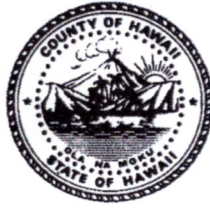


William P. Kenoi  
Mayor



Duane Kanuha  
Director

Joaquin Gamiao-Kunkel  
Deputy Director

West Hawai'i Office  
74-5044 Ane Keohokalole Hwy  
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Fax (808) 327-3563

County of Hawai'i  
**PLANNING DEPARTMENT**

East Hawai'i Office  
101 Pauahi Street, Suite 3  
Hilo, Hawai'i 96720  
Phone (808) 961-8288  
Fax (808) 961-8742

July 5, 2016

William R. Grace  
P. O. Box 1767  
Pahoa, Hawai'i 96778-1767

Dear Mr. Grace:

**SUBJECT: Application: Variance - VAR 16-000363**  
**Applicant: WILLIAM R. GRACE**  
**Owner: WILLIAM R. GRACE & IRENE PATRICE GRACE**  
**Request: Variance from Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum Yards, and Section 25-4-44, Permitted Projections into Yards and Open Space Requirements (Encroachment into Northwest Side Yard Setback)**

**Tax Map Key: 1-5-088:006; Lot 1977**

After reviewing your variance application, the Planning Director certifies the **approval** of Variance 16-000363 subject to conditions. The variance will allow for the construction of a 4-foot high rock wall addition to the existing 4-foot rock wall for a height of 8 feet along the side (northwest) boundary with a minimum 1-foot side (northwest) yard setback and associated side (northwest) yard open space. This allowance is in lieu of the required minimum 8-foot side yard setback and 4-foot side yard open space requirement. The variance is from the subject property's minimum side (northwest) yard setback requirement pursuant to the Hawaii County Code, Chapter 25 (Zoning), Article 5, Division 1, Section 25-5-7 minimum yards and Article 4, Division 4, Section 25-4-44 (a), Permitted projections into yards and open space requirements.

**BACKGROUND AND FINDINGS**

1. **Location.** The subject property contains approximately 8,102 square feet and is located in the Hawaiian Shores Subdivision, situated at Waiakahiula, Puna, Hawai'i. The subject property's street address is 15-2777 Papio Street.
2. **County Zoning.** Agricultural – 1 acre (A-1a).
3. **State Land Use Designation.** Urban.

4. **Required Setback.** 15-feet for front and rear; 8-feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on April 5, 2016. The variance site plan is drawn to scale, prepared by the applicant and denotes the position of the proposed 4-foot rock wall addition to be constructed onto the existing 4-foot high rock wall encroaching into the minimum 8-foot side yard setback and side yard open space. The request affects the northwest side yard setback. **(See Exhibit A - Site Plan)**

The site plan shows that new 8-foot rock wall encroaches 7 feet into the 8-foot side (northwest) yard setback and 3 feet into the 4-foot side (northwest) yard open space.

The encroachment leaves a minimum 1-foot side (northwest) yard setback and side (northwest) open space, in lieu of the required 8-foot side (northwest) yard setback and associated side (northwest) yard open space requirement.

6. **County Building Records.** Hawai'i County Real Property Tax Office Records indicate that a building permit (#981098) was issued on August 18, 1998 to the subject property for a single-family dwelling consisting of 2 bedrooms, 2 baths, living room, kitchen and dining area.
7. **Agency Comments and Requirements.**
  - a. State Department of Health (DOH) memorandum dated April 27, 2016. "The Health Department found no environmental health concerns with regulatory implications to the submittals."
  - b. No comments were received from the Department of Public Works – Building Division.
8. **Public Notice.** The applicant filed a transmittal letter with copy of the notices sent to surrounding property owners via USPS. According to USPS certificate of mailing receipts and affixed postal receipts, the first and second notices were mailed on April 20, 2016 and April 23, 2016, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on May 10, 2016.
9. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or the general public were received.
10. **Time Extension.** The applicant's variance application was acknowledged by letter dated April 14, 2016 and additional time to review the application was required. The applicant granted the Planning Director an extension of time for decision on the Variance Application to July 9, 2016.



