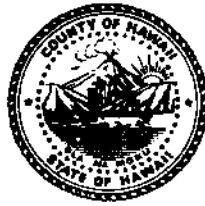


Harry Kim
Mayor

Roy Takemoto
Managing Director

West Hawai'i Office
74-5044 Ane Keohokālole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
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County of Hawai'i
PLANNING DEPARTMENT

Michael Yee
Director

April Surprenant
Acting Deputy Director

East Hawai'i Office
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Phone (808) 961-8288
Fax (808) 961-8742

June 2, 2020

Amos D. Meyers, Jr.
Charlene M. Meyers
P.O. Box 59
Hawai'i National Park, HI 96718

Dear Mr. & Mrs. Meyers:

SUBJECT: Application: Variance - VAR 20-000574
Applicant: AMOS D. MEYERS JR. & CHARLENE M. MEYERS
Owner: AMOS D. MEYERS JR. & CHARLENE M. MEYERS
Request: Variance from Chapter 25, Zoning, Article 5 Division 1
Section 25-5-7 Minimum Yards, Article 4, Division 4,
Section 25-4-44(a) Permitted Projections into Yards and
Open Space Requirements (Encroachment into South Front
and North Rear Yard Setback)

Tax Map Key: (3) 9-9-007:043 (Lot 280)

The Planning Director certifies the **approval** of Variance-20-000574 subject to conditions. The variance will allow a portion of the single-family dwelling to remain with a minimum 19.02-foot front (south) yard setback in lieu of the required 20-foot front yard setback. It also allows for the detached water tank to remain with 12.27-foot rear (north) yard setback. These exceptions are in lieu of the required minimum 20-foot front and rear yard setback and 14-foot rear yard open space. This variance is from the subject property's minimum front and rear yard setback pursuant to the Hawai'i County Code, Chapter 25, (Zoning), Article 5, Division 7, Section 25-5-76, 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 consists of approximately 12,259 square feet and is located in the Volcano Golf and Country Club Subdivision, situated at Keauhou, Ka'ū, Hawai'i. The subject property's street address is 99-7729 Kilau Place.
2. **County Zoning.** Single-Family Residential 15,000 square feet (RS-15).

3. **State Land Use Designation.** Urban.
4. **Required Setback.** Front and rear – 20 feet; sides – 10 feet.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on February 26, 2020. The variance revised survey map is drawn to scale, prepared by Niels Christensen L.P.L.S. (The Independent Hawaii Surveyors, LLC), and denotes the position of the single-family dwelling constructed into the minimum 10-foot rear (north) yard setback. **(See revised survey map – Exhibit A)**

The survey map shows that a portion of the single-family dwelling encroaches 0.98 feet (11.76 inches) into the 20-foot front (south) yard setback. It also allows for the detached water tank to remain with 12.27 feet rear (north) yard setback. These exceptions are in lieu of the required minimum 20-foot side yard setback and 14-foot side yard open space. This variance is from the subject property's minimum (northwest) side yard setback pursuant to the Hawai'i County Code, Chapter 25, (Zoning), Article 5, Division 7, Section 25-5-76, Minimum Yards and Article 4, Division 4, Section 25-4-44(a), Permitted Projections into Yards and Open Space Requirements.

6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (BP 010246) was issued on February 23, 2001, and finalized on March 5, 2002, for the construction of a two-story single-family dwelling consisting of 2 bedrooms, 2.5 baths, living room, kitchen, dining area, garage and steel water tank.
7. **Agency Comments and Requirements**
 - a. State Department of Health (DOH) memorandum dated April 16, 2020: "The Health Department found no environmental health concerns with regulatory implications in the submittals."
 - b. Department of Public Works-Building Division memorandum dated March 25, 2020: No objections.
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 March 2, 2020, and March 18, 2020, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on March 12, 2020.
9. **Comments from Surrounding Property Owners or Public.**
 - a. Letter expressing concern that approval of the variance would set precedence with other properties from received on March 23, 2020 from Wayne Carvalho. **(See Exhibit B)**

10. **Time Extension.** The applicant's variance application was acknowledged by letter dated March 10, 2020, and additional time to review the application was required. The applicant granted the Planning Director an extension of time to June 5, 2020, for decision on the Variance Application.

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 single-family dwelling into the 20-foot front yard and rear yard setbacks as required by the Zoning Code.

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 two-story, single-family dwelling constructed in 2002, approximately 18 years ago, and subsequent construction permits were issued and closed under valid building permit by the County for the existing two-story, single-family dwelling. It also appears that past building permit inspections of the premises, by the affected agencies during construction of the dwelling improvements, did not disclose any building encroachment issues or building setback irregularities at that time.

The owner was not at fault in creating the encroachment violation and requiring them to fix the encroachments would not be practicable when the owners complied and secured all necessary building permits from the County. Further, there is a park area which aligns with the north rear yard boundary that provides a buffer between the subject property and other properties. Thereby, added costs to relocate the water tank outside of the setback would not increase the separation that the park area already provides. These special and unusual physical land features would minimize impact of the water tank to the adjacent property owner.

- (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 single-family

dwelling and detached water tank encroachments constructed into the affected front and rear yard setbacks of the subject property include the following actions:

Remove the building encroachments and/or redesign the single-family dwelling and detached water tank denoted on the revised survey map to fit within the correct building envelope as prescribed by the Zoning Code. This alternative would be deemed unreasonable, especially when the previous 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 requirements would leave unattractive reconstruction scars.

Because the encroachment is within the rear yard setback, to consolidate the subject property with the abutting rear property, which is a park site and subdivide the property to modify property lines and adjust minimum rear 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.

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. The two-story single-family dwelling has been in existence for approximately 18 years and was constructed under valid building permits and other construction permits issued by the County of Hawai'i.

As such, it is felt that the issuance of this variance will not depreciate or detract from the character of the surrounding properties.

Therefore, the variance would be consistent with the general purpose of the zoning district 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 and detached water tank built on the subject property ("LOT 280") will not meet the minimum front and rear 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. Should the single-family dwelling 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. An 'Ohana or Farm Dwelling permit shall not be approved for the subject property, subject to the provisions of the Hawai'i County Code, Chapter 25, Zoning or State law, which may change from time to time.
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 proceed to declare subject Variance-20-000574 null and void.

Sincerely,



MICHAEL YEE
Planning Director

LHN:jaa

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Amos D. Meyers, Jr.
Charlene M. Meyers
June 2, 2020
Page 6

Encl: Exhibit A – Survey Map
Exhibit B – Letter of Concern

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

March 23, 2020

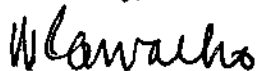
Michael Yee, Planning Director
County of Hawaii Planning Department
101 Aupuni Street, Suite 3
Hilo, HI. 96720

mail
MAR 30 2020
RECEIVED
COUNTY OF HAWAII
PLANNING
DEPT.

Re: Variance Application VAR 20-000574
Amos D. And Charlene M. Meyers
Encroachment into South Front and North Rear Yard Setback
TMK: (3)-9-9-007:043 Lot 280

We have reviewed the above variance application together with its attached map of the property in question (gray shaded lot) on a section of the relevant plat map as submitted by the applicant(s) and do not offer any negative comments other than to suggest that the granting of the variance may set precedence with other property owners in the particular subdivision who file similar variance applications. Thank You.

Sincerely,



Wayne Carvalho
Lot 281
TMK: (3)-9-9-007:44

EXHIBIT

B

SCAN

MAR 31 2020

132193