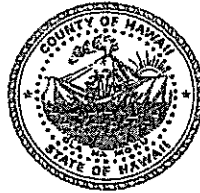


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii
PLANNING DEPARTMENT
101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • Fax (808) 961-8742

October 3, 2003

Mr. Larry Clutter
77-6421 Kilohana Street
Kailua-Kona, HI 96704

Dear Mr. Clutter:

VARIANCE PERMIT NO. 1390 WH (VAR 03-043)

Applicant: LARRY CLUTTER
Owners: LARRY CLUTTER, ET AL.
Request: Proposed Dwelling: Variance from Minimum Yards,
pursuant to Chapter 25, the Zoning Code
Tax Map Key: 8-7-017:045, Lot 141

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No.1390 allows portions of a proposed dwelling to be constructed on Lot 141 with a minimum 10.00 feet front yard and corresponding 5.00 feet front yard open space. The variance is from Lot 141's minimum 15.00 feet front yard and corresponding minimum 10.00 feet front yard open space requirement, pursuant to the Hawaii County Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), Section 25-5-77, Other regulations, and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements, (a).

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 141 containing 7,500 square feet, is within Kona Paradise Subdivision, being a portion of MAHELE AWARD 25, and situated at Kaohe 4th, South Kona, Hawaii.

The property is zoned Agricultural (A-5a) by the County and designated Agriculture "A" by the Land Use Commission (LUC).

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2. **Variance Application-Site Plan.** The original applicant-Jim Kerver, on behalf of the owners, submitted the variance application, attachments, and filing fee to the Kona Planning Department on or about July 8, 2003. The variance application includes a site plan and other supplementary drawings. These drawings, drawn to scale, include the site plan and elevation drawings of the proposed "New Residence". The original applicant is requesting a variance to allow dwelling improvements to be constructed on the subject TMK with a minimum 10 feet front yard in lieu of the minimum 15 feet front yard required.

The applicant's background, dated July 4, 2003, states in part:

"Please consider granting a reduction of the front setback for the garage from 15 feet to 10 feet because of the special circumstances applicable to this property. The steep drop-off is consistent across the front property line and also, due to the limited size of the property, there is no alternative build-able area. The thirteen feet between the pavement and the property line in addition to the proposed ten-foot setback to the garage would still provide 23 feet of driveway allowing adequate off road parking and not detracting from the intent of the set back."

3. **Note:** A copy of the approved BP No. 036186 recently issued to the TMK on August 8, 2003 by the Department of Public Works (Kona-DPW) was incorporated into the variance file. The variance request and original variance application was submitted by the owner's representative or Applicant-Kerver **after** the original site plan associated with the building permit application (BP No. 036186) was approved by the Kona Planning Department on July 3, 2003. It appears that the owner's contractor (Kerver) submitted the variance request and application on behalf of the owners on or about July 8, 2003. Due to unusual circumstances, on or about September 24, 2003, Larry Clutter (owner) requested to be designated "applicant" for the subject application and responsible for any variance conditions. After discussing the variance application and status of the BP No. 036186 with Mr. Clutter, it appears that the dwelling or "residence" permitted on Lot 141 pursuant to the "original" site plan associated with BP No. 036186 **could not** be built without extensive fill and severe grading or site preparation. The variance request is to allow a revised building position to minimize grading or reconfiguration of the lot's natural topography or slope.

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The applicant or owner(s) will confer with the DPW to address the status BP No. 036186.

4. **Agency Comments and Requirements-WH (VAR 03-043):**

- a. The Department of Public Works (DPW) memorandum dated August 4, 2003, states in part:

“We have reviewed the subject application and offer the following comment:

Please refer to the attached Building Division comments dated July 31, 2003.”

The attached DPW-Building Division memorandum dated July 31, 2003 states in part:

“Approval of the application shall be conditioned on the comments as noted below.

All new building construction shall conform to current code requirements.

The minimum setbacks shall be maintained as follows:

Residential structures-3 ft. side, 3 ft. rear
Commercial structures-5 ft. side, 5 ft. rear”

- b. The State Department of Health (DOH) memorandum dated August 5, 2003, states:

“The Health Department found no environmental health concerns with regulatory implications in the submittals.”

