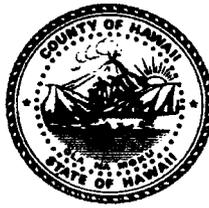


William P. Kenoi  
Mayor



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

February 5, 2016

Patrick Smith  
P. O. Box 1501  
Fort Smith, AR 72902-1501

Dear Mr. Smith:

**SUBJECT: Application: Variance - VAR 15-000334**  
**Applicant: PATRICK SMITH**  
**Owner: PATRICK SMITH AND JUDITH ANN O'CONNER**  
**Request: Variance from Chapter 25, Zoning, Article 5, Division 7,**  
**Section 25-5-76, Minimum Yards (Encroachment into**  
**Southeast Side Yard Setback)**  
**Tax Map Key: 1-5-025:015; Lot 842**

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The Planning Director certifies the **approval** of Variance 15-000334, subject to conditions. The variance will allow a section of the enclosed garage to remain on Lot 842, with a minimum 18.50-foot side (southeast) yard setback, in lieu of the required 20-foot side yard setback. The variance is from the subject property's minimum 20-foot side yard setback requirement. These exceptions are in lieu of the required 20-foot side yard setback, as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum Yards.

**BACKGROUND AND FINDINGS**

1. **Location.** The subject property contains approximately 43,560 square feet (1 acre) and is located in the Hawaiian Paradise Park Subdivision, situated at Kea'au, Puna, Hawai'i. The subject property's street address is 15-2000 10<sup>th</sup> Avenue.
2. **County Zoning.** Agricultural – 1 acre (A-1a).
3. **State Land Use Designation.** Agricultural.
4. **Required Setback.** 30-feet for front and rear; 20-feet for sides.

5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on December 3, 2015. The variance site plan is drawn to scale, prepared by Daniel L. Berg, L.P.L.S. (dlb & Associates) and denotes the position of the enclosed garage constructed into the minimum 20-foot side yard setback. The request affects the southeast side yard setback.

The survey map shows that portion of the garage encroaches 1.5 feet into the 20-foot side (southeast) yard setback.

The encroachment leaves a minimum 18.50-foot side (southeast) yard setback, in lieu of the required 20-foot side (southeast) yard setback.

6. **County Building Records.** Hawai'i County Real Property Tax Office Records indicate that a building permit (#981098) was issued on August 18, 1998 to the subject property for a single-family dwelling consisting of 2 bedrooms, 2 baths, living room, kitchen and dining area.
7. **Agency Comments and Requirements.**
  - a. The State Department of Health (DOH) memorandum dated December 30, 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 November 27, 2015 and December 29, 2015, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on December 28, 2015.
9. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or the general public were received.
10. **Time Extension.** The applicant's variance application was acknowledged by letter dated December 8, 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 February 8, 2016.

#### 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 garage into the 20-foot southeast side yard setback.

The survey map shows that portion of the garage encroaches 1.50 feet into the 20-foot side (southeast) yard setback.

The encroachment leaves a minimum 18.50-foot side (southeast) yard setback, in lieu of the required 20-foot side (southeast) yard setback requirement.

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 1998, nearly 17 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 garage 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 enclosed garage encroachments constructed into the affected side yard setback of the subject property include the following actions:

Remove the building encroachments and/or redesign the 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 enclosed garage was in compliance with all County requirements. Any structural or design correction of the enclosed garage 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 someone else, and resubdivide the property to modify property lines and adjust minimum yard setbacks. Therefore, to consolidate and re-subdivide the property to modify property lines and adjust minimum side 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.

The encroachment of the enclosed garage, resulting with a minimum of 18.50-foot side yard setback still allows for adequate air circulation

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 garage.

In addition, 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 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 garage built upon the subject property ("LOT 842") 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 additional farm dwelling 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 garage 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 proceed to declare subject Variance-15-000334 null and void.

