Ola'a, Puna, Hawaii, Tax Map Key 1-8-82:77 pursuant to the authority vested in it by Article 1, Section 7 of the Zoning Code, subject to the condition that all other applicable rules and regulations shall be complied with.

Should the foregoing condition 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 February 23, 1978.

Dated at Hilo, Hawaii, _____ day of _____, 1978.



William F. Mielcke
Chairman, Planning Commission

