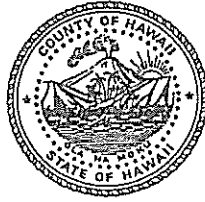


Harry Kim
Mayor



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

June 21, 2005

Mr. and Mrs. Robert Ray
87-3211 E'a Road
Captain Cook, HI 96704

Dear Mr. and Mrs. Ray:

VARIANCE PERMIT NO. VAR 04-075
Applicants: ROBERT RAY, ET AL.
Owners: ROBERT RAY, ET AL.
Request: Variance from Minimum Yards
Pursuant to Chapter 25, Zoning
Tax Map Key: 8-7-017:044, Lot 139

After reviewing your application and the information and plans submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 04-075 allows existing dwelling improvements, "AS-BUILT" to remain on LOT 139 and allow proposed dwelling renovations and garage addition to be constructed with a minimum 10 feet front yard and attendant minimum 8.0 feet front yard open space requirement and minimum 5.0 feet to minimum 7.5 feet side yards and attendant minimum 2.33 feet to 4.25 feet side yard open space requirements, respectively, in lieu of the minimum 15 feet front yard and attendant 10 feet front yard open space requirements and minimum 8.0 feet side yard(s) and attendant minimum 4.0 feet side yard open space requirements, respectively, according to revised variance site plan map. The variance request is from the minimum yard requirements of the Hawaii County Code, Chapter 25, Zoning, 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).

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BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 139 containing 7500 square feet, is within Kona Paradise Subdivision, being a portion of MAHELE AWARD 25, and situated at Kaohe 4th, South Kona, Hawaii. The TMK property's street address is 87-2211 E'a Road.

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

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on or about August 31, 2004. The applicant's variance application site plan map drawing, drawn to scale, was prepared by the applicants. The revised variance site plan map denotes the location of the dwelling and garage encroachments, "AS-BUILT", within the TMK property's minimum front yard, side yard(s), and respective open space requirements.

The applicant's background states in part:

"In October 2003, your agency approved Variance Permit no. 1390 WH (VAR 03-043) for a reduction in the set back for a garage on the lot located next door south of our property. The major difference between the two requests is that our house already exists. This makes the alternative of grading and fill impossible on this site. Although a one-lane road has been developed in front of the property the shoulder is soft and does not offer adequate off street parking. Currently, the house position limits remaining build-able area."

Note: WH (VAR 03-043) or Variance Permit No. 1390 dated October 3, 2003 was recently granted to permit dwelling/garage improvements to be constructed on the adjoining TMK property-Lot 141 with a 10 feet minimum front yard. The character and natural topography of Lot 141 and subject TMK property-Lot 139 are similar. Both lots exhibit severe topography and require similar house and garage or similar vehicle ingress/egress designs. The placement or proposed garage position on Lot 139 would not detract from the dwelling-garage building pattern in this neighborhood.

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3. Agency Comments and Requirements-WH VAR 04-075:

- a. The Department of Public Works (DPW) memorandum dated September 14, 2004, states in part:

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

BUILDING

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

The attached DPW memorandum dated September 13, 2004 states in part:

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

The minimum setbacks shall be maintained as follows:

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

The exterior wall or projections shall be constructed to provide a one-hour fire resistive occupancy separation.

Others: The building permit No. K06757 is never finalized.”

- b. The State Department of Health (DOH) memorandum dated October 4, 2004 states:

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

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 first and second notices were mailed on August 9, 2004 and December 1, 2004 by the applicant.

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5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. The following letters from surrounding property owners and/or public were received:
 - a. Objection letter(s) from Alan Bebeau, Et al. received on October 1, 2004 and December 7, 2004 .
 - b. Objection letter from George Goodrich received on or about October 4, 2004

SPECIAL AND UNUSUAL CIRCUMSTANCES

According to the applicants and copy(s) of building permits obtained from DPW, the original dwelling and encroachment issues were built in 1985 and expanded in 1988. The applicants are trying to address the encroachment issues constructed by others. The original house position and "lay of the land" limits the remaining area between the dwelling and front property to build a garage.

Lot 139's topography or natural grade is severe. The construction of the original dwelling improvements and dwelling's position is being constructed pursuant to building permits issued to previous owners. In addition to addressing the dwelling encroachment issues, the applicants would like to construct a garage building to compliment the dwelling and the resulting building pattern on Lot 139 would be similar to the building position on the adjoining property-TMK: 8-7-017:045, Lot 141 (VAR 1390) and consistent with other dwelling-garage combinations permitted on property with similar limitations or building patterns throughout the subdivision.

The site plan identifies the dwelling and garage encroachments within the property's minimum yards pursuant to the Hawaii County Zoning Code. It appears that the dwellings are/were being constructed under valid building permit(s) and construction permits issued to the TMK property by the County. It appears that the building inspections of the premises, e.g. foundation, framing, etc. of the original dwelling improvements did not disclose any building encroachment issues or building permit irregularities. The applicants or current owners are honestly trying to address the status of the dwelling and are requesting to build a garage on the subject TMK property.

ALTERNATIVES

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

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1. Remove the building encroachments or redesigning or relocating the dwelling to fit within the correct building envelope prescribed by the Zoning Code. To comply with the minimum yard requirements of the Zoning Code, it appears that extensive "fill" or changes to Lot 139's natural grade to support the dwelling and garage building(s) would be necessary or required.
2. Consolidation of the subject TMK property-Lot 139 with a portion of the privately owned right-of-way and/or adjoining property-lots and resubdivision and adjustment of minimum yards from revised boundary lines, etc.

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 existing dwelling encroachment and proposed garage building within the property's minimum front and side yards and attendant open spaces will not be physically and visually obtrusive from adjoining property(s) or rights-of-way. The original building encroachments were not detected prior to submittal of the variance application and do not detract from the character of the surrounding neighborhood and land patterns. Therefore, it is felt that the existing building encroachments and proposed garage building within the minimum yards on LOT 139 will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated August 31, 2004 and additional time to consider agency and objection letters received from surrounding property owners was necessary. The applicants agreed to extend the date on which the Planning Director shall render a decision on the subject variance to no later than June 30, 2005.

Based on the foregoing findings, this 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:

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1. The applicant/owner, 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/owner, their successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.
3. Portions of the existing 2-story dwelling, "AS-BUILT", and proposed (new) garage building addition on "LOT 139" will not meet Chapter 25, the Zoning Code's minimum front yard, side yard(s) and attendant minimum open space requirements. The approval of this variance allows the existing dwelling improvements to remain, "AS BUILT", and allows the proposed dwelling and garage building improvements to be constructed pursuant to the revised variance site plan map in subject variance file.
4. The outstanding building permit (BP No. K06757) issued to subject TMK property by the DPW-Building Division (Kona) shall be closed or "finaled" by the applicants or current owners. A building permit to construct the proposed garage addition shall be secured from the DPW and be "finaled" by the applicants or current owners prior to any future sale of the TMK 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 the subject TMK property, subject to provisions of the Zoning Code or State Law which may change from time to time.
6. Future building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

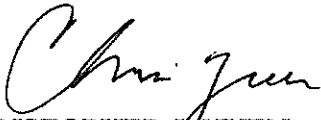
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Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

WRY: je/cd

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cc: Real Property Tax Office-Kona
Planning Dept.-Kona