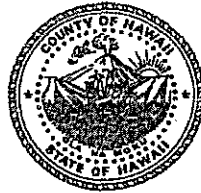


Harry Kim
Mayor



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

December 4, 2003

Mr. Vincent P. Graham
9332 Mediar Drive
San Ramon, CA 94583

Dear Mr. Graham:

VARIANCE PERMIT NO. 1397 WH (VAR 03-056)

Applicant: VINCENT P. GRAHAM
Owners: VINCENT P. GRAHAM
Request: Proposed Dwelling: Variance
from Minimum Yards, pursuant to
Chapter 25, the Zoning Code

Tax Map Key: 8-7-018:073, Lot 276

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1397 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 applicant submitted the variance application, attachments, and filing fee to the Planning Department on or about September 10, 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 "Proposed Home". 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. **Agency Comments and Requirements-WH (VAR 03-043):**

- a. The State Department of Health (DOH) memorandum dated October 3, 2003, states:

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

- b. The Department of Public Works (DPW) memorandum dated October 9, 2003, states in part:

"We have reviewed the subject application and our comments are as follows:

BUILDING

1. Building s shall conform to all requirements of code and statutes pertaining to building construction, (see attached memorandum from our Building Division)."

Mr. Vincent P. Graham
Page 3
December 4, 2003

The attached DPW-Building Division memorandum dated September 28, 2003 states in part:

“We oppose the approval of the application for the reasons noted below.

The Building #035512 permit for the subject dwelling has no status of inspections.

Others: There is no electrical or plumbing permit taken for BP#035512”

4. **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 September 22, 2003 and October 2, 2003 by the applicant.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments or objections to the variance application from surrounding property owners or public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

Lot 276's topography is severe. The building site or envelope slopes away from the street. Portions of the proposed dwelling will be allowed to be located 10.00 feet from Lot 276's front boundary line and allow a corresponding 5.00 feet front yard open space requirement.

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 276's building envelope prescribed by the Zoning Code.
2. Consolidation of Lot 276 with a portion of the private roadway (Road J) and resubdivision of the consolidated property together with adjustment of minimum yards from the resulting boundary line(s).

Mr. Vincent P. Graham
Page 4
December 4, 2003

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.

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 building 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 September 12, 2003. Additional time to consider property topography and agency comments was deemed necessary. The owner/applicant agreed to extend the date on which the Planning Director shall render a decision on the subject variance to no later than December 5, 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, their assigns or successors shall be responsible for complying with all stated conditions of approval.
3. 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

Mr. Vincent P. Graham
Page 5
December 4, 2003

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 proposed building improvements or "Proposed Home" denoted on the variance application's site plan map and supplementary drawings to be constructed on Lot 276 or subject TMK property.
4. The applicants/owner(s) or assigns shall comply with all County rules and regulations and State statutes pertaining to the construction of the dwelling and related site improvements.
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 276 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. YUEN
Planning Director

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cc: Real Property Tax - Kona
Planning Department - Kona