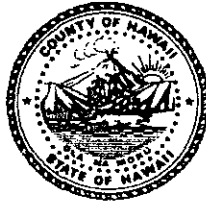


William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
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

November 19, 2013

Leah and Thomas Murphy
242A Laula Road
Hilo, HI 96720

Dear Mr. & Mrs. Murphy:

SUBJECT: Application: Variance VAR-13-000163
Applicant: LEAH AND THOMAS MURPHY
Owners: LEAH AND THOMAS MURPHY
Request: Variance from Chapter 25, Zoning, Article 5, Division 7,
Section 25-5-76, Minimum Yards, (a), (Encroachment into
West Rear Yard and South Side Yard Setback)
TMK: 2-5-038:045 (Lot 14)

After reviewing your variance application, the Planning Director certifies the **approval** of Variance 13-00163, subject to conditions. The variance will allow portions of the detached water tank to remain on Lot 14, with a minimum 11-foot rear (west) yard setback and a 6.1-foot side (south) yard setback. This allowance is in lieu of the required minimum 15-foot rear yard setback and 8-foot side yard setback requirement. This variance is from the subject property's minimum side yard setback requirements pursuant to the Hawai'i County Code, Chapter 25, (Zoning), Article 5, Division 7, Section 25-5-76 (a), Minimum yards.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 7,500 square feet and is situated within the Kaumana City Subdivision, Ponahawai, South Hilo, Hawai'i. The subject property's street address is 25-45 Malumalu Street.
2. **County Zoning.** Agricultural – 20 Acres (A-20a).
3. **State Land Use Designation.** Agricultural.
4. **Setback Requirements.** 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 August 15, 2013. The variance application's site plan map was prepared by the owner/applicant. The variance site plan, undated, received on December 14, 2012, denotes portion of the existing detached water tank into the minimum 15-foot rear yard and 8-foot side yard setback.

The owner/applicant submitted the variance application to address or resolve the encroachment of the detached water tank into the 15-foot west rear yard and 8-foot south side yard setback, as required by the Zoning Code.

The survey map shows that portions of the detached water tank encroaches 4 feet into the 15-foot rear (west) yard setback and 1.9 feet into the side (south) yard setback.

6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (#930211) was issued on February 9, 1993 to the subject property for a single-family dwelling consisting of a 3 bedroom, 2 bath, living room, kitchen, dining area and two-car carport.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated October 2, 2013. (Refer to attached DOH memorandum).
 - b. The Department of Public Works Building Division e-mail, dated September 27, 2013. (Refer to attached DPW e-mail)
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 September 13, 2013 and October 18, 2013, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on August 27, 2013.
9. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written comments or objections from surrounding property owners of the general public were received.
10. **Time Extension.** The applicant's variance application was acknowledged by letter dated September 16, 2013; and additional time to review the application was required. The applicants granted the Planning Department and the Planning Director an extension of time for decision on the Variance application to November 19, 2013.

GROUNDS FOR APPROVING VARIANCE

Special and Unusual Circumstances

(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 criterion (a) for the following reasons:

The owner/applicant submitted the variance application to address or resolve the encroachment of the detached water tank into the 15-foot rear (west) and 8-foot (south) yard setback as required by the Zoning Code.

The survey map prepared by Roy G. Hollowell, L.P.L.S., shows that portions of the detached water tank encroaches 4 feet into the 15-foot rear (west) yard setback and 1.9 feet into the 8-foot side (south) yard setback.

The background report submitted by the applicant informs that the topography of the property influenced the placement of the water tank. Due to the small lot size, the current location is the only functional location. Movement of the water tank would eliminate access to the carport.

No evidence has been found to show indifference or premeditation by the past owners or builders to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the original dwelling improvements constructed in 1993 nearly 20 years ago were constructed under valid building permits and other construction permits issued by the County. It also appears that past building permits inspections of the premises by the agencies during construction of the dwelling improvements did not disclose any building encroachment issues or building setback irregularities at that time.

Therefore, special circumstances exist which justify the current placement of the water tank and requiring movement would interfere with the best use of the property.

Alternatives

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

The Variance application meets criterion (b) for the following reasons:

Alternatives available to the current owners to correct and/or address the building encroachments constructed into the affected side yard of the subject property include the following actions:

Remove the building encroachments and/or redesign or relocate the as-built, water tank constructed upon the subject property to fit within the correct building envelope denoted on the recent survey map as prescribed by the Zoning Code. This alternative would be deemed

unreasonable, especially when the owners complied with the building permit process and were under the impression that the detached water tank was in compliance with all County requirements. To deny this variance, would require the owner to relocate the water tank, which would involve the owner to do major excavation to his property, by requiring him to replace and move existing pipe lines.

Another alternative is to consolidate the subject property with the adjoining side property which is owned by another party, and to resubdivide the property to modify property lines and adjust minimum yard setbacks. Both of these alternatives are not practical. Therefore, there are no reasonable alternatives to resolve the difficulty.

Intent and Purpose

(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 welfare or cause substantial, adverse impact to an area's character or to adjoining properties.

The Variance application meets criterion (c) for the following reasons:

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

Based on the foregoing findings and unusual circumstances, the applicant's request for variance 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. 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. Because of the size of the property and topography of certain parcels, other similar type variances for setback have been granted within the subdivision. This can be substantiated, to some degree, by the fact that this office did not receive any comments or objections from the surrounding property owners or general public in response to the Notification of Surrounding Properties Owners

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

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 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. No permit shall be granted to allow an ohana, a second single-family or farm dwelling 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. The water tank built upon the subject property ("LOT 14") will not meet the minimum side yard requirement pursuant to Hawai'i County Code, Chapter 25, (Zoning Code), according to the variance application's survey map.
5. Should the water tank on the subject property be destroyed by fire or other natural causes, the replacement structure shall comply with the Hawai'i County Code, Chapter 25, (Zoning) and be subject to State law and County ordinances and regulations pertaining to building construction occupancy.
6. 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 initiate proceedings to null and void Variance-13-000163.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

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

Leah and Thomas Murphy
Page 6
November 19, 2013

Nakayama, Larry

From: Matsumoto, Joy
Sent: Friday, September 27, 2013 9:37 AM
To: Nakayama, Larry
Subject: VAR 13-000163 Leah and Thomas Murphy
We have no objections to the variance request.

Joy Matsumoto

Supervising Building Inspector
County of Hawaii
Tel. (808) 961-8471
Fax (808) 961-8410
Email: jmatsumoto@co.hawaii.hi.us

PLANNING DEPARTMENT
COUNTY OF HAWAII
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Leah and Thomas Murphy
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November 19, 2013

NEIL ABERCROMBIE
GOVERNOR
PLANNING DEPT SENT
OCT 23 2013
2013 OCT -3 AM 8:39




LORETTA J. FUDDY, A.C.S.W., M.P.H.
Director of Health

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 916
HILO, HAWAII 96721-0916

MEMORANDUM

DATE: October 2, 2013

TO: Duane Kanuha
Planning Director, County of Hawaii

FROM: Newton Inouye 
District Environmental Health Program Chief

SUBJECT: Application: Variance – VAR 13-000163
Applicant: LEAH AND THOMAS MURPHY
Owner: LEAH AND THOMAS MURPHY
Request: Variance from Chapter 25, Zoning, Article 5, Division 7,
Section 25-5-76 Minimum Yards (Encroachment into the
West Rear and South Side Yard Setback)
Tax Map Key: 2-5-038:045, Lot 14

Wastewater Branch found no wastewater/environmental health concerns with regulatory implications in the submittal.