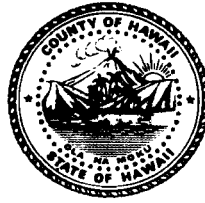


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Mayor

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October 3, 2019

Dale G. McBeath
P.O. Box 1375
Volcano, Hawai'i 96785

Dear Mr. McBeath:

SUBJECT: Application: Variance – VAR-19-000534
Applicant: DALE G. MCBEATH
Owner: DALE GRANHOLM MCBEATH/DALE G. MCBEATH 2013 TRUST
Request: Variance from Chapter 25, Zoning, Article 5 Division 7, Section 25-5-76 Minimum Yards, Article 4, Division 4, Section 25-4-44(a) Permitted Projections into Yards and Open Space Requirements (Encroachment into Southwest Side Yard Setback)
Tax Map Key: (3) 1-9-018:090

The Planning Director certifies the **approval** of Variance 19-000534, subject to conditions. The variance will allow for the water tank to remain with a minimum eight (8) foot side (southwest) yard setback and side yard open space in lieu of the required 15-foot side yard setback and the 10-foot side yard open space. These exceptions are in lieu of the required 15-foot side yard setback and 10-foot side yard open space as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-76, Minimum yards and Section 25-4-44 (a), Permitted projections into yards and open space requirements.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 21,780 square feet (0.50 acre) and is located in the Volcano Cymbidium Acres Subdivision, situated at Volcano, Puna, Hawai'i. The subject property's street address is 19-4176 Ke Koa Nui Boulevard.
2. **County Zoning.** Agriculture – 20 acres (A-20a).

3. **State Land Use Designation.** Agricultural.
4. **Required Setback.** 25 feet for front and rear; 15 feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on July 23, 2019. The variance application site map was prepared by the applicant/owner (**See Exhibit A-Site Plan**)

The as-built water tank encroaches 7 feet into the 15-foot side (southwest) yard setback and 2 feet into the 10-foot side (southwest) yard open space.

The encroachment leaves the water tank with a minimum eight (8) foot side (southwest) yard setback and side yard open space, in lieu of the required 15-foot side yard setback and 10-foot side yard open space.

6. **County Building Records.** Hawai'i County Real Property Tax office records indicate that the the following building permits were issued.
 - a. Building Permit 921130 was issued June 17, 1992, for the construction of a single-family dwelling, consisting of 1 bedrooms, 1 bath, living area, kitchen and open carport. Permit finalized on November 23, 1992.
 - b. Building Permit 921131 issued on June 17, 1992, for a new corrugated water tank and bedroom. Permit finalized on November 23, 1992.
 - c. Building Permit 922026 issued on June 17, 1992, for conversion of open carport into an enclosed garage. Permit finalized on November 23, 1992.
 - d. Building permit 960357 issued on March 20, 1996, for addition of 1 bedroom, 1 bath with wet bar and lānai. Permit finalized on January 13, 2010.
 - e. Building Permit 000028 issued on January 5, 2000, for a new detached hobby room, storage and bath with lānai. Permit finalized on March 20, 2000.

7. **Agency Comments and Requirements.**

- a. State Department of Health (DOH) memorandum dated September 3, 2019: "The Health Department found no environmental health concerns with regulatory implications in the submittals."
 - b. No comments 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 August 12, 2019, and August 15, 2019, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on August 10, 2019.

9. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written comments or objections from surrounding property owners or the general public were received.

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 water tank into the 15-foot (southwest) side yard setback and 10-foot side yard open space.

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. The water tank improvements authorized under building permit #921131, which was issued on June 17, 1992, and given final inspection approval on November 23, 1992. It appears that building permit inspections of the premises by the affected agencies during construction of the single-family dwelling improvements did not disclose any building encroachment issues or building setback irregularities at that time.

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 as-built water tank, encroachments constructed into the affected side yard setback of the subject property include the following actions:

Relocate the water tank denoted on the site plan to fit within the correct building envelope 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 water tank was in compliance with all County requirements

Because the encroachment is within the side yard setback, to consolidate the subject property with the adjacent side yard property, which is owned by someone else, and re-subdivide the property to modify property lines and adjust minimum side yard setbacks are not viable options. Therefore, both of these alternatives are not practical.

(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 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.

No evidence has been found to show indifference or premeditation by the owners or builders to deliberately create or intentionally allow the building encroachment problems to occur.

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.

Therefore, the variance would be consistent with the general purpose of the zoning district and not be materially detrimental to the public's welfare or cause substantial adverse impact to the area's character or 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 90") 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:

1. The applicant/owner(s), their assigns or successors shall be responsible for complying with all stated conditions of approval.

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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/owner(s), their successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.
3. Should the water tank built 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.
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-19-000534 null and void.

