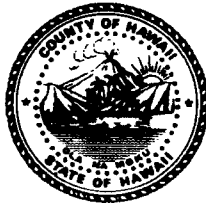


William P. Kenoi
Mayor



Duane Kanuha
Director

Joaquin Gamiao-Kunkel
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

June 22, 2016

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

Dear Mr. Daniel Berg:

SUBJECT: Application: Variance - VAR 16-000365
Applicant: DANIEL BERG/DLB AND ASSOCIATES, LLC
Owner: JEE HEE OH
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 West Front Yard Setback)
Tax Map Key: 2-3-048:008; Lot 8

The Planning Director certifies the **approval** of Variance No. 16-000365, subject to variance conditions. The variance will allow portion of the carport wall to remain with a minimum 6.1-foot front (west) yard setback to a minimum 7.1-foot front (west) yard setback, in lieu of the required 15-foot front yard setback and associated roof eave projection resulting with a minimum 5.7-foot front (west) yard open space to a minimum 6.5-foot front (west) open space in lieu of the required 10-foot open space requirement. These exceptions are in lieu of the required 15-foot front yard setback and 10-foot front yard open space, as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, 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 10,010 square feet and is situated within the Komohana Heights Subdivision, Kukuau 2nd, South Hilo, Hawai'i. The subject property's street address is 420 Huali Street.

2. **County Zoning.** Single-Family Residential – 7,500 sq. ft. (RS-7.5).
3. **State Land Use Designation.** Urban.
4. **Setback Requirements.** 15 feet front and 8 feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on April 12, 2016. The variance application's revised survey map dated June 16, 2016 was prepared by Daniel Berg (dlb and Associates, LLC) and denotes that a portion of the carport wall built into the front (west) yard setback and associated roof eave projection into the front (west) yard open space. **(See Exhibit A-Site Plan)**

The revised survey map dated June 16, 2015, prepared by Daniel L. Berg L.P.L.S., (dlb & Associates, LLC), shows a section of the carport wall encroaching with a minimum 7.9 feet to a minimum 8.9 feet into the 15-foot front (west) yard setback and associated roof eave encroaching with a minimum 3.5 feet to a minimum 4.3 feet into the 10-foot front (west) yard setback.

The encroachment leaves a minimum 6.1-foot to a minimum 7.1-foot front (west) yard setback in lieu of the required 20-foot front (west) yard setback and associated roof eave projection resulting with a minimum 5.7-foot to a minimum 6.5-foot front (west) yard open space in lieu of the required 10-foot open space requirement.

6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (#810627) was issued on March 10, 1981 for a single-family dwelling consisting of 4 bedrooms, 2-1/2 baths, living room, kitchen, and dining area.
7. **Agency Comments and Requirements.**
 - a. State Department of Health (DOH) memorandum dated May 2, 2016. "The Health Department found no environmental health concerns with regulatory implications in the submittals."
 - b. No comments received from 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 April 12, 2016 and April 26, 2016, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on May 10, 2016.

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.
10. **Time Extension.** The applicant's variance application was acknowledged by letter dated June 13, 2016 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 July 13, 2016.

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 carport wall into the 15-foot front (west) yard setback and 10-foot front (west) yard open space as required by the Zoning Code.

The revised survey map dated June 16, 2015, prepared by Daniel L. Berg L.P.L.S., (dlb & Associates, LLC), shows a section of the carport wall encroaching with a minimum 7.9 feet to a minimum 8.9 feet into the 15-foot front (west) yard setback and associated roof eave encroaching with a minimum 3.5 feet to a minimum 4.3 feet into the 10-foot front (west) yard setback.

The encroachment leaves a minimum 6.1-foot to a minimum 7.1-foot front (west) yard setback in lieu of the required 20-foot front (west) yard setback and associated roof eave projection resulting with a minimum 5.7-foot to a minimum 6.5-foot front (west) yard open space in lieu of the required 10-foot open space 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 1981, nearly 35 years ago, and subsequent construction permits were 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 carport 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 was 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.

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. Both of these alternatives are not practical. 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.

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 carport has been in existence for approximately 35 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.

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.

This can be substantiated, to some degree, by the fact that no comments or objections were received from the surrounding property owners or general public in response to the Notification of Surrounding Properties Owners.

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 on the subject property ("LOT 8") 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 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 carport wall 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,

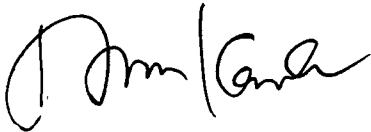
Daniel Berg, L.P.L.S.
dlb and Associates, LLC
Page 6
June 22, 2016

(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 initiate proceedings to null and void Variance-16-000365.

