

COUNTY OF HAWAII
PLANNING DEPARTMENT

RULES OF PRACTICE AND PROCEDURE

RULE 18. DE MINIMIS STRUCTURE POSITION DISCREPANCY

18-1 Authority.

This rule is made pursuant to Chapter 91, Hawaii Revised Statutes, Section 25-14, Chapter 25 (Zoning Code), Hawaii County Code, as amended, and sections 669-11,12, and 13, Hawaii Revised Statutes.

18-2 Purpose and Findings.

This rule governs the determination whether a minor discrepancy between the yard or open space required under Chapter 25, Hawaii County Code, and the actual yard or open space, is a violation of the zoning code. The Director finds that with more modern surveys, it is sometimes discovered that a structure has been inadvertently located a small distance into a required yard or open space. Sections 669-11,12, and 13, Hawaii Revised Statutes, legitimated "de minimis" encroachments of improvements across boundary lines. The purpose of this rule is to apply the same principle to similar minor encroachments into required yards and open spaces.

18-3 Definition.

"De mimmis structure position discrepancy" means a difference between the distance from a property boundary required by the Zoning Code for a yard or open space and the actual distance, of not more than the following:

- (a) For property zoned Multiple Residential (RM), Residential-Commercial Mixed Use (RCX), Resort-Hotel (V), Neighborhood Commercial (CN), General Commercial (CG), Village Commercial (CV), Industrial-Commercial Mixed (MCX), Limited Industrial (ML), General Industrial (MG), Downtown Hilo Commercial (CDH), or within a Planned Unit Development (PUD), Cluster Plan Development (CPD), or Project District (PD): 0.25 feet;
- (b) For property zoned Single Family Residential (RS) or Double-Family Residential (RD): 0.5 feet;
- (c) For property zoned Residential and Agricultural (RA), Family Agricultural (FA), Agricultural (A), Intensive Agricultural (IA), or Agricultural Project District (APD): 0.75 feet.

18-4 Procedure for recognizing a de minimis structure position discrepancy.

An application for recognition of a de minimis structure position discrepancy shall be filed with the Director and shall include:

- (a) A description of the property in sufficient detail to determine the precise location of the property involved;
- (b) A plot plan of the property, prepared by a licensed surveyor, showing existing improvements, and the improvement(s) and relevant distances for the de minimis structure position discrepancy;
- (c) A description of the nature of the improvements involved in the de minimis structure position discrepancies;
- (d) A statement by the landowner that to the best of the landowner's knowledge and

information, the improvements were placed without actual knowledge that they did not meet the minimum yard or open space requirements.

18-5 Review by Director.

Within fifteen days of receipt of the application, the Director shall either accept the application as complete, or reject it as incomplete, in writing. Any rejection shall list the deficiencies in the application. The Director shall approve or deny an application for recognition of a de minimis structure position discrepancy within twenty-five days after acceptance of the application. If the Director does not approve or deny the application within twenty-five days of acceptance, the application shall be deemed approved.

18-6 Grounds for Approval or Denial.

The Director shall approve an application for recognition of a de minimis structure position discrepancy unless:

- (a) The discrepancy is greater than the difference allowed by section 18-3 above; or
- (b) The Director finds that the improvement was placed with knowledge that it would violate the minimum yard or open space requirements; or
- (c) The improvement could be moved, or the discrepancy otherwise corrected, without significant expense, difficulty, or hardship to the applicant.

18-7 Recognition of De Minimis Structure Position Discrepancy.

If the Director accepts the application for recognition of de minimis structure position discrepancy, the Director shall notify the applicant in writing that the discrepancy is not a violation of the Zoning Code and that it may remain in place without a variance.

18-8 Disclosure.

A de minimis structure position discrepancy shall be disclosed by the owner to subsequent purchasers of the property in question.

18-9 Appeals.

The Director's decision with respect to a de minimis structure position discrepancy is appealable to the Board of Appeals.