

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

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 16-000381
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 Southeast and North Side Yard Setback)
Tax Map Key: 1-1-018:005; Lot 2231 (Rear Property)

After reviewing your variance application, the Planning Director certifies the **denial** of VAR-16-000381. The variance application seeks to allow the water tank to remain within the southeast side yard setback with an 11.5 side (southeast) setback in lieu of the required 15-foot side yard setback requirement. It also seeks allowance for the second water tank to remain with a 3.9 feet north side yard setback and north side 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 Section 25-4-44 (a), 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 21,500 square feet of land, is located in the Royal Hawaiian Estates, situated at Kea'au, Puna, Hawai'i. The subject property's street address is 11-3139 A Mokuna Street.
2. **Zoning.** Agricultural – 1 acre (A-1a).

3. **State Land Use.** Agricultural (A).
4. **Required Setback.** Flag lot - 15 foot side yards. The minimum yards for all property boundaries of a flag lot, excluding the access drive, shall be the minimum side yards required for a building site in the applicable zoning district.
5. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on June 21, 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 the applicant shows a detached water tank encroaching 3.5 feet into the southeast side yard setback and the second water tank encroaches 14.1 feet into the north side yard setback. **(See Exhibit A)**
6. **County Building Records.** Real Property Tax Office records indicate that building permit (B2007-01794) issued on January 1, 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 29, 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. A letter objecting to the variance request from Kathleen A. Hendrix & Bruce A. Hendrix dated July 15, 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 water tanks into the 15-foot southeast and north side yard setback as required by the Zoning Code.

The variance application's site plan map is drawn to scale and prepared by the applicant shows the water tank encroaches 3.5 feet into the southeast side yard setback and the second water tank encroaches 11.1 feet into the north side yard setback.

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 and north side yard setback of the subject property include the following actions:

Although 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.*" The applicant also informs that a septic waste system is located in the front yard of the parcel which would not allow space for a water tank. However, through a consolidation/resubdivision of both affected properties, the structures and water tanks would not need to be removed or relocated.

Consolidation/Resubdivision of the two adjacent affected properties would reduce the subject lot to under 20,000 square feet in size, thus changing the setbacks requirements from a 15-foot side yard setback to a 10-foot side yard setback. Redrawing the property boundaries would also increase the front parcel (TMK: 1-1-018:005) to accommodate the water tank to be situated on the same subject property it was intended to service.

Therefore, there is a more reasonable alternative to resolve the encroachment issues.

- (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.

The applicant has stated that the water tank situated into the north side yard setback of the subject property services the adjacent property water needs.

A letter of objection was received from Kathleen and Bruce Hendrix, who own the adjacent two parcels (TMK: 1-1-018:003 & 004) along the east property boundary. They expressed concerns regarding the water tank located to the rear of the subject property adjacent to their parcel (TMK: 1-1-018:004). The denial of this variance would require the water tank located adjacent to their lot to be relocated outside of the setback. However, a remedy to this encroachment would be through a consolidation/resubdivision process, which would allow dwelling and water tank to remain in its current location. Should the applicant choose to consolidate/resubdivide the property, the encroachment would be resolved by the establishment of a lesser setback making the structures conforming.

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 16-000381, concerning the applicant's request to allow both water tanks built into the side southeast and north yard setback and side yard open space is hereby **DENIED**.

1. Both water tanks shall be relocated to conform to the required minimum yard setback within six (6) months from the date of this letter either by removal or resolving the setback encroachment by a consolidation/resubdivision action. Written confirmation shall be submitted to the Planning Director when completed code conformance is met.

