

PLANNING DEPARTMENT
County of Hawaii
Hilo, Hawaii

APPLICATION FOR ADMINISTRATIVE VARIANCE)
by)
EMILIANO RODRIGUES, JR.) ADMINISTRATIVE
from) VARIANCE NO. 22
Minimum side yard setback requirements)
in)
Olaa, Puna, Hawaii)
_____)

ADMINISTRATIVE VARIANCE PERMIT

An administrative public hearing was held by the Planning Director of the County of Hawaii Planning Department on July 7, 1980, on the application of EMILIANO RODRIGUES, JR. for a variance from the minimum side yard setback requirements, more specifically, to allow the retention of a single family dwelling with a 6'-7" sideyard setback in lieu of the minimum requirement of ten (10) feet at Olaa, Puna, Hawaii, Tax Map Key 1-8-31:51.

After hearing the case, the Planning Director has found:

That there are unusual circumstances applying to the construction of the existing single family dwelling which do not generally apply to the surrounding properties and improvements within the same zoned district.

In 1973, a Building Permit for the construction of the single family dwelling was issued by the County. At that time, the plot plan submitted with the building plans did indicate that the proposed building would meet the applicable setback requirements. The final inspection for the construction of the dwelling was approved by the County in August of 1973.

According to the new owner and the plot plan submitted with this application, it appears that in the actual construction of the dwelling, the wrong rear property pin was used to determine the south side property line. This resulted in the dwelling to be constructed only six (6) feet and seven (7) inches from the affected side property line instead of the required ten (10) feet. This discrepancy was discovered only recently when the petitioner, upon purchasing the property, resurveyed the lot and the location of the existing dwelling. Since the time the dwelling was originally constructed, which is about seven (7) years ago, the property has changed "hands" three (3) times.

In conducting an inspection of a building construction, rather than taking physical measurements as to the placement of a building, it is the normal practice of the Building Inspector, to verbally verify with the constructor whether or not the applicable setback requirements are being met. Although the contractor, namely Hicks Construction Company, Inc., was

negligent in determining the side property line from the wrong property line, to a degree, it would appear that by not physically determining the setbacks by actual measurement, government contributed somewhat to the present situation at hand.

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

Furthermore, since the petitioner was not in any way involved with the circumstances which lead to the violation that initially occurred in 1973, it is felt that special circumstances exist to a degree which would deprive the owner of substantial property rights if the variance were to be denied. The end result would be that the petitioner would be required to move the entire dwelling or remove or "cut off" the affected portion of the building. This action would definitely cause undue hardship on the petitioner who only recently acquired the property.

The granting of this variance may constitute a grant of personal privilege inconsistent with the limitations placed upon other properties in the same district classification. However, since only a small corner of the dwelling (about 71+ square feet) encroaches into the setback area, it is determined that the approval of this particular request will not be materially detrimental to the public welfare nor be injurious to improvements or property rights related to properties in the near vicinity. The encroachment into the side yard setback area is very minimal. Further, since the dwelling was constructed at an angle, the front portion of it is about 11' -10" from the side property line; thus, meeting the minimum requirement of ten (10) feet.

Therefore, the Planning Director hereby grants to the applicant a variance to allow the retention of a single family dwelling with a 6'-7" sideyard setback in lieu of the minimum requirement of ten (10) feet at Olaa, Puna, Hawaii, Tax Map Key 1-8-31:51, pursuant to the authority vested in him by the County Charter, subject to the following conditions:

1. That no other setback variance as may be directly affected by this variance shall be granted for future improvements.
2. That building shall also meet the requirements of the Building and Housing Codes which are administered by the Department of Public Works.
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.

The effective date of this permit shall be from July 10, 1980.

Dated at Hilo, Hawaii, this 7th day of October, 1980.

Sidney M. Fuke
SIDNEY M. FUKU, Director
Planning Department

APPROVED AS TO FORM AND LEGALITY:

R. Ben Tubazali
Deputy Corporation Counsel
County of Hawaii

Date: 1 Oct 80

CERTIFIED MAIL

July 10, 1980

Mr. Emiliano Rodrigues, Jr.
P. O. Box 570
Mt. View, Hawaii 96771

Dear Mr. Rodrigues:

Variance Application
Minimum Side Yard Setback Requirements
Tax Map Key 1-8-31:51

After review of your application and the information presented at the administrative public hearing on July 7, 1980, the Planning Director is hereby certifying the approval of the variance to allow the retention of a single family dwelling with a 6'-7" side yard setback in lieu of the minimum requirement of ten (10) feet.

Approval of this request is based on the following findings:

That there are unusual circumstances applying to the construction of the existing single family dwelling which do not generally apply to the surrounding properties and improvements within the same zoned district.

In 1973, a Building Permit for the construction of the single family dwelling was issued by the County. At that time, the plot plan submitted with the building plans did indicate that the proposed building would meet the applicable setback requirements. The final inspection for the construction of the dwelling was approved by the County in August of 1973.

According to the new owner and the plot plan submitted with this application, it appears that in the actual construction of the dwelling, the wrong rear property pin was used to determine the south side property line. This resulted in the dwelling to be constructed only six (6) feet and seven (7) inches from the affected side property line instead of the required ten (10) feet. This discrepancy was discovered only recently when the petitioner, upon purchasing the property, resurveyed the lot and the location of the existing dwelling. Since the time the dwelling was originally constructed, which is about seven (7) years ago, the property has changed "hands" three (3) times.

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

Furthermore, since the petitioner was not in any way involved with the circumstances which lead to the violation that initially occurred in 1973, it is felt that special circumstances exist to a degree which would deprive the owner of substantial property rights if the variance were to be denied. The end result would be that the petitioner would be required to move the entire dwelling or remove or "cut off" the affected portion of the building. This action would definitely cause undue hardship on the petitioner who only recently acquired the property.

The granting of this variance may constitute a grant of personal privilege inconsistent with the limitations placed upon other properties in the same district classification. However, since only a small corner of the dwelling (about 71+ square feet) encroaches into the setback area, it is determined that the approval of this particular request will not be materially detrimental to the public welfare nor be injurious to improvements or property rights related to properties in the near vicinity. The encroachment into the side yard setback area is very minimal. Further, since the dwelling was constructed at an angle, the front portion of it is about 11' -10" from the side property line; thus, meeting the minimum requirement of ten (10) feet.

The conditions of approval are as follows:

1. That no other setback variance as may be directly affected by this variance shall be granted for future improvements.
2. That building shall also meet the requirements of the Building and Housing Codes which are administered by the Department of Public Works.

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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.

Please be informed that the official Variance Permit will be forthcoming under separate cover.

Should you have any questions in the meantime, please feel free to contact us.

Sincerely,



SIDNEY M. HUKÉ
Planning Director

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cc Planning Commission