

William P. Kenoi
Mayor



Duane Kanuha
Director

Joaquin Gamiao-Kunkel
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
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County of Hawai'i
PLANNING DEPARTMENT

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
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September 27, 2016

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

Dear Mr. Berg:

SUBJECT: Application: Variance - VAR 16-000380
Applicant: DANIEL L. BERG, LPLS, dlb & ASSOCIATES
Owner: KJ VOLCANO, LLC
Request: Variance from Chapter 25, Zoning, Article 5, Division 1, Section 25-5-76 (7), Minimum Yards Requirements (Encroachment into South Rear Yard Setback)
Tax Map Key: 1-1-018:006; Lot 2230 (Front Property)

After reviewing your variance application, the Planning Director certifies the **denial** of VAR-16-000380. The variance application seeks to allow the single-family dwelling to remain within the south rear yard setback with a minimum 14.3-foot rear (south) yard setback and the open covered lanai with associated roof eave with a minimum 5.3-foot rear (south) yard open space in lieu of the required 20-foot rear yard setback and the 14-foot rear yard open space requirement. The variance is from Hawai'i County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-78, Minimum yards and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements.

The Planning Director has concluded that the variance from the above-referenced zoning standards be **denied** based on the following findings:

BACKGROUND

1. Location. The subject property, consisting of approximately 10,000 square feet of land, is located in the Royal Hawaiian Estates Subdivision, situated at Kea'au, Puna, Hawai'i. The subject property's street address is 11-3139 Mokuna Street.
2. Zoning. Agricultural – 1 acre (A-1a).

3. State Land Use. Agricultural (A).
4. Required Setback. 20-feet front and rear; 10-feet for sides.
5. Variance Application-Site Plan. The applicant submitted the variance application, attachments, and filing fee on July 22, 2016, and other submittals related to the variance request and variance application.

The variance application's site plan map is drawn to scale and prepared by Daniel L. Berg L.P.L.S. (dlb & associates) shows the single-family dwelling encroaches 5.7 feet into the southeast rear yard setback and the open lanai with associated roof eave encroaches 8.7 feet into the southeast rear yard open space. (See Exhibit A)

6. County Building Records. Real Property Tax Office records indicate that building permit (B2007-0176H) issued on January 17, 2007 for the construction of a 3-bedroom and 2-bath, single-family dwelling.
7. Agency Comments and Requirements.
 - a. The State Department of Health (DOH) memorandum, dated July 13, 2016, states: The Health Department found no environmental health concerns with regulatory implications in the submittals.
 - b. The Department of Public Works – Building Division e-mail dated July 19, 2016 states: “The Building Division has no objections to both variances, VAR 16-000380 and VAR 16-000381.”
8. Notice to Surrounding Property Owners. A copy of the first and second notices were sent by the applicant via USPS to surrounding property owners and mailing certificates were submitted to the Planning Department. According to the submittals, the first and second notices were mailed on June 20, 2016 and July 14, 2016, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on August 4, 2016.
9. Comments from Surrounding Property Owners or Public.
 - a. Objection letter received from Kathleen A. Hendrix and Bruce A. Hendrix on July 22, 2016. (See Exhibit B)

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 right 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 does not meet with criteria (a) for the following reasons:

There are no special or unusual circumstances applying to the 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 that property.

The owner/applicant submitted the variance application to address or resolve the encroachment of the single-family dwelling into the 20-foot south rear yard setback and 14-foot rear yard open space as required by the Zoning Code.

The variance application's site plan map is drawn to scale and prepared by the applicant shows the single-family dwelling encroaches 5.7 feet into the south rear yard setback and the open lanai with associated roof eave encroaches 8.7 feet into the south rear yard open space.

The applicant has also stated that the water tank that services the water needs for the single-family dwelling on the subject property was erroneously placed on the adjacent rear property (TMK: 1-1-018:005).

In review of the application materials, county records, and associated documentation, the Planning Department finds that there are no special or unusual circumstances justifying the approval of this variance, since there is a reasonable alternative for the applicant to resolve the encroachment issues.

- (b) There are no other reasonable alternatives that would resolve the difficulty.***

Alternatives available to the current owners to correct and/or address the building encroachments constructed into the affected southeast rear yard setback of the subject property include the following actions:

The applicant has stated "removing or relocating the structure is impractical and unreasonable, besides the expense in removing/relocating the only viable locations available is in the front of the house where the current waste system is located."

However, Consolidation/Resubdivision of the subject property with the adjacent property (TMK: 1-1018:005) would enlarge the subject parcel and eliminate any encroachment

issues without having to remove or relocate the structures to meet minimum setback requirements. Consolidation/Resubdivision of the subject parcels would also create an expanded area to the rear of the subject property to accommodate the existing water tank which is presently situated on the adjacent rear property. This action would resolve both problems. In addition, this could be readily facilitated since both parcels have the same landowner - KJ Volcano, LLC.

- (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's welfare or cause substantial, adverse impact to an area's character or to adjoining properties.*

The variance application does not meet with criteria (c) for the following reasons:

The intent and purpose of requiring building setbacks on a lot are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines.

