

PLANNING COMMISSION

Planning Department
County of Hawaii
Hilo, Hawaii

APPLICATION FOR VARIANCE)	
by)	
R.M. JITCHAKU ENTERPRISES, INC./)	VARIANCE NO. 588
ROBERTO GARZA)	
from)	
MINIMUM SIDE YARD)	
SETBACK REQUIREMENT)	
in)	
Waiakea, South Hilo, Hawaii)	
)	

VARIANCE PERMIT

The County of Hawaii Planning Commission at a duly held public hearing on August 15, 1979, considered the application of R.M. JITCHAKU ENTERPRISES, INC. and ROBERTO GARZA for a variance from Chapter 8 (Zoning Code), Article 3, Section 7; more specifically, to allow the retention of a single family dwelling with a side yard setback of 5'-3" and a clearspace of 2'-3" in lieu of the minimum requirements of ten (10) and six (6) feet, respectively. The property involved is located within the Hawaii Housing Authority's Komohana Subdivision, Phase III, Waiakea, South Hilo, Hawaii, Tax Map Key 2-4-41:105.

The Commission has found:

That there are unusual circumstances applying to the construction of the existing dwelling at its present location which do not generally apply to surrounding properties or improvements in the same zoned district.

In November of 1977, a building permit for the construction of the single family dwelling was issued by the County. At that time, the plot plan which was submitted with the building plans did indicate that the proposed building would meet the applicable setback requirements. In fact, according to the approved plans, the dwelling would have been setback about twelve (12) feet from the affected side property line.

In the actual construction of the building, however, the wrong rear property pin (south) was used to determine the side boundary line. This resulted in the dwelling to be constructed five (5) feet three (3) inches from the side yard property line instead of the required ten (10) feet. This discrepancy was not discovered until the dwelling was already constructed, sold, and occupied by the new owner.

As indicated in the memorandum from the Department of Public Works, during the initial stage of construction when the foundation was been staked out, the building inspector did verbally verify with the contractor that the building was sufficiently setback from all affected property lines.

Although it is difficult to say at this point in time whether the inspector would have noted the discrepancy if he had physically taken measurements on the ground, it would appear that, in this particular case, government also may have contributed to the error at hand. However, in this particular case, it is felt that an honest mistake was made by the contractor in utilizing the incorrect rear property pin.

Based on the above, it is determined that there were unusual circumstances which lead to the situation at hand, and the placement of the dwelling at its present location.

It is further determined that the granting of this particular request will not be detrimental to the public welfare nor be injurious to improvements or property rights related to the adjacent and surrounding properties. The affected portions of the building are an open carport and a small enclosed area used for storage purposes. Also, the closest portion of the adjacent building on the affected side is also a carport and storage area. The closest distance between both buildings is approximately seventeen (17) feet. The adjacent dwelling is sited in such an angle and manner that the habitable or living areas of both dwellings are quite a distance from each other. Thus, it is felt that the granting of this particular variance request will not violate the spirit and intent of the minimum setback requirements which are to provide for light, air, and circulation.


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 5'-3" and a clearspace of 2'-3" in lieu of the minimum requirements of ten (10) and six (6) feet, respectively, at Waiakea, South Hilo, Hawaii, pursuant to the authority vested in it by Chapter 8, Article 1, Section 7, subject to the following conditions:

1. That the portion of the roof overhang shall comply with the requirements of the Building and Housing Codes.
2. That the affected portions of the carport shall not be enclosed.
3. That no other setback variance as may be directly affected by this variance shall be granted for future improvements.
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 August 15, 1979.

Dated at Hilo, Hawaii, this 13th day of September, 1979.



WILLIAM F. MIELCKE
Chairman, Planning Commission

APPROVED AS TO FORM
AND LEGALITY:



Deputy Corporation Counsel
County of Hawaii

Date: September 4, 1979