2. Should the applicant choose to consolidate/resubdivide the properties to allow the water tanks to remain in the current location, written confirmation and photos shall be submitted to the Planning Department, concurrently with Item 1.
3. All structures shall conform and 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

Daniel L. Berg, LPLS
dlb & Associates
Page 6
September 27, 2016

- (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,



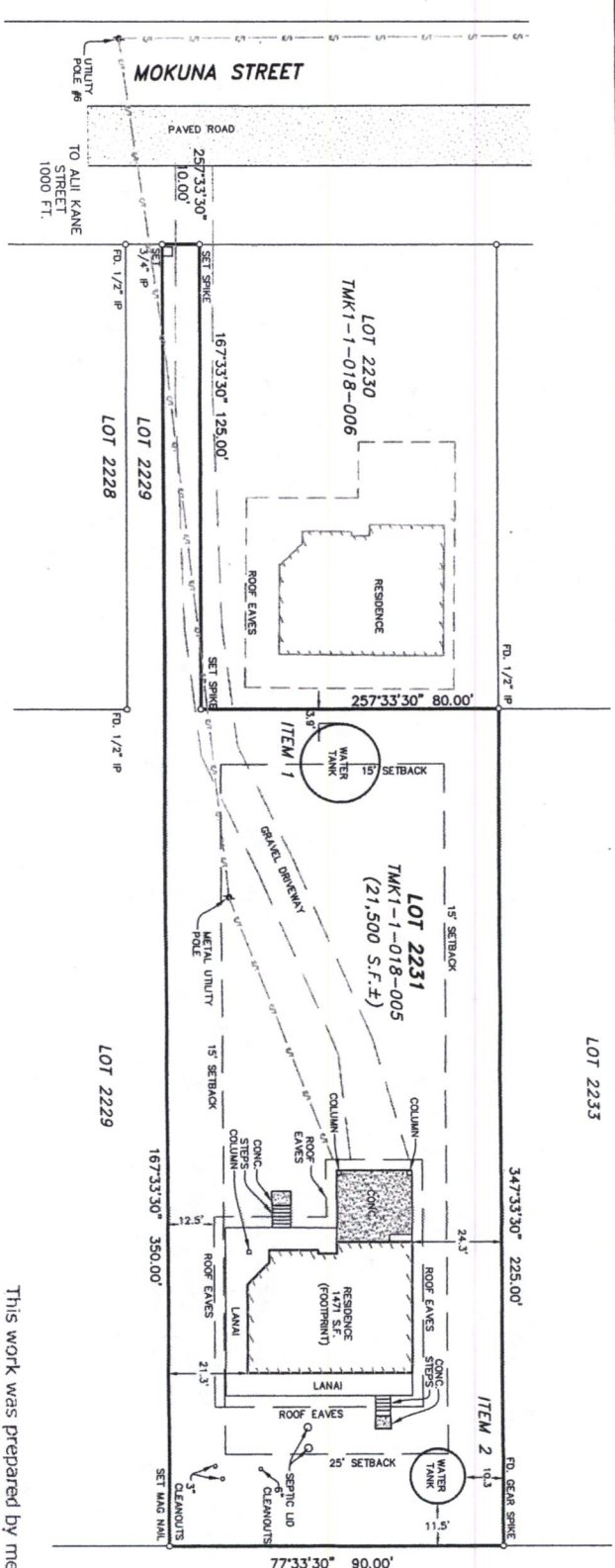
DUANE KANUHA
Planning Director

LHN/SG:nci

\\COH33\planning\public\Admin Permits Division\Variances From CoH02\Zone1\VAR16-000381TMK 1-1-018-006 KJ Volcano, LLC.docx

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

Gilbert Bailado, Planning GIS



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

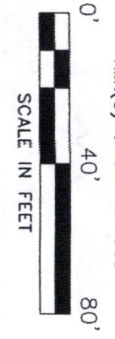
SITUS
 11-3139 A Mokuna St.
 Volcano, HI.
 Tax Map Key (3rd) 1-1-018: 005

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.

ZONE
 Designated as A-1a
 Applied RS-20
 Setbacks Front/Rear- 25 ft.
 Sides- 15 ft.

Date: June 17, 2016
 Project: J2016-128

Site Map
 Of Lot 2231
 Royal Hawaiian Estates Subdivision,
 Keaau, Puna,
 Island and County of Hawaii.



This work was prepared by me or under my direct supervision.
 Daniel L. Berg
 Licensed Professional Land Surveyor
 License Number 11245 Exp.



dlb & Associates
 LAND SURVEYING • MAPPING • CONSULTING
 P.O. Box 49-2281 Keaau, HI. 96749
 Ph. 966-4206 Fax. 82-6830
 www.dibandassoc.com

EXHIBIT

A

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