

PLANNING COMMISSION

Planning Department
County of Hawaii
Hilo, Hawaii

APPLICATION FOR VARIANCE)
by)
JAMES A. AND LOUISE M. DYKES)
from)
MINIMUM SETBACK REQUIREMENTS)
in)
Kalanihonua Tract, Ola'a, Puna,)
Hawaii)

VARIANCE NO. 540

VARIANCE PERMIT

The County of Hawaii Planning Commission at a duly held public hearing on July 20, 1978, considered the application of JAMES A. and LOUISE M. DYKES for a variance from Chapter 8 (Zoning Code), Article 3, Section 8 of the Hawaii County Code, as amended, more specifically, to allow the retention of a single family dwelling with a side yard setback of 1.44 feet in lieu of the minimum requirement of eight (8) feet and a roof overhang into an adjacent parcel at Kalanihonua Tract, Ola'a, Puna, Hawaii, Tax Map Key 1-9-9:163 and 164.

The Commission has found:

That there are unusual circumstances applying to the existing dwelling and its location which do not generally apply to surrounding properties or improvements in the same zoned district. The construction of the portion of the dwelling under consideration was based on an erroneous location of the side property line. Until the adjacent property, identified as tax map key 1-9-9:163 was re-surveyed in 1973, the side property line was believed to be in another location and the structure was believed to be in compliance with all applicable setback requirements. The garage portion of the dwelling was constructed based upon the old survey. A building permit was applied for and approved and an inspection conducted. At that time, based on the existing survey stakes it was assumed that the improvements as constructed were in conformance. In relation to the determination of setbacks in general, it is determined that the existing situation is a usual circumstance.

The petitioners have only two alternative recourses to the variance request. One alternative would be to remove the portion of the structure which is not in conformance with the setback requirement. The other alternative is to consolidate and resubdivide parcels 163 and 164 so that the existing structure would be in conformance. The first alternative would cause undue hardship to the petitioner, particularly in light of the orientation of the existing

structure to the property lines. The removal of a portion of the garage would render the remaining area of the structure unusable for all practical purposes. This would be further emphasized by the fact that the existing structure is not parallel to but at an angle to the recently surveyed side property line. Because there are other structures on both parcels, the alternative to consolidate and resubdivide would also be unfeasible, particularly since both parcels are already nonconforming in area and to maintain 9,000-square foot lot sizes would require a side property line of an unusual configuration.

The proposed air easement between the petitioners and the adjacent property owner would resolve the encroachment problem with a minimum of disruption. The proposed air easement would also run with the life of the portion of the structure which encroaches onto parcel 163. As a result, if the nonconforming portion of the structure is demolished, it would have to be rebuilt in conformity with all applicable requirements. In addition, there is adequate distance between the dwellings on parcels 163 and 164 to be in keeping with the purpose and intent of the setback provisions of the Zoning Code, which is to assure that there is adequate air, light and circulation between structures on adjacent parcels. The distance between the two dwellings is 24+ feet. The minimum setback requirements of the Zoning Code require a sixteen-foot separation between the two structures. There is, therefore, adequate separation between the two structures in terms of the requirements of the Zoning Code.

It should further be pointed out that the existing situation is not the result of actions taken by the petitioners. The portion of the structure in question was constructed by a previous owner, and the petitioners are attempting to correct the situation.

Therefore, the Commission hereby grants to the applicant a variance to allow the retention of a single family dwelling with a side yard setback of 1.44 feet in lieu of the minimum requirement of eight (8) feet and a roof overhang into an adjacent parcel pursuant to the authority vested in it by Article 1, Section 7 of the Zoning Code, subject to the following conditions:

1. That the proposed air easement agreement and metes and bound description shall be submitted to the Planning Director for review within six (6) months from the effective date of approval of the Variance Permit.
2. That the air easement agreement and metes and bound description shall be recorded with the Bureau of Conveyances upon completion of the Planning Director's review. Said easement shall run with the life of the portion of the structure which is nonconforming.
3. That should any portion of the structure within the side yard setback area be demolished or destroyed, it shall not be rebuilt.

4. That all other applicable rules, regulations and requirements shall 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 July 20, 1978.

Dated at Hilo, Hawaii, this 3rd day of August, 1978.



William F. Mielcke, Chairman
Planning Commission