Sincerely,



DUANE KANUHA  
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone1\VAR15-000334TMK1-5-025-015 Smith doc

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



**dlb & Associates**  
LAND SURVEYING • MAPPING • CONSULTING

Daniel L. Berg, PLS11245

Ph: 808-966-4206

Email: [info@dlbandassoc.com](mailto:info@dlbandassoc.com)

Fax: 808-982-6830

Web: [www.dlbandassoc.com](http://www.dlbandassoc.com)

P.O. Box 49-2281, Kea'au, HI 96749

February 1, 2016

**To:** Hawaii County Planning Dept.,  
101 Pauahi St.  
Hilo, HI. 96720  
Attn.: Larry Nakayama

**Re:** **TMK 1-5-025-015**  
**VAR-15-000334**

Mr. Nakayama-

In response to your email request of January 27:

As agent for the owners in this matter, I am authorized to extend the time to process this application to February 8, 2016, as you requested. Please proceed.

We look forward to resolving this application as soon as possible.

Sincerely,

*Daniel Berg*  
Daniel L. Berg

DAVID Y. IGE  
GOVERNOR OF HAWAII



VIRGINIA PRESSLER, M.D.  
DIRECTOR OF HEALTH

2016 JAN 5 PM 2 00

PLANNING DEPARTMENT  
COUNTY OF HAWAII

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

MEMORANDUM

DATE: December 30, 2015

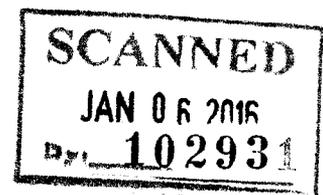
TO: Mr. Duane Kanuha  
Planning Director, County of Hawaii

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

SUBJECT: **Application: Variance - VAR-15-000334**  
**Applicant: DANIEL BERG/DLB & ASSOCIATES, LLC**  
**Owner: PATRICK SMITH**  
**Request: Variance from Chapter 25, Zoning, Article 5 Division 7,**  
**Section 25-5-76 Minimum Yards (Encroachment into the**  
**Southeast Side Yard Setback)**  
**Tax Map Key: 1-5-025:015; Lot 842**

