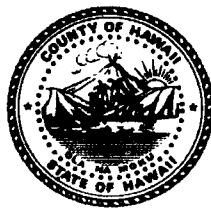


William P. Kenoi
Mayor



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

January 6, 2016

Daniel Berg
dlb & Associates, LLC
P. O. Box 492281
Kea'au, Hawai'i 96749

Dear Mr. Berg:

SUBJECT: Application: Variance - VAR 15-000319
Applicant: DANIEL BERG/DLB & ASSOCIATES, LLC
Owner: DOUGLAS ALLEN PORTER
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 West Front Yard Setback and West Front Yard Open Space.
Tax Map Key: 9-9-007:026; Lot 263

The Planning Director certifies the **approval** of VAR-15-000319 subject to variance conditions. The variance will allow the detached garage to remain on Lot 236, with 17.9-foot front (west) yard setback, in lieu of the required 20-foot front yard setback and associated roof eave projection resulting in a 13.7-foot front (west) yard open space. This exception is in lieu of the required minimum 20-foot front yard setback and 14-foot front yard open space. This variance is from the subject property's minimum (west) front yard setback pursuant to the Hawai'i County Code, Chapter 25, (Zoning), Article 5, Division 7, Section 25-5-76, Minimum yards, (a), Section 25-5-8, Other regulations, 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 contains approximately 13,394 sq. ft. and is located in the Volcano Golf and Country Club, Keauhou, Kau, Hawai'i. The subject property's street address is 99-7726 Pukeawe Place.
2. **County Zoning.** Single-Family Residence – 15,000 sq. ft. (RS-15).

3. **State Land Use Designation.** Urban
4. **Required Setback.** 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 October 19, 2015. The variance site plan is drawn to scale, prepared by the Daniel Berg, L.P.L.S. (dlb & Associates, LLC) and denotes the position of the detached garage constructed into the minimum 20-foot front (west) yard setback and the 14-foot front yard open space. The request affects the west front yard setback.

The site plan shows that the detached garage encroaches 2.1 feet into the 20-foot front yard setback and 0.30 feet (3.6 inches) into the 14-foot front yard open space.

The encroachment leaves a minimum 17.9-foot front (west) yard setback in lieu of the required 20-foot front (west) yard setback associated roof eave projection resulting in a 13.7-foot front (west) yard open space.

6. **County Building Records.** Hawai'i County Real Property Tax Office Records indicate that a building permit (B2005-0290H) was issued on February 2, 2005 to the subject property for a single-family dwelling consisting of 3 bedrooms, 2 baths, living room, kitchen and dining area and detached garage.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated November 4, 2015. (See attached.)
 - b. No comments were received from the Department of Public Works – Building.
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 October 23, 2015 and December 3, 2015 respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on November 25, 2015.
9. **Time Extension.** The applicant's variance application was acknowledged by letter dated October 7, 2015 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 January 8, 2016.
10. **Comments from Surrounding Property Owners or Public.**

- a. A letter objecting to the variance request from Michele Stephen-Hassard was received on November 6, 2015.

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 detached garage into the 20-foot front (west) yard setback and the 14-foot front (west) yard open space requirement.

The site plan shows that the detached garage encroaches 2.1 feet into the 20-foot front yard setback and 0.30 feet (3.6 inches) into the 14-foot front yard open space.

The encroachment leaves a minimum 17.9-foot front (west) yard setback in lieu of the required 20-foot front (west) yard setback associated roof eave projection resulting in a 13.7-foot front (west) 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. It appears that the original dwelling improvements constructed in 2002, nearly 13 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.

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 water tank

encroachments constructed into the affected side yard setback of the subject property include the following actions:

Remove the building encroachments and/or redesign the detached garage 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 detached garage was in compliance with all County requirements. Any structural or design correction of the detached garage 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.

(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.

A letter objecting to the variance request was received from Ms. Michele Stephen-Hassard on November 6, 2015.

Ms. Stephen-Hassard objections states in part: *"There is no need for anyone to deviate from the minimum yard setbacks. All information regarding these lots, including minimum yard setbacks, was available at time of purchase of the property. There was a good reason for setting of these distances; that reasoning has not changed. This is already one of the bigger lots in this subdivision and there is no need to infringe on others open space."* It should be noted that the encroachments are into the front (west) yard setback and open space and not into the side yard setback and does not infringe on anyone's open space.

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 detached garage has been in existence for approximately 10 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.

The site plan shows that the detached garage encroaches 2.1 feet into the 20-foot front yard setback and 0.30 feet (3.6 inches) into the 14-foot front yard open space.

The encroachment of 2.1 feet into the 20-foot front (west) yard setback and associated roof eave encroaching 0.30 feet (3.6 inches) into the 14-foot front yard open space still allows for adequate air circulation as the affected area is within the front setback adjacent to 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 existence of the detached garage.

Based on the foregoing findings and circumstances, the applicant's request for variance would be consistent with the general purpose of the zoning district and the intent and purpose of the Zoning Code, Subdivision Code and the County General Plan.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

Based on the variance application's survey map, the detached garage built upon the subject property ("LOT 263") 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:

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. An ohana or farm dwelling permit shall not be granted 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 detached garage (footprint) 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

Daniel Berg
dlb & Associates, LLC.
Page 6
January 6, 2016

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-15-000319 null and void.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone9\VAR15-000319TMK9-9-007-026 Porter.doc

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

DAVID Y. IGE
GOVERNOR OF HAWAII

NOV 10 6 PM 2 00

PLANNING DEPARTMENT
COUNTY OF HAWAII



VIRGINIA PRESSLER, M.D.
DIRECTOR OF HEALTH

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

MEMORANDUM

DATE: November 4, 2015

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

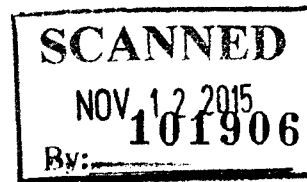
FROM: Eric Honda *EHA*
District Environmental Health Program Chief

SUBJECT: **Application: Variance – VAR-15-000319**
Applicant: DANIEL BERG/DLB & ASSOCIATES, LLC
Owner: DOUGLAS ALLEN PORTER
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 the West Front Yard
Setback).