Sincerely,



MICHAEL YEE
Planning Director

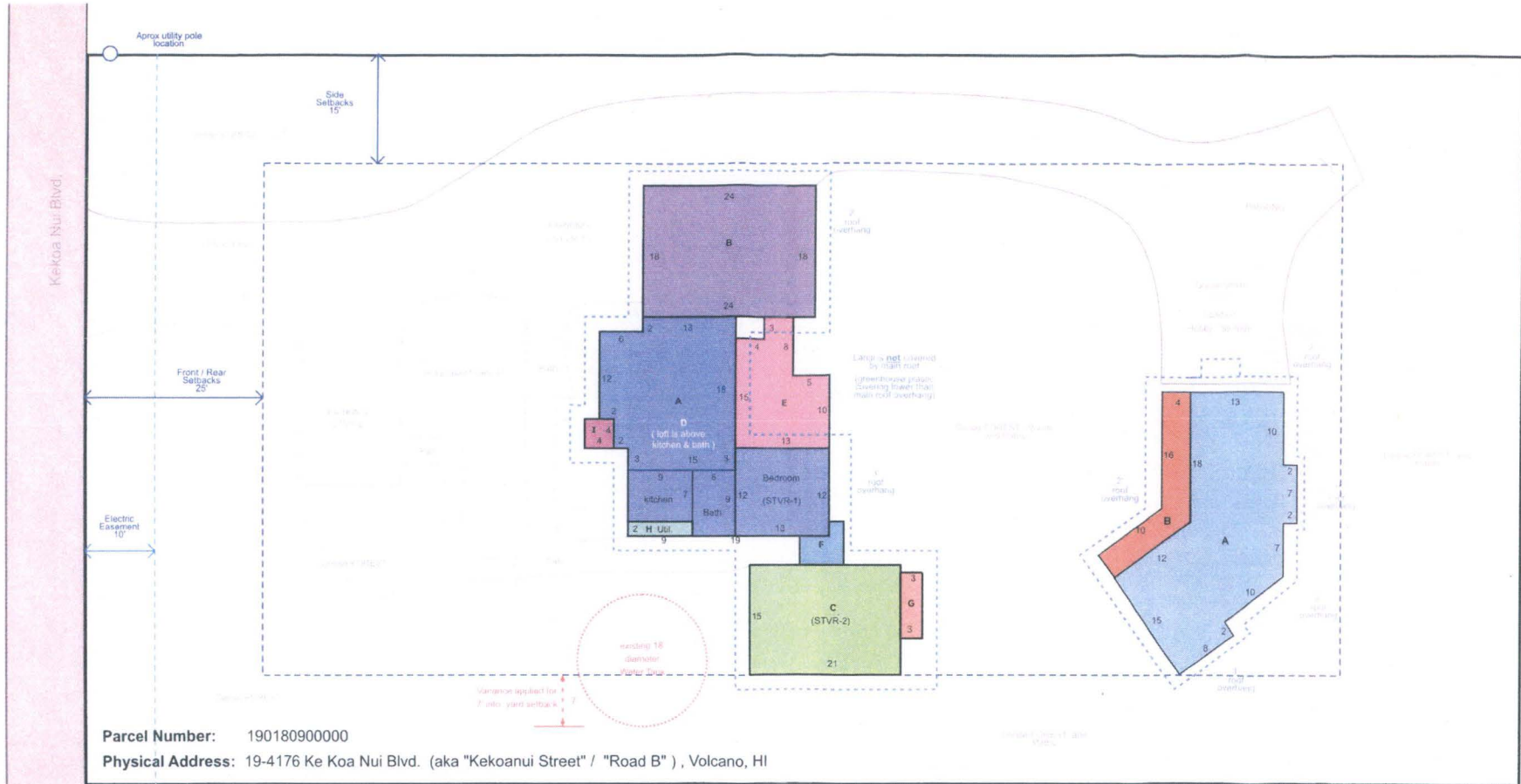
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Encl: Exhibit A-Site Plan

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

EXHIBIT A



Building 1:

living, kitchen, bath, bed	A: Main Area	640 sq ft
shop / laundry	B: PCH ENCLOSED	432 sq ft
bedroom / bath	C: 1ST STY FRAME	315 sq ft
2nd floor loft / office	D: 2nd Floor: 2ND STY FRAME	189 sq ft
deck walk-way	E: WDDCK WOOD DECKS	34 sq ft
deck walk-way	F: WDDCK WOOD DECKS	34 sq ft
lanai	G: PCH UNC W/RAIL	24 sq ft
utilities / storage	H: WOOD STOR ECON	18 sq ft
entry porch	I: PCH CD PLY ENCL - MAS	16 sq ft

Building 2:

	A: Main Area	504 sq ft
	B: PCH UNC SHD RF	110 sq ft