Sincerely,



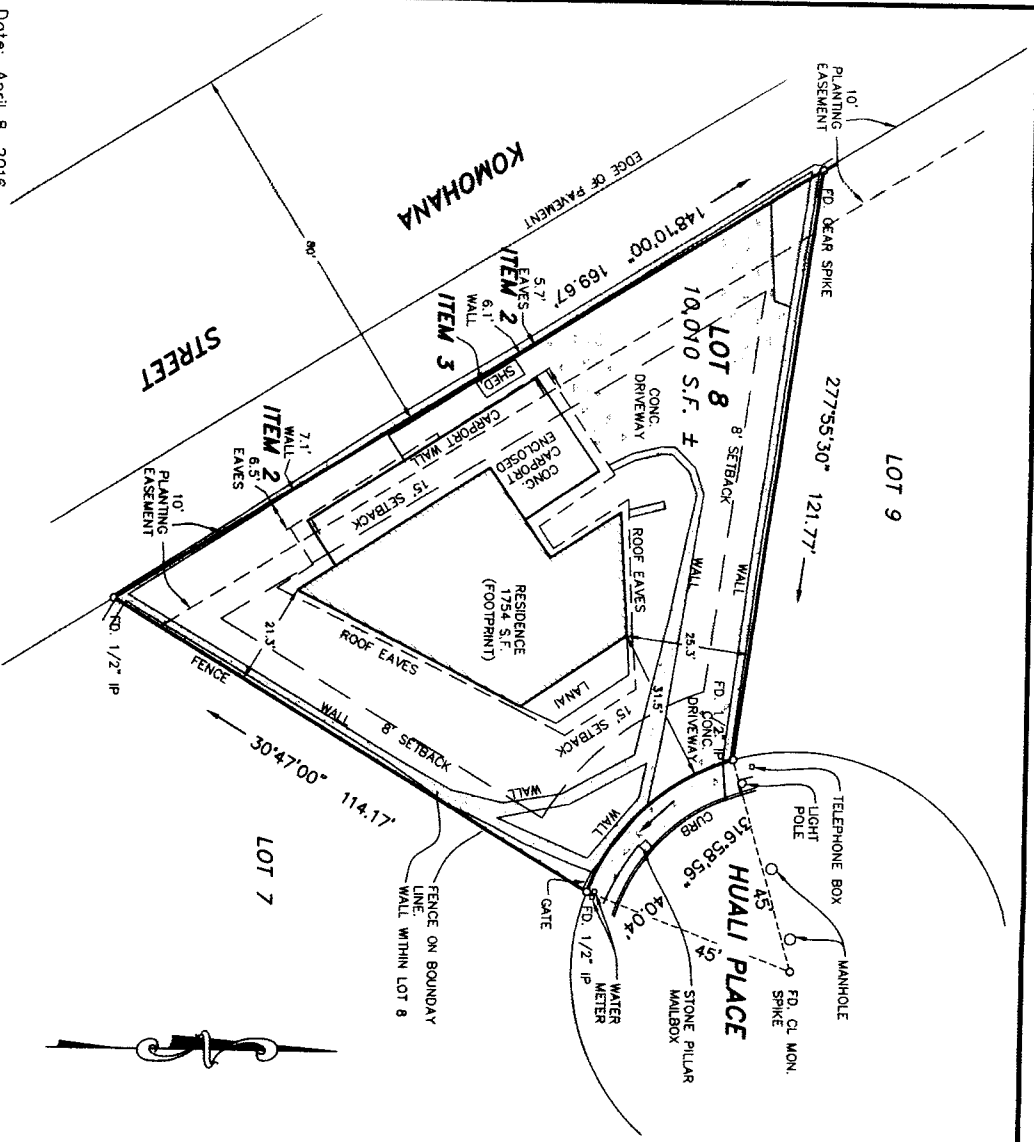
DUANE KANUHA
Planning Director

LHN/SG:nci

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

EXHIBIT A



Date: April 8, 2016
 Rev. June 16, 2016
 VAR-16-000365
 Project: J2016-087
 BX14L

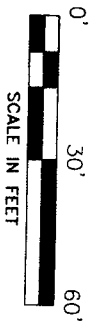
Site Survey
 Of Lot 8, Komohana Heights Subdivision,
 Portion of R.P. 5706, L.C.A.W. 8521-B,
 Apana 2 to G.D. Hueu,
 Kukuau 2nd, So. Hilo,
 Island and County of Hawaii.
 TMK(3) 2-3-048: 008

Owner
 Stella Taneoa, Jee Hee Oh
 420 Huail Place
 Hilo, HI 96720

Tax Map Key (3) 2-3-048:008

Land Use Zone
 RS-7.5
 Residential, Single Dwelling, 7,500 sq. ft.
 min. parcel area.

Survey Note
 Setbacks determined from field measured
 boundary.
 Courses are record per Komohana Heights
 Subd., approved Aug., 1971 by HCPD as
 SUB# 3012



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

Daniel L. Berg
 PLS 11245


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