Tax Map Key: 9-9-007:026; Lot 263

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

WORD: VAR-15-000319.eh



Plot Plan for Variance Application

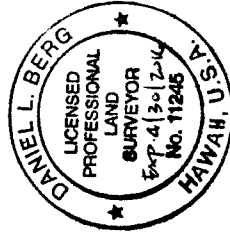
Owner:
Douglas Allen Porter
109 S. White St.
Hanford, CA. 93230

Situs:
99-7726 Pukeawe Place.
Volcano, HI 96785

TMK(3) 9-9-007: 026

Lot 263, Volcano Golf & Country Club Subdivision, Unit IV
Portion of R.P. 4475, L.C.A.W. 7713, Apana 11 to V, Kamamalu,
Keauhou, Kau. (DAGS File Plan 1674)

Zoning: RS-15.
Designation: Front/Rear 20 ft.
Setbacks: Side: 10'



This work was prepared by me or
under my direct supervision.

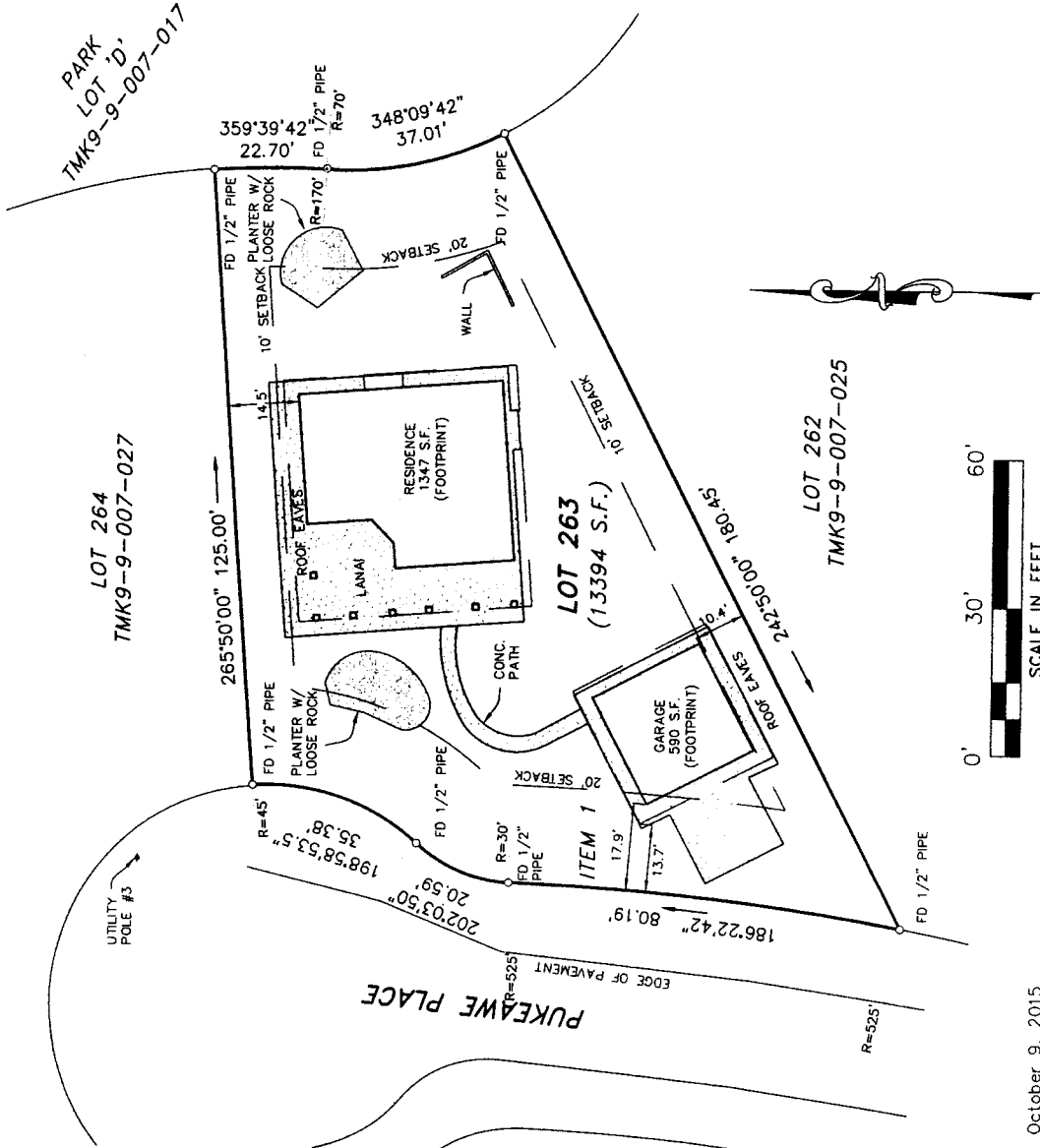
Daniel L. Berg
Daniel L. Berg
PLS 11245



dlb & Associates

LAND SURVEYING • MAPPING • CONSULTING

P.O. Box 49-2281 Keaau, HI. 96749
Ph. 966-4206 Fx. 82-6830
www.dlbassoc.com



Date: October 9, 2015
App. No. VAR-15-
Project: 2015-090
8X14L