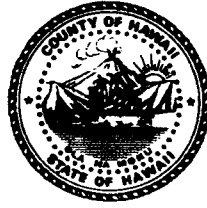


William P. Kenoi
Mayor



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
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

October 31, 2016

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

Dear Mr. Berg:

SUBJECT: Application: Variance - VAR 16-000367
Applicant: DANIEL BERG/DLB AND ASSOCIATES, LLC
Owner: LOIS T. ENDO
Request: Variance from Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum Yards. (Encroachment into Southwest Side Yard Setback)
Tax Map Key: 1-1-041:034; Lot 6396

The Planning Director certifies the **approval** of Variance 16-000367, subject to conditions. The variance will allow a section of the single-family dwelling to remain on Lot 6396, with a minimum 18.7-foot side (southwest) 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. 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 25-5-76, Minimum yards.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 3 acres and is located in the Fern Acres Subdivision, situated at Kea'au, Puna, Hawai'i. The subject property's street address is 11-3014 Plumeria Street.
2. **County Zoning.** Agricultural – 3 acre (A-3a).
3. **State Land Use Designation.** Agricultural.
4. **Required Setback.** 30-feet front and rear; 20-feet for sides.

5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on May 27, 2016. The variance site plan is drawn to scale, prepared by the Daniel L. Berg, L.P.L.S. (dlb & Associates, LLC), and denotes the position of the single-family dwelling constructed into the minimum 20-foot side (southwest) yard setback. The variance request affects the southwest yard setback.

(See attached survey map – Exhibit A)

The survey map shows that portion of the single-family dwelling encroaches 1.3 feet into the 20-foot side (southwest) yard setback. The encroachment leaves the single-family dwelling with a minimum 18.3-foot side (southwest) yard setback, in lieu of the required 20-foot side (southwest) yard setback.

6. **County Building Records.** Hawai'i County Real Property Tax Office Records indicate that a building permit (B2006-0690H) was issued on March 8, 2006, to the subject property for a single-family dwelling consisting of 3 bedrooms, 2 baths, living room, kitchen and dining area.

7. **Agency Comments and Requirements.**

a. State Department of Health (DOH) memorandum dated May 16, 2016: "The Health Department found no environmental health concerns with regulatory implications in the submittals."

b. No comments received from the 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 26, 2016 and May 19, 2016, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on May 19, 2016.

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 May 5, 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 October 31, 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 single-family dwelling into the 20-foot southwest side yard setback.

The survey map shows that portion of the single-family dwelling encroaches 1.3 feet into the 20-foot side (southwest) yard setback.

The encroachment leaves the single-family dwelling with a minimum 18.7-foot side (southwest) yard setback, in lieu of the required 20-foot side (southwest) 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 single-family dwelling improvements constructed in 2006, nearly 10 years ago and 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 single-family dwelling encroachment constructed into the affected side yard setback and side yard open space of the subject property include the following actions:

Remove the building encroachments and/or redesign the single-family dwelling 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 detached 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.

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 single-family dwelling constructed in 2006, nearly 10 years ago and the detached was 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 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.

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 upon the subject property ("LOT 6396") 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. 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-16-000367 null and void.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone1\VAR16-000367 TMK1-1-041-034 Endo.doc

cc: Real Property Tax Office (Hilo)
Gilbert Bailado, GIS (via email)
Lois Endo via email: loisleeendo@gmail.com

LD. CT. APP. 1053 MAP 49

LOT 2382

LOT 6418

240'05"12" 871.20'

20' SETBACK
LOT 6396
2.000 ACRES ±
20' SETBACK

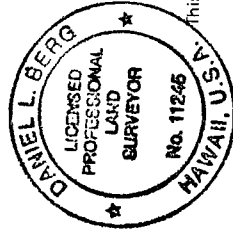
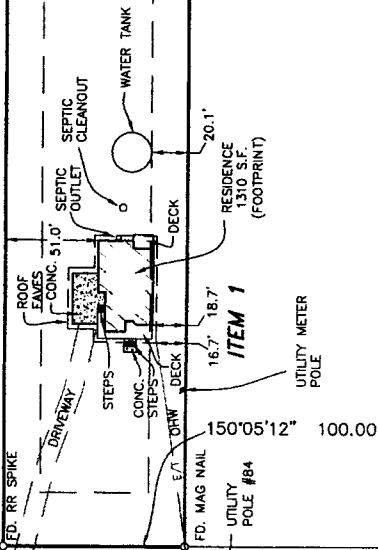
60'05"12" 871.20'

LOT 6420

50'
150'05"12" 200.00'

PLUMERIA STREET

TO GARDENIA STREET 2700 FT.



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

Daniel L. Berg
PLS 11245

Site Plan

Of Lot 6396,

Fern Acres Subdivision,
Keaau, Puna, Island and County of Hawaii.

TMK(3) 1-1-041:034



NOTES:

1. Field survey completed February 5, 2016.
2. Boundaries are record dimensions per Henry L. Favores-Jr; Lois T. Endo Trst PO Box 1279 1266-Kawili-Way Makawao, HI-96768-9555
3. Features denoted as 'ITEM-' applied as a variance to the zoning code, and fully described in the attached application for variance.
4. Setbacks determined from found and accepted boundary monumentation.

Owners:
Henry L. Favores-Jr; Lois T. Endo Trst
PO Box 1279
1266-Kawili-Way
Makawao, HI-96768-9555

Situs:
11-3014 Plumeria St.
Mountain View

Zoning Designation:
A-3a (2 acres lots in this subdivision are legal, non-conforming status).

Date: February 10, 2016
Drawing: J2016-040Var.dwg

Project: J2016-040
8X14L



dlb & Associates

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EXHIBIT

A