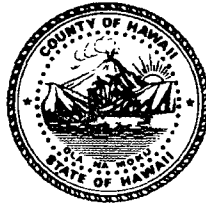


William P. Kenoi
Mayor



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

June 30, 2015

Stephen Meek
P. O. Box 982
Pepe'ekeo, HI 96783

Dear Mr. Meek:

SUBJECT: Application: Variance VAR-14-000248
Applicant: STEPHEN MEEK
Owners: STEPHEN MEEK AND LUCILLE MEEK
Request: Variance from Chapter 25, Zoning, Article 5, Division 3,
Section 25-5-36, Minimum Yards, Requirements,
(Encroachment into Northeast Side Yard Setback)
TMK: 2-6-004:040

The Planning Director certifies the **approval** of Variance 14-00248, subject to conditions. The variance will allow portion of the proposed two-story single-family dwelling to be constructed, with a minimum 7-foot 8-inches side (northeast) yard setback in lieu of the minimum required 10-foot side yard setback requirement. The variance is from the subject property's minimum 10-foot side yard requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 2, Section 25-5-26, Minimum yards.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 6,211 square feet and is situated in Pu'ueo, South Hilo, Hawai'i. The street address is 327 Lehua Street.
2. **County Zoning.** Multiple Family Residential – 1,000 sq. ft. (RM-1).
3. **State Land Use Designation.** Urban.
4. **Setback Requirements.** 20-feet for front and rear; side yards, eight feet for a one-story building, plus an additional two feet for each additional story.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments,

filing fee, and associated materials on October 24, 2014. The variance application's site plan map is drawn to scale and prepared by Stephen Meek, denotes the portion of the single-family dwelling built into the side (south) yard setback.

The owner/applicant submitted the variance application to address or resolve the encroachment of the proposed single-family dwelling into the 10-foot side (northeast) yard setback, as required by the Zoning Code.

The survey map shows that portion of the proposed single-family dwelling will encroaches 2 feet- 4 inches into the 10-foot side (northeast) yard setback.

6. **Special Management Area.** The subject property is located within the Special Management Area (SMA). According to the acknowledgement letter dated November 5, 2014, Special Management Area Use Permit (SAA 14-1198) and Special Management Area Minor Permit (SMM-14-000318) were issued on November 5, 2014 to all for the construction of two new, two-story 1,440 square feet single-family dwelling.
7. **County Building Records.** None; vacant parcel.
8. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated November 17, 2014. (Refer to attached DOH memorandum).
 - b. No comments were from the Department of Public Works Building Division.
9. **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 October 28, 2014 and November 10, 2014, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on November 12, 2014.
10. **Time Extension.** The applicant's variance application was acknowledged by letter dated October 31, 2014 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 June 30, 2015.
11. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or 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 proposed two-story; single-family dwelling into the 10-foot side (northeast) yard setback as required by the Zoning Code.

The plot plan prepared by Stephen Meek shows that portion of the two-story, single-family dwelling encroaches 2' 4" into the 10-foot side (northeast) yard setback.

The dimensions of this 6,211 sq. ft. parcel measures 44.06 feet wide and a length of 150 feet makes it difficult for the owner to comply with current zoning requirements.

It should be noted that Section 25-5-34 of the county code requires that the minimum building site in the Multiple Residential (RM) district should be 7,500 square feet; however this property was created prior to the adoption of the zoning code.

The subject property is irregular shaped and concave inward where the encroachment occurs. If the property was a typical rectangular lot, the dwelling could meet the setback requirements.

Therefore, 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.

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:

Redesign or relocate the proposed single-family dwelling to be constructed upon the subject property to fit within the correct building envelope as prescribed by the Zoning Code. Due to the narrowness and the size (6,211 sq. ft.) of the subject property, redesigning the single-family dwelling to meet setback requirement will require the owner to construct a narrower single-family dwelling and would diminish the overall functionality of the proposed improvement.

Another alternative is to consolidate the subject property with the adjoining side property and to re-subdivide the property to modify property lines and adjust minimum yard setbacks. Although the adjacent property is similarly owned, the applicant has stated that consolidation and re-subdivision of both properties are not practical options. Pursuant to the applicant's background information, the dwelling on the adjacent property, which is a legal non-conforming structure, built in 1937; already encroaches into the side yard setback; therefore, consolidation and re-subdivision of both properties would only worsen the encroachment issue. Both of these alternatives are not practical; therefore, there are no other reasonable alternatives to resolve these encroachment issues.

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.

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 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 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.

Stephen Meek
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June 30, 2015

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-14-000248.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

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

Stephen Meek
Page 6
June 30, 2015

NEIL ABERCROMBIE
GOVERNOR



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

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

PLANNING DEPARTMENT
COUNTY OF HAWAII
2014 NOV 18 PM 3:37

MEMORANDUM

DATE: November 17, 2014

TO: Duane Kanuha
Planning Director, County of Hawaii

FROM: Newton Inouye
District Environmental Health Program Chief

SUBJECT: Application: Variance – VAR 14-000248
Applicant: STEPHEN MEEK
Owner: STEPHEN MEEK AND LUCILLE MEEK
Request: Variance from Chapter 25, Zoning, Article 5, Division 3,
Section 25-5-36 Minimum Yards and Article 4, Division 4,
Section 25-4-44(a), Permitted Projections into yards and
Open Space Requirements (Encroachment into the
Northeast Side Yard Setback)
Tax Map Key: 2-6-004:040

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

We recommend that you review all of the Standard Comments on our website:
<http://hawaii.gov/health/environmental/cnv-planning/landuse/landuse.html>. Any comments specifically applicable to this project should be adhered to.

The same website also features a Healthy Community Design Smart Growth Checklist (Checklist) created by Built Environment Working Group (BEWG) of the Hawaii State Department of Health. The BEWG recommends that state and county planning departments, developers, planners, engineers and other interested parties apply the healthy built environment principles in the Checklist whenever they plan or review new developments or redevelopment projects. We also ask you to share this list with others to increase community awareness on healthy community design.

WORD: VAR 14-000248.ni

095433

327 Lehua Street

