

PLANNING COMMISSION

Planning Department  
County of Hawaii  
Hilo, Hawaii

APPLICATION FOR VARIANCE	)	
by	)	
ROBERT MCDONOUGH	)	
from	)	VARIANCE NO. 571
MINIMUM LOT SIZE REQUIREMENTS	)	
in	)	
Ahualoa Homesteads, Hamakua,	)	
Hawaii	)	
	)	

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VARIANCE PERMIT

The County of Hawaii Planning Commission at a duly held public hearing on March 8, 1979, considered the application of ROBERT MCDONOUGH for a variance from the requirements of Article 7, Section 5 of Chapter 8 (Zoning Code), as amended, more specifically, to allow the creation of two (2) 4.43 acre lots in lieu of the minimum building site area requirement of five (5) acres as stipulated within the Agricultural-5 acre (A-5a) zoned district at Ahualoa Homesteads, Hamakua, Hawaii, Tax Map Key 4-6-09:portion of 20.

The Commission has found:

That unusual circumstances exist in that a registered land surveyor incorrectly established the property limits in 1975 and based on that survey, the petitioner paid for 10.25 acres of land. Had the subject property actually contained 10.25 acres, no variance would be required for a two (2) lot subdivision of the property. However, a subsequent survey by the petitioner's surveyor shows that the property is composed of substantially less land due to the mistaken location of the government right-of-way (portion of Parcel "B") and the inclusion of Parcel "C" in the 1975 survey to which the petitioner holds questionable title. Such circumstances where a registered land surveyor is in error are relatively unusual and deprives the owner of presumed property rights. This situation is, however, differentiated from discrepancies in surveys due to the changes in the land itself due to erosion or definitions of the shoreline.

That petitioner's situation was further extenuated by the fact that a portion of the government road was constructed on his property and thus the petitioner's usable land area is reduced to 8.860 acres. Had the road been constructed in its correct location, the petitioner would appear to have approximately 0.7 acres more usable land. Thus by incorrect survey and governmental placement of the road, the usable land is 8.860 acres and not 10.25 acres as was paid for.

That the approval of the subject request would not render the land unusable for its intended purpose. Although the proposed lots are 0.57 acres below the minimum lot size, it is felt that this deviation will not negate the intent of the Agricultural-5 acre zoned district which is to provide opportunities for small scale agricultural activities. Further, as the proposed lots would have 4.43 acres each, there is ample area on which to locate structures in conformance with the applicable setback requirements. Given that structures can be properly located and that the basic intent of the zoned district can be met, it is determined that the approval of the subject request will not be injurious to adjoining property rights or improvements, nor detrimental to the public welfare.

Therefore, the Commission hereby grants to the applicant a variance to allow the creation of two (2) 4.43 acre lots in lieu of the minimum building site area requirement of five (5) acres as stipulated within the Agricultural-5 acre (A-5a) zoned district, pursuant to the authority vested in it by Article 1, Section 7 of Chapter 8 (Zoning Code), as amended, subject to the following conditions:

1. That the petitioner, or his authorized representative, secure tentative subdivision approval within one (1) year from the effective date of the variance permit. The petitioner/representative shall also be responsible for securing final subdivision approval.
2. That as per the petitioner's representations, he shall convey to the County at no cost, the 0.2196-acre portion of the property on which the government road has been constructed within one (1) year from the date of final subdivision approval.
3. 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 March 8, 1979.

Dated at Hilo, Hawaii, this \_\_\_\_\_ day of \_\_\_\_\_, 1979.

APPROVED AS TO FORM  
AND LEGALITY:

  
Deputy Corporation Counsel

Date: APR 10 1979

  
WILLIAM F. MIELCKE  
Chairman, Planning Commission