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

WORD: VAR-15-000334.eh



LOT 774

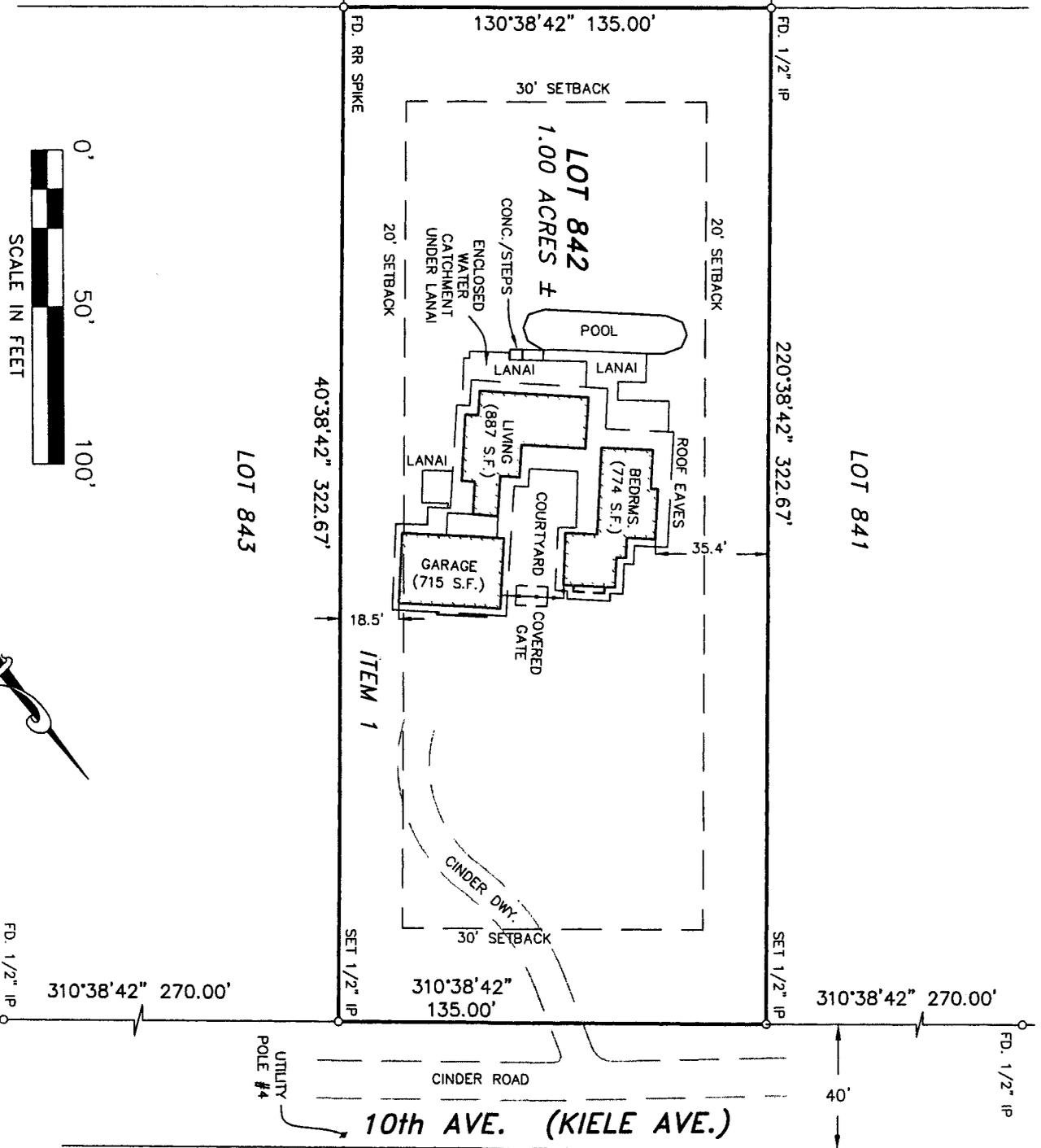
LOT 773

LOT 772

LOT 841

LOT 843

LOT 842  
1.00 ACRES ±



SCALE IN FEET

FD. 1/2" IP

310'38'42" 270.00'

40'38'42" 322.67'

ITEM 1

310'38'42" 135.00'

310'38'42" 270.00'

FD. 1/2" IP

220'38'42" 322.67'

SET 1/2" IP

FD. 1/2" IP

10th AVE. (KIELE AVE.)

CINDER ROAD

UTILITY POLE #4

### Plan of Existing Improvements

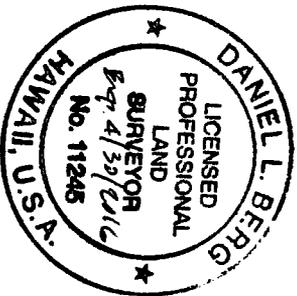
Of Lot 842, Block 9,  
Hawaiian Paradise Park Subdivision,  
Keaau, Puna, Island and County of Hawaii.

TWK(3) 1-5-025: 015

**Purpose:**  
Plan of existing improvements as a Variance Application  
supplement. Intrusion into side yard setback identified as  
Item 1 hereon.

**Owners:**  
Norma Bell, Patrick Smith  
HC 3 Box 11107  
Keaau, HI. 96749

**Map Note:**  
Survey of site dated October 15, 2015.  
Boundary courses are record per La. Ct. App. 1053, Map 64.  
Setback limits determined from found and accepted boundary  
monuments.



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



**dlb & Associates**

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Ph. 966-4206 Fx. 82-6830  
www.dibandassoc.com

Date: November 16, 2015

2015-206