

PLANNING COMMISSION

Planning Department
County of Hawaii
Hilo, Hawaii

APPLICATION FOR VARIANCE)	
by)	
DAVID BASQUE)	
from)	VARIANCE NO. 595
THE MINIMUM REARYARD AND OPEN)	
SPACE REQUIREMENTS)	
in)	
Holualoa, North Kona, Hawaii)	

VARIANCE PERMIT

The County of Hawaii Planning Commission at duly held public hearings on September 13, 1979 and on October 11, 1979, considered the application of DAVID BASQUE for a variance from Article 3, Section 7A and Article 26, Section 4H of Chapter 8 (Zoning Code) of the Hawaii County Code, as amended, more specifically, to allow the retention of a single family dwelling with a ten and one-half (10-1/2)-foot rearyard setback and an open projection with an 18-inch rearyard clearspace in lieu of the minimum requirements of fifteen (15) and ten (10) feet, respectively. The property involved is along the makai side of Kupehe Street, approximately 150 feet north of the Kupehe Street-Lako Street intersection, within the Kilohana Subdivision, Holualoa, North Kona, Hawaii, Tax Map Key: 7-5-20:77.

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 April of 1978, the petitioner did apply for and received a Building Permit for the construction of the single-family dwelling. Although the plot plan, which was part of the building plans, did not reflect the 9-foot wide deck area, the accompanying construction plans, however, did show the deck. Therefore, it appears that the error occurred during the initial stage of development. To a degree, it would appear that by not adequately checking the appropriate plan (plot plan vs construction plan) before signing the Building Permit, government contributed somewhat to the present circumstances which lead to the violation.

Further, according to the Department of Public Works, during the initial stage of construction when the foundation was being staked out, the building inspector did do an investigation. During the field inspection, the inspector did verbally verify with the petitioner that the building was sufficiently set back from all affected property lines.

In fact, the inspector noted the pins toward the rear of the property and was assured by the petitioner that the minimum rear yard setback requirements had been complied with.

During the subsequent inspection after the dwelling was already constructed, the setback violation was noted.

Although the petitioner was also negligent in not physically verifying the placement of the dwelling by taking measurements of the lot on the ground, it would appear that, in this particular case relative to inspection, government also may have contributed to the error at hand. In this particular case, it is felt that an honest mistake was made by the contractor, as well as government, in utilizing the incorrect rear property pins.

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 should be emphasized that it is the responsibility of the contractor to submit accurate plans for review and to correctly site the structure on the property. Government's role then is to check the plans for compliance with the applicable regulations and to see that the construction is done in conformance with the approved plans. Thus, the prime responsibility in this case rests with the petitioner. Government's contribution to the situation was that it did not catch the contractor's errors early enough.

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 adjacent land to the rear of the affected property is set aside as an open area under the Cluster Plan Development (CPD) concept. Therefore, no structures will be built within this open area. Thus, it is felt that the granting of this particular variance with appropriate conditions will not violate the spirit and intent of the minimum setback requirements which are to provide for light, air and circulation, nor impede on surrounding improvements.

The 10 1/2 foot rear setback to the building wall is not the most desirable situation and does not conform to the Zoning Code requirements. However, in view of the open area to the rear of the property the impact of such a setback is substantially mitigated. However, the existing porch projection leaves only 18 inches of open area to the rear while the roof actually projects over the property line. These projections do not conform to the Building Code and thus pose public safety problems. Based on this, a recommended condition of approval is that the porch be brought into compliance with the clear space provisions of the Zoning Code and that the affected eaves be limited to a three (3) foot width.

Therefore, the Commission hereby grants to the applicant a variance to allow the relocation of the existing building 4'-6" towards the front of the property, and to allow clearspace of three (3) feet in lieu of the minimum requirement of ten (10) feet. The property involved is along the makai side of Kupehe Street, approximately 150 feet north of the Kupehe Street-Lako Street intersection, within the Kilohana Subdivision, North Kona, Hawaii, pursuant to the authority vested in it by Article 1, Section 7 of Chapter 8 (Zoning Code) of the Hawaii County Code, as amended, subject to the following conditions:

1. To retain the existing dwelling in its present condition, without cutting off any portion, the entire building shall be moved 4'-6" towards the front of the property. In doing so, the building walls will be outside the rear yard setback area. The deck will still be within the clear space area but will encroach into it by only 4 feet (6 feet from the property line). The roof overhang also will encroach into the clear space area, but will be at least 3 feet from the property line. The relocation of the structure shall be completed within two (2) months from the effective date of the variance permit. The petitioner shall notify the Planning Department as soon as these improvements have been removed.
2. That all future improvements shall comply with the minimum setback requirements. No setback variance shall be granted for any future improvements.
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 October 11, 1979.

Dated at Hilo, Hawaii, this _____ day of _____, 1979.

for William F. Mielcke, Jr.

WILLIAM F. MIELCKE, CHAIRMAN
PLANNING COMMISSION

APPROVED AS TO FORM
AND LEGALITY:

L. Ben Tuhazali
DEPUTY CORPORATION COUNSEL
COUNTY OF HAWAII

Date: 12/10/79