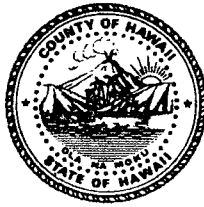


William P. Kenoi
Mayor



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

May 1, 2015

Daniel L. Berg
dlb & Associates
P. O. Box 49-2281
Kea'au, HI 96749

Dear Mr. Berg:

SUBJECT: Application: Variance VAR-15-000277
Applicant: DANIEL L. BERG/DLB & ASSOCIATES
Owners: JOHN K. UOHARA TRUST
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 (West) Yard Setback and Side (East) Yard Setback)
TMK: 2-4-021:170; Lot 7

The Planning Director certifies the **approval** of Variance 15-00277, subject to conditions. The variance will allow a section of the single-family dwelling to remain on Lot 7, with a minimum 16-foot front (west) yard setback. It also allows for pool equipment shed to remain with a minimum of 9.8-foot side (east) yard setback. The variance is from the subject property's minimum 20-foot front yard setback and 10-foot side yard setback requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 15, Section 25-5-156, Minimum yards.

The variance request also referenced an encroachment of a rock wall into the County of Hawaii right-of-way. The rock wall is excluded from this variance approval as separate action is required by the Department of Public Works.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 45,341 square feet (1.0409 acres) and

is situated within the Bright Hawaii Subdivision, Waiākea Homesteads, Waiākea, South Hilo, Hawai‘i. The subject property’s street address is 219 Kipa Street.

2. **County Zoning.** Single-Family Residential – 15,000 sq. ft. (RS-15)
3. **State Land Use Designation.** Urban
4. **Setback Requirements.** 20-foot front; 10-foot for sides; Section 25-4-42, Corner building sites: (a) On any corner building site, the interior lines shall be side lot lines and all rear yard regulations shall be inapplicable.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on November 13, 2014. The variance application’s survey map was prepared by Daniel L. Berg (dlb & Associates) and denotes that a portion of the single-family dwelling encroaching 4-foot into the 20-foot front (west) yard setback and the equipment pool shed encroaching 0.2 feet into the 10-foot side (east) yard setback.
6. **County Building Records.** Hawai‘i County Real Property Tax Office records indicate that a building permit (#880967) was issued on June 9, 1988 for a single-family dwelling consisting of a 7 bedroom, 5 baths and 4-half baths, living room, kitchen, and dining area.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated April 6, 2015.
(Refer to attached DOH memorandum)
 - b. The Department of Public Works Building Division e-mail dated April 7, 2015.
(Refer to DPW-Building Division 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 March 26, 2015 and March 31, 2015, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on April 13, 2015.
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 bedroom into the 20-foot front (west) yard setback and the open deck with associated roof eave into the 14-foot rear (east) yard open space as required by the Zoning Code.

The survey map dated March 6, 2015 prepared by Daniel L. Berg, L.P.L.S. (dlb & Associates) and Associates), shows a section of the single-family dwelling encroaching 4-feet into the 20-foot front (west) yard setback and the pool equipment shed encroaching 0.2 feet (2.4 inches) into the 10-foot side (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 1989 nearly 26 years ago and subsequent construction permits issued by the County for the existing single-family dwelling and pool equipment shed and closed under valid building permits. 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 above special and unusual circumstances determine the owner was not at fault in creating the encroachment violation and requiring them to fix the encroachments would interfere with best use and 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:

Remove the building encroachments and/or redesign the single-family dwelling and pool equipment building denoted on the survey map 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 single-family dwelling and associated alterations were 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.

Another alternative is to consolidate the subject property with the adjoining side property which is owned by another party, and to re-subdivide the property to modify property lines and adjust minimum yard setbacks. Both of these alternatives are not practical.

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.

Therefore, 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 pool equipment shed encroachment of 0.2 feet (2.4 inches) is rather miniscule. Therefore, it should not obstruct or prevent adequate air circulation and exposure to light between permitted structure(s)/uses and boundary/ property lines. Also, the encroachment of 4-feet into the front (west) yard setback and resulting in a 16-foot front yard setback still allows for adequate air circulation, as the affected area is within the front yard setback adjacent to the roadway frontage.

Furthermore, 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. This can be substantiated, to some degree, by the fact that this office did not receive any complaints from surrounding property owners during the roughly 26 years since the single-family dwelling and pool equipment shed were constructed.

Further, 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 bedroom and open deck built on the subject property ("LOT 7") will not meet the minimum front and side 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 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. Should the single-family dwelling and equipment pool shed 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. The owner shall remove or move the covered BBQ sun shed to comply with the 5-foot side yard open space requirement as required in Chapter 25, Zoning, Section 25-4-44 (c) Permitted Projections into yards and open space.
5. 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.
6. Future or new building improvements and permitted uses shall be subject to State law and

Daniel L. Berg
dlb & Associates
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May 1, 2015

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-15-000277.