**ANALYSIS OF GROUNDS FOR VARIANCE**

No variance will be granted unless it is found that:

- (a) *There are special or unusual circumstances applying to the subject real property which exist either to a degree which deprives the owner or applicant of substantial property rights that would otherwise be available, or to a degree which obviously interferes with the best use or manner of development of the property.*

**The variance application meets criteria (a) for the following reasons:**

The owner/applicant submitted the variance application to address or resolve the encroachment of the 8-foot high rock wall into the 8-foot side yard setback and associated side yard open space

The site plan shows that new 8-foot rock wall will encroach 7 feet into the 8-foot side (northwest) yard setback and 3 feet into the 4-foot side (northwest) yard open space.

The encroachment leaves a minimum 1-foot side (northwest) yard setback and side (northwest) open space, in lieu of the required 8-foot side (northwest) yard setback and associated side (northwest) yard open space requirement.

The applicant has stated that because there is a huge drop off between the adjacent properties and the existing 4-foot high rock wall is not sufficient in height to provide safety for people not to fall over, the owner/applicant has implied that the adjacent property owner suggested raising the rock wall an additional 4 feet for safety reasons.

The owner/applicant is proposing to add an additional 4 feet in height to the existing 4-foot rock wall for a height of 8 feet. The existing 4-foot rock wall meets with current setback requirement for walls and fences. However, by adding an additional 4 feet to the existing rock wall to 8 feet in height, it will not conform to current setback requirements for walls and fences.

**Section 25-4-43. Fences and accessory structures. (c):** Any accessory structure, including any fence, or wall over six feet in height, architectural feature or water tank, which is not connected to a building, may not extend into any required front, side or rear yard, but may be located next to any building without any open space requirement.

Based on the above-mentioned information, special and unusual circumstances do exist to an extent that they deprive the owner of substantial property rights that would otherwise be available, or which unreasonably interfere with the best use or manner of development of the subject property.

- (b) *There are no other reasonable alternatives that would resolve the difficulty.*

**The variance application meets criteria (b) for the following reasons:**



Alternatives available to the current owners to correct and/or address the proposed 8-foot rock wall encroachment constructed into the affected side yard setback of the subject property include the following actions:

Keep the current height of 4 feet for the constructed wall at the current location on the subject property which would leave an unsafe situation because of the huge drop off.

Another alternative is to increase the height another 4 feet and consolidate the subject property with the adjoining side property which is owned by someone else, and resubdivide the property to modify property lines and adjust minimum yard setbacks. This would legitimize an 8 foot wall, however, not a practice option. There are no reasonable alternatives to resolve the encroachment issue for increasing the height of the wall.

*(c) The variance is consistent with the general purpose of the district, the intent and purpose of this chapter, and the general plan, and will not be materially detrimental to the public's welfare or cause substantial, adverse impact to an area's character or to adjoining properties.*

**The variance application meets criteria (c) for the following reasons:**

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

The encroachment of the 8-foot rock wall, resulting with a minimum of 1-foot side yard setback still allows for adequate air circulation.

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. This can be substantiated, to some degree, by the fact that this office did not receive any complaints from the adjacent property owner regarding the increase in height of the wall.

In addition, objections were not received from the surrounding property owners or general public in response to the Notification of Surrounding Property Owners. As such, it is felt that the issuance of this variance will not depreciate or detract from the character of the immediately-surrounding properties.

Based on the foregoing findings and circumstances, the applicant's request for variance would be consistent with the general purpose of the zoning district and the intent and purpose of the Zoning Code, Subdivision Code and the County General Plan.

#### **PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS**

Based on the variance application's survey map, the proposed rock wall to be built upon the subject

William R. Grace

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July 5, 2016

property ("LOT 1977") will not meet the minimum side yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

This variance application is approved subject to the following variance conditions:

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 Hawai'i 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. An Ohana or Additional Farm Dwelling permit shall not be granted upon the subject property, subject to provisions of the Hawai'i County Code, Chapter 25 (Zoning) or State Law, which may change from time to time.
4. Future or new building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance-16-000363 null and void.