As mentioned earlier, the water tank that services the water needs for the single-family dwelling on the subject property is situated on the adjacent rear property.

Although, an objection letter was received by Kathleen and Bruce Hendrix, the adjoining parcel to the southeast, the dwelling and water tank encroachments do not encroach into the side property boundary and do not impact their parcel.

Based on the background information and other materials referenced in the variance analysis, the variance to allow for the encroachment would not be consistent with the general purpose of the zoning district and the intents and purpose of the Zoning code, Subdivision code and the County General Plan since a more reasonable alternative is available.

VARIANCE DECISION

The variance application, VAR 16-000380, concerning the applicant's request, seeks to allow the single-family dwelling to remain within the south rear yard setback with a minimum 14.3-foot rear (south) yard setback and the open covered lanai with associated roof eave with a minimum 5.3-foot rear (south) yard open space in lieu of the required 20-foot rear yard setback and the 14-foot rear yard open space requirement is hereby **DENIED**.

1. The existing dwelling and lanai shall meet all rear yard setback requirements within six (6) months from the date of this letter either by removal or a consolidation/resubdivision action. Written confirmation shall be submitted to the Planning Director when completed.

2. Concurrently, upon meeting compliance with the required rear yard setbacks for the existing dwelling and lanai, a water system source (water catchment) for the existing dwelling shall be established on the subject property. Written confirmation shall be submitted to the Planning Department currently with Item 1.
3. All structures shall conform to be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

If compliance with the above has not been met by referenced date, the Department may proceed with enforcement actions against the owner which could include fines or placement of a lien against the property.

In accordance with Ordinance No. 99-112, you may appeal the director's decision as follows:

- (a) Any person aggrieved by the decision of the director in the administration or application of this chapter, may, within thirty days after the date of the director's written decision appeal the decision to the board of appeals.
- (b) A person is aggrieved by a decision of the director if:
 - (1) The person has an interest in the subject matter of the decision that is so directly and immediately affected, that the person's interest is clearly distinguishable from that of the general public; and
 - (2) The person is or will be adversely affected by the decision.
- (c) An appeal shall be in writing, in the form prescribed by the board of appeals and shall specify the person's interest in the subject matter of the appeal and the grounds of the appeal. A filing fee of \$250 shall accompany any such appeal. The person appealing a decision of the director shall provide a copy of the appeal to the director and to the owners of the affected property and shall provide the board of appeals with the proof of service.
- (d) The appellant, the owners of the affected property, and the director shall be parties to an appeal. Other persons may be admitted as parties to an appeal. Other persons may be admitted as parties to an appeal, as permitted by the board of appeals.

The board of appeals may affirm the decision of the director, or it may reverse or modify the decision, or it may remand the decision with appropriate instructions if based upon the preponderance of evidence the board finds that:

- (1) The director erred in its decision; or
- (2) The decision violated this chapter or other applicable law; or

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dlb & Associates
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- (3) The decision was arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

In view of the above and for your reference, we have enclosed the GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR form.