5. **Notice to Surrounding Property Owners.** Proof of mailing a first and second notice was submitted to the Planning Department. For the record, it appears that the first and second notice was mailed on June 14, 2003 and July 14, 2003 by the applicant.

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6. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. Several telephone call(s) regarding the status of the encroachment issues were received and the following letters relating to the applicant's request and variance application were received:
 1. Letter dated August 17, 2003 from George Goodrich citing concerns related to vistas and building height.
 2. Letter dated September 5, 2003 from Chuck Savell, Chairman, Architectural Review Committee, KPPOA, supporting the variance request.

SPECIAL AND UNUSUAL CIRCUMSTANCES

Lot 141's topography or natural grade is severe. The proposed dwelling will be allowed to be located 10.00 feet from Lot 141's front boundary line and allow a corresponding 5.00 minimum feet front yard open space requirement. The dwelling improvements will be constructed pursuant to building permit (BP No. 036186) and/or other construction permits issued by the County.

ALTERNATIVES

Alternatives available to the applicant to address and correct the existing building encroachments include the following actions:

1. Locate the proposed dwelling within the Lot 141's building envelope prescribed by the Zoning Code. To comply with the minimum yard requirements of the Zoning Code, it appears that extensive changes to the Lot 141's natural grade and foundation improvements would be necessary to anchor and support the dwelling.
2. Consolidation of Lot 141 with a portion of the private road right-of-way and resubdivision of the consolidated property together with adjustment of minimum yards from the resulting boundary line(s).

INTENT AND PURPOSE

The intent and purpose of requiring building setbacks within a subdivision are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines.

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It appears that the proposed dwelling improvements within the front yard and front yard open space will not be noticeable or visually obtrusive to the adjoining property(s) or the privately owned rights-of-way. It is felt that the revised dwelling position will not depreciate or detract from the character of the surrounding neighborhood, public uses, and the existing and surrounding land patterns. Therefore, due to the character of the property and severe topography and surrounding land and building patterns, it is felt that the variance request is reasonable and the permitted building improvements within the affected front yard and minimum front yard open spaces will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated July 21, 2003. Additional time to consider property topography, building permit, and other circumstances beyond the control of the property owners was deemed necessary. The owner(s)/applicant-Larry Clutter agreed to extend the date on which the Planning Director shall render a decision on the subject variance to no later than October September 30, 2003.

Based on the foregoing findings, this applicant's variance request would be consistent with the general purpose of the zoning district and the intents and purposes of the Zoning Code, Subdivision Code and the County General Plan. Furthermore, the variance request will not be materially detrimental to the public's welfare and will not cause substantial adverse impact to the area's character and to adjoining properties.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

This variance request is approved subject to the following conditions:

1. The applicant/owner(s), their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property damage, personal injury, or death arising out of any act or omission of the applicants/owners, their successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.
3. The approval of the variance is only from the Zoning Code's minimum front yard and attendant front yard open space requirements. The approval of this variance allows the dwelling or "New Residence" permitted pursuant to BP No. 036186 to

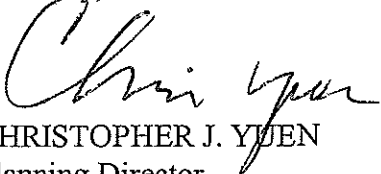
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be constructed on Lot 141 or subject TMK property in accordance with the variance application's site plan map.

4. The owner(s) or assigns shall comply with building regulations and State statutes pertaining to the construction of the dwelling and related site improvements under BP No. 036186. BP No. 036186 together with any associated electrical and mechanical permits shall be closed or "finaled" prior to any transfer of title or sale of the property.
5. No permit shall be granted to allow an ohana dwelling or building permit issued to allow construction of an "ohana" dwelling shall be granted to Lot 141 or the subject TMK property.
6. Future building improvements and permitted uses on the subject tax map key property are subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,



CHRISTOPHER J. YDEN
Planning Director

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cc: Real Property Tax - Kona
Planning Department - Kona
Mr. George Goodrich
Mr. Chuck Savell, KPPOA