Sincerely,



DUANE KANUHA  
Planning Director

LHN:nci

P:\Admin Permits Division\Variations From CoH02\Zone1\VAR16-000363TMK1-5-088-006 Grace doc

xc: Real Property Tax Office (Hilo)  
Gilbert Bailado, GIS (via email)



PROPOSED ROCK WALL  
FOR WILLIAM ROBERT GRACE

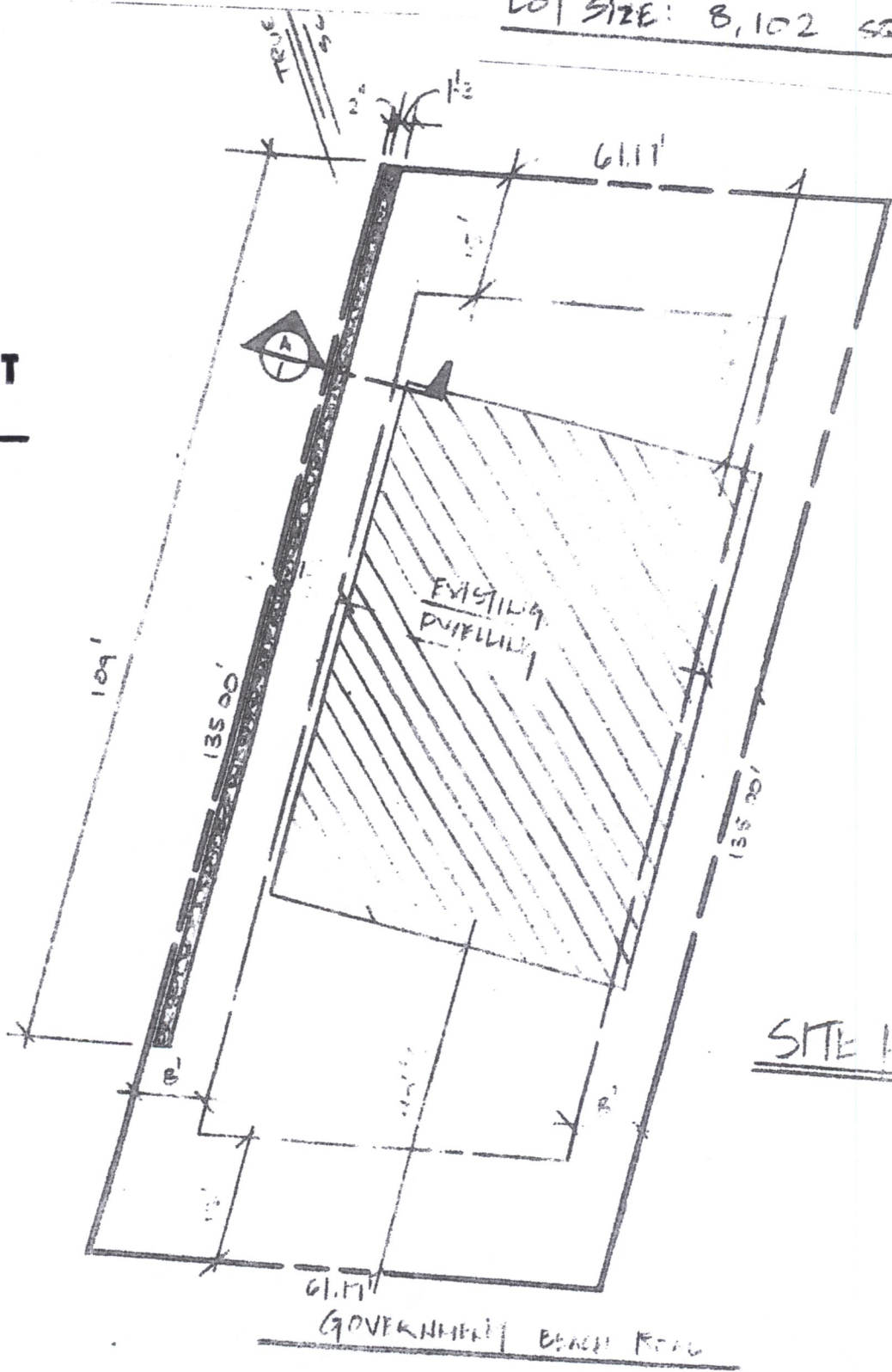
+ IRENE PATRICE GRACE

TMK (3) 1-5-008:006

LOCATION: PAHOA PULUA, HI

LOT SIZE: 8,102 SQ. FT.

**EXHIBIT**  
A



SITE PLAN