Sincerely,



DUANE KANUHA
Planning Director

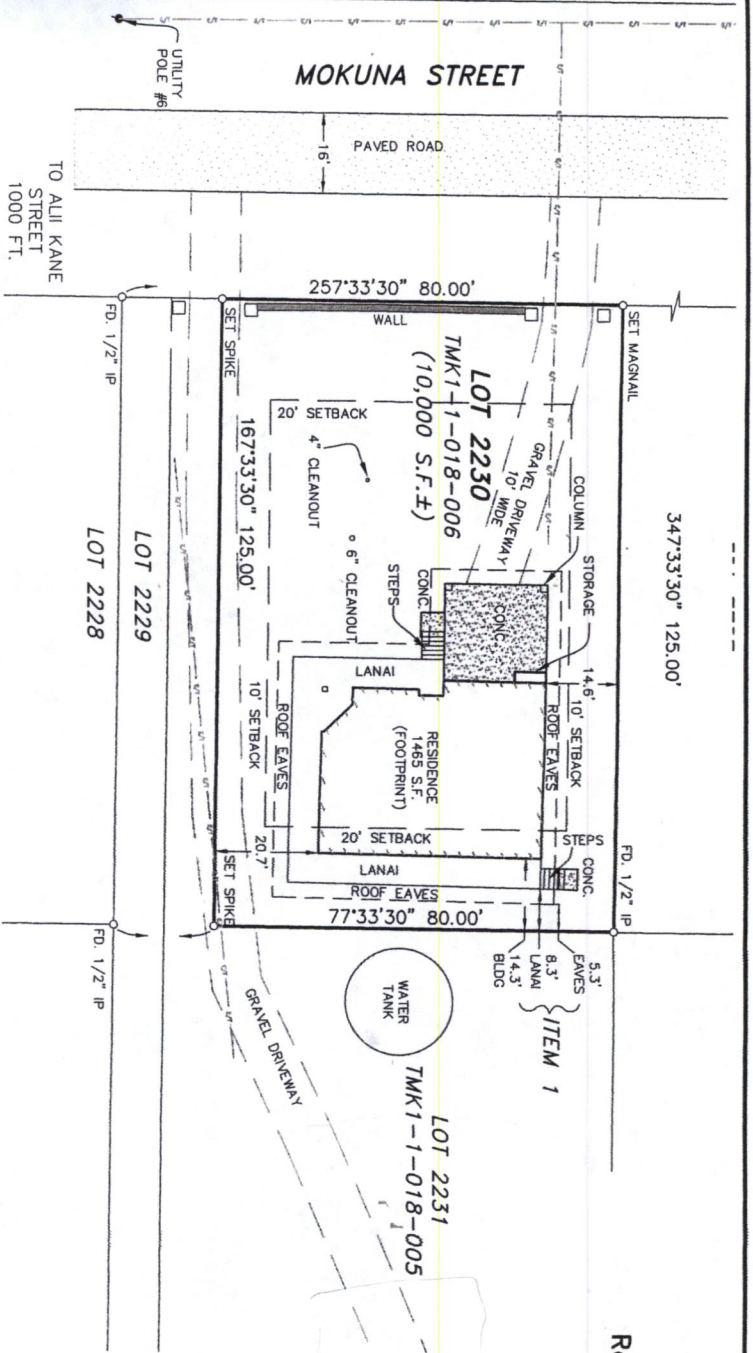
LHN/SG:nci

\\COH33\planning\public\Admin Permits Division\Variances From CoH02\Zone1\VAR16-000380 TMK 1-1-018-006 KJ Volcano, LLC.docx

cc: Bruce and Kathleen Hendrix
PO Box 88236
Honolulu, HI 96815

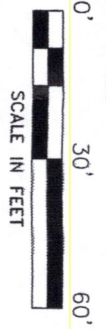
Gilbert Bailado, Planning GIS

347.33'30" 125.00'



Site Map
Of Lot 2230
Royal Hawaiian Estates Subdivision,
Keaau, Puna,
Island and County of Hawaii.

TMK(3) 1-1-018: 006



EXHIBIT



OWNERS
 KJ Volcano, LLC
 75-1000 Henry St. Ste 200
 Kailua-Kona, HI. 96740

SITUS
 T1-3139 Mokuna St.
 Volcano, HI.
 Tax Map Key (3rd) 1-1-018: 005

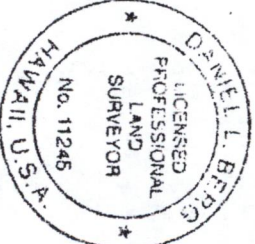
ZONE
 Designated as A-1a
 Applied RS-10
 Setbacks Front/Rear- 20 ft.
 Sides- 10 ft.

- MAP NOTES**
1. Field survey completed July 21, 2015 and updated May 31, 2016
 2. Boundary courses are record per Royal Hawaiian Estates Subd., Ld.Ct.App. 1053, Map 48.
 3. Intrusions into zoning setbacks denoted as 'ITEM' and described in the variance statement.

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

Daniel L. Berg

Daniel L. Berg
 Licensed Professional Land Surveyor
 License Number 11245
 Exp.



dlb & Associates
 LAND SURVEYING • MAPPING • CONSULTING
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 Ph. 966-4206 Fax 82-6830
 www.dlbassoc.com

Date: May 25, 2016
 Escrow: Next Title# 0223486
 Project: J2016-128
 8X14L

Bruce & Kathleen Hendrix
PO Box #88236, Honolulu, HI 96815

Cell: 510.504.7999

Email: WeBeSunshine@yahoo.com

To: **Dunae Kanuha, Planning Director**

July 15, 2016

101 Aupuni St.
Hilo, HI 96720
Phone: 808.961.8288
Fax: 808.961.8742

2016 JUL 22 pm 2 52
PLANNING DEPARTMENT
COUNTY OF HAWAII

This is concerning Applicant:

Daniel L. Berg, dlb & Associates, LLC
On behalf of the owners, KJ Volcano, LLC.
PO Box 492281, Keaau, HI 96749

Location of Property:

11-3139 A Mokuna St.
TMK(3) 1-1-018:005 & TMK (3) 1-1-018:006

Dear Mr. Kanuha,

We have received many letters by mail with in the last month stating that there is a violation with our neighbors setback zone. This is very upsetting to us as we had the line surveyed and it has always been flagged and clearly marked before building ever commenced.

This is not fair to us. It was bad enough that when they completely cleared the lots it opened our property up to the wind and more than half of our trees blew down. We did not complain, but this is a total disregard for the zoning. We thought this was an area (the setback) for equal separation of the properties.

We understand it might be possible to be a little over, but on both lots and because they didn't want their water tank where they would have to look at it. We don't want to see it either. This all seems a bit much.

We ask that they build a privacy fence so we don't have them so close to our line. If this is not possible then we would like the tanks moved. It is my understanding that both houses are also in the setback? The letter states about the side yard? I know the houses can't be moved and I don't completely understand, other than they are too close via the zoning laws.

Being a good neighbor is our hope; however this is not a good start.

Thank you for your consideration,

Kathleen A Hendrix & Bruce A Hendrix

EXHIBIT
B

SCANNED
JUL 25 2016
By: 106683