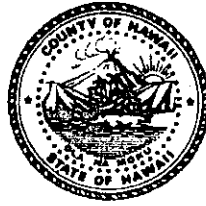


William P. Kenoi
Mayor



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
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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

April 30, 2014

Ernest Medeiros (R)
Ala Kai Realty
250 Naniakea Street
Hilo, HI 96720

Dear Mr. Medeiros:

SUBJECT: Application: Variance VAR-14-000199
Applicant: ERNEST MEDEIROS
Owners: CHRISTOPHER LAUER AND QUYEN-AHN TRAN
Request: Variance from Chapter 25, Zoning, Article 5, Division 1, Section 25-5-1, Minimum Yards, and Section 25-4-44, Permitted Projections into Yards and Open Space Requirements. (Encroachment into East Front Yard Setback).
TMK: 2-4-048:034 (Lot 47)

The Planning Director certifies the **approval** of Variance 14-00199, subject to conditions. The variance will allow the bay window of the single-family dwelling to remain on Lot 47, with a minimum 19.2-foot front (east) yard setback. This allowance is in lieu of the required minimum 20-foot front yard setback. This variance is from the subject property's minimum front yard setback requirements pursuant to the Hawai'i County Code, Chapter 25, (Zoning), Article 5, Division 1, Section 25-5-7 (a), Minimum yards.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 16,494 square feet and is situated within the Komohana Estates, Increment 2, Subdivision, Waiākea Homesteads, 2nd series, South Hilo, Hawai'i. The subject property's street address is 1180 N. Kumuwaina Place.
2. **County Zoning.** Single-Family Residence – 15,000 square feet (RS-15).

3. **State Land Use Designation.** Urban.
4. **Setback Requirements.** 20-feet for front and rear; 10-feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on March 17, 2014. The variance application's site plan map was prepared by the owner/applicant. The variance site plan, dated November 1, 2013, denotes that a portion of the bay window of the single-family dwelling encroaches 0.80 feet (9.6 inches) into the 20-foot front (east) yard setback.

The owner/applicant submitted the variance application to address or resolve the encroachment of the single-family dwelling into the 20-foot east front yard setback, as required by the Zoning Code.

The survey map shows that portion of the bay window of the single-family dwelling encroaches 0.80 feet (9.6 inches) into the 20-foot front (east) yard setback.

6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (#881404) was issued on July 19, 1988 to the subject property for a single-family dwelling consisting of a 4 bedroom, 2.5 bath, living room, kitchen, and dining area.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated March 27, 2014. (Refer to attached DOH memorandum).
 - b. The Department of Public Works Building Division email dated March 25, 2014. (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 April 24, 2013 and November 14, 2013, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on April 11, 2014.
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.

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 bay window into the 20-foot front (east) yard setback as required by the Zoning Code.

The site prepared by Ronaldo B. Aurelio, L.P.L.S. shows that the bay window of the single-family dwelling encroaches 0.80 feet (9.6 inches) into the 20-foot front (east) yard setback.

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 1988 nearly 26 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 support the encroachment of the bay window and structure and to require movement of the window 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 the as-built, bay window 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 single-family dwelling was in compliance with all County requirements. Any structural or design correction of the single-family dwelling to meet setback requirement would leave unattractive reconstruction scars.

Because the encroachment is within the front yard setback, to consolidate the subject property with the roadway and re-subdivide the property to modify property lines and adjust minimum front yard setbacks are not viable options, there are no reasonable alternatives to resolve the encroachment issue.

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.

The encroachment of 0.80 feet (9.6 inches) into the front (east) yard setback area is miniscule, but it exceeds the limit of falling under the De Minimis exception. The granting of the setback variance still allows for adequate air circulation as the affected area is within the front setback adjacent to roadway frontage.

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 intent 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.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

Based on the variance application's survey map, the single-family dwelling built upon the subject property ("LOT 47") will not meet the minimum front yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

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

Ernest Medeiros
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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/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 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. Should the single-family dwelling 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.
5. 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-14-000199.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

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

Ernest Medeiros
Ala Kai Realty
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NEIL ABERCROMBIE
GOVERNOR
PLANNING DEPARTMENT

2014 APR 28 PM 2:30



LINDA ROSEN, M.D., M.P.H.
DIRECTOR OF HEALTH

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

MEMORANDUM

DATE: March 27, 2014

TO: Duane Kanuha
Planning Director, County of Hawaii

FROM: Newton Inouye
District Environmental Health Program Chief

SUBJECT: Application: Variance – VAR-14-000199
Applicant: ERNEST MEDEIROS
Owner: CHRISTOPHER LAUER & QUYEN-ANH TRAN
Request: Variance from Chapter 25, Zoning, Article 5, Division 1,
Section 25-5-7, Minimum yards, and Section 25-4-44,
Permitted Projections into Yards and Open Space
Requirements (Encroachment into Front (East) Yard
Setback)
Tax Map Key: 2-4-048:34; Lot47

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