Sincerely,

A handwritten signature in black ink, appearing to read 'Duane Kanuha', written in a cursive style.

DUANE KANUHA
Planning Director

LHN/SG:nci

P:\Admin Permits Division\Variances From CoH02\Zone2\VAR15-000277TMK2-4-021-170Uohara.doc.rtf

xc: Kelly Gomes, DPW Engineering Division
Real Property Tax Office (Hilo)
Gilbert Bailado, GIS

Daniel L. Berg
dlb & Associates
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May 1, 2015

DAVID Y. IGE
GOVERNOR OF HAWAII



VIRGINIA PRESSLER, M.D.
DIRECTOR OF HEALTH
PLANNING DEPARTMENT
COUNTY OF HAWAII

2015 APR -7 AM 11: 51

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

MEMORANDUM

DATE: April 6, 2015

TO: Mr. Duane Kanuha
Planning Director, County of Hawaii

FROM: Newton Inouye
District Environmental Health Program Chief

SUBJECT: Application: Variance-VAR 15-000277
Applicant: DANIEL BERG/DLB & ASSOCIATES, LLC
Owner: JOHN K. UOHARA TRUST
Request: Variance from Chapter 25, Zoning, Article 5, Division 1,
Section 25-5-7, Minimum Yards. (Encroachment into the
Front (West) and Side (East) yard Setback)
Tax Map Key: 2-4-021:170; Lot 7

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

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VAR 15-000277 - Nakayama, Larry

Page 1 of 1

VAR 15-000277

PLANNING DEPARTMENT
COUNTY OF HAWAII

2015 APR -7 PM 1:35

Matsumoto, Joy

Tue 4/7/2015 11:15 AM

To: Nakayama, Larry <Larry.Nakayama@hawaiicounty.gov>;

Variance – VAR 15-000277

Owner: John K. Uohara Trust

TMK: 2-4-021:170, lot 7

The Building Division has no objection to this variance request.

Joy Matsumoto

Supervising Building Inspector

County of Hawaii

Tel. (808) 961-8471

Fax (808) 961-8410

Email: jmatsumoto@co.hawaii.hi.us

098029

Daniel L. Berg
dlb & Associates
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May 1, 2015



Daniel L. Berg, PLS11245

Ph: 808-966-4206

Email: info@dlbandassoc.com

Fax: 808-982-6830

Web: www.dlbandassoc.com

P.O. Box 49-2281, Keaau, HI 96749

Report

March 24, 2015

To: John K. Uohara Tr.
c/o Title Guaranty Escrow Co.
460 Kilauea Ave.
Hilo, HI. 96720

Escrow No. 1402 2463
Attention: Michelle Dickenson

Re: **TMK (3) 2-4-021:170** (219 Kipa St.)
Lot 7, The Bright Hawaii Subdivision,
A Portion of Grant 9371,
Being Lot 904, Waiakea Homesteads 1st Series
Waiakea So. Hilo, Island & Co. of Hawaii, HI.

2015 APR 13 PM 3:45
PLANNING DEPARTMENT
COUNTY OF HAWAII

This report refers to conditions observed during a field survey dated February 18, 2015, as shown on the accompanying map. Record lot dimensions are indicated by (R) and field measured dimensions are indicated by (F). Major improvements shown.

Findings

Hawaii Co. Land Use designation for this property is RS-15: Residential, Single Family, 15,000 sq. ft. min. parcel area setback restrictions. See Hawaii Co. Zoning Code §25-5-1 through §25-5-8 for details.

NOTED ITEMS:

- ~~1. A portion of a rock wall is situated as much as 0.6 ft. into Moho Kipa Street right-of-way. (Removed)~~
2. The pool equipment shed is situated as much as 0.2 ft. the easterly sideyard setback; within the *de minimis structure position discrepancy* of 0.5 ft. See §25-4-66 for details.
3. The BBQ roof is situated as much as 6.0 ft. into the southerly sideyard setback.
4. A portion of the residence wall is situated as much as 4. ft. into the westerly sideyard setback.

General Notes:

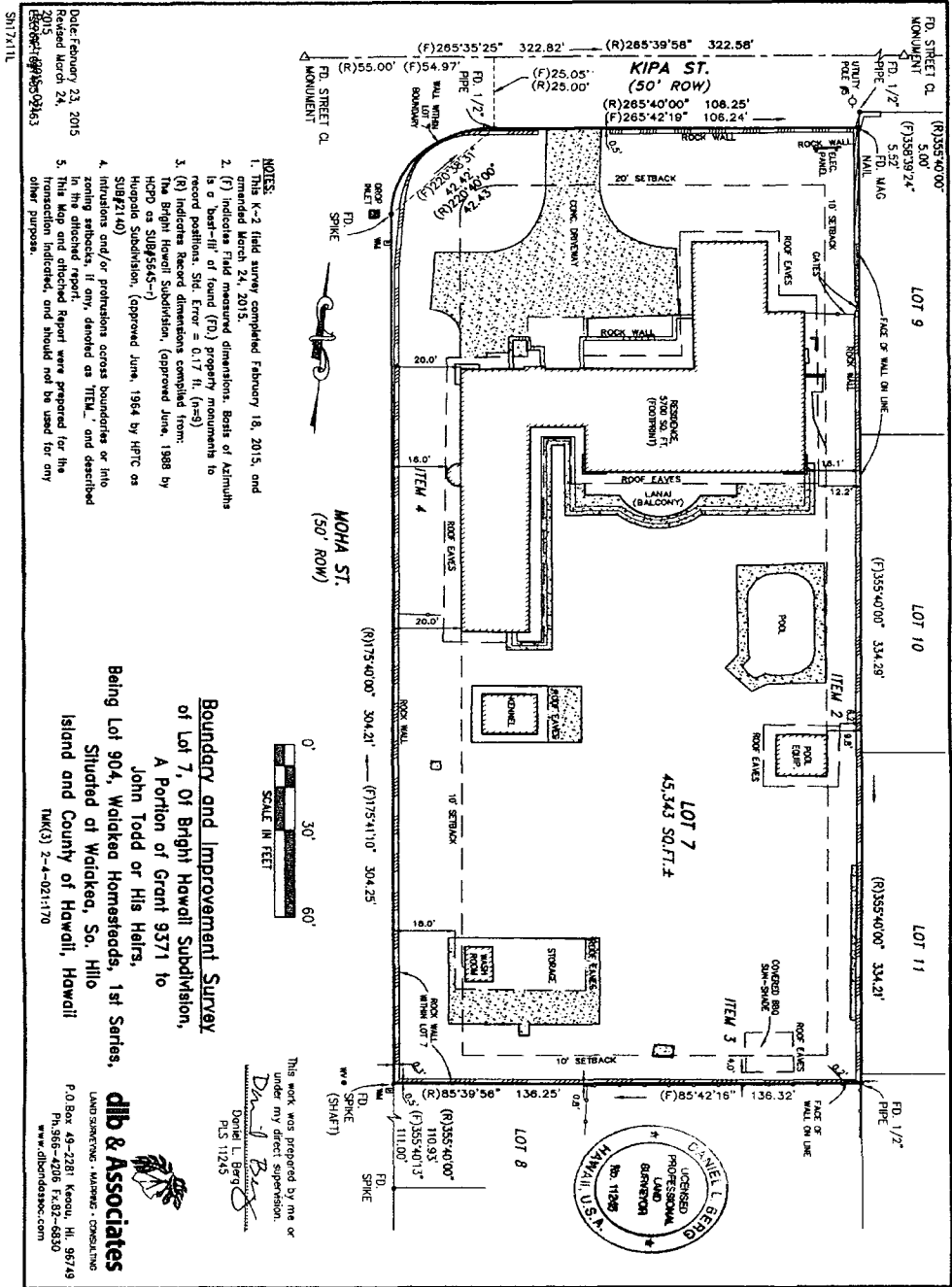
Roof eaves are an allowable intrusion of up to 5 ft. for 10 ft. sideyards and 6 ft. for 20 ft. sideyards.

Items located within the setbacks may be permissible intrusions depending on such factors as date of construction and zoning ordinances in effect at the time. Verify with Hawaii Co. Planning Dept for specific items.

This report was prepared by
me or under my direction.

Daniel L. Berg PLS 11245 (HI)

This report and the accompanying map were prepared for the transaction indicated hereon, and should not be used for any other purpose.



Date: February 23, 2015
 Revised March 24, 2015
 2015
 1527061-09105-0363
 SH17A11L

- NOTES:**
1. This K-2 field survey completed February 18, 2015, and re-revised March 24, 2015.
 2. (F) indicates field measured dimensions. Basis of Azimuths is a bearing of found (FO) property monuments to record position. Std. Error = 0.17 ft. (1"=2')
 3. (R) indicates recorded dimensions compiled from:
 a. The Big Island Historic Subdivision, (approved June, 1988 by HCPD # SIB4545-7)
 b. Historic Subdivision, (approved June, 1984 by HPTC on SIB82140)
 4. Indicators and/or notations across boundaries or into zoning setbacks, if any, denoted as "ITEN_" and described in the attached report.
 5. This map and attached report were prepared for the transaction indicated, and should not be used for any other purpose.

Boundary and Improvement Survey
 of Lot 7, Of Bright Hawaii Subdivision,
 A Portion of Grant 9371 to
 John Todd or His Heirs,
 Being Lot 904, Waialae Homesteads, 1st Series,
 Situated at Waialae, So. Hill
 Island and County of Hawaii, Hawaii
 TMK(3) 2-4-021:170

dlb & Associates
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 P.O. Box 43-2281 Keolu, HI, 96749
 PH: 580-4200 FAX: 580-6830
 WWW.DLBANDASSOCIATES.COM

This work was prepared by me or under my direct supervision.
 Daniel L. Berg
 PLS 11245

