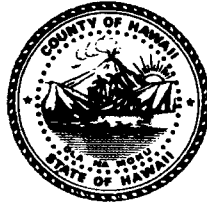


Harry Kim
Mayor



Michael Yee
Director

Daryn Arai
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokālole Hwy
Kailua-Kona, Hawai'i 96740
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County of Hawai'i
PLANNING DEPARTMENT

East Hawai'i Office
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Fax (808) 961-8742

November 30, 2017

Daniel Berg
dlb and Associates, LLC
P. O. Box 492281
Keaau, Hawaii 96749

Dear Mr. Berg:

SUBJECT: Application: Variance - VAR 17-000417
Applicant: DANIEL BERG/dlb & Associates, LLC
Owner: MARK NEIDER AND DAVID MORRIS DUNBAR
Request: Variance from Chapter 25, Zoning, Article 5 Division 7, Section 25-5-76 Minimum Yards and Article 4, Division 4, Section 25-4-44(a) Permitted Projections into Yards and Open Space Requirements (Encroachment into Southwest Front Yard Setback)
Tax Map Key: 1-5-032:005 (Lot 30)

The Planning Director certifies the **approval** of Variance 17-000417, subject to conditions. The variance will allow portion of the single-family dwelling to remain with a minimum 15.3-foot front (southwest) yard setback, in lieu of the required 20-foot front yard setback and associated roof eave projection resulting with a 12.2-foot front (southwest) yard open space in lieu of the required 14-foot open space requirement. The variance will also allow for the open lanai to remain with a minimum 8.7-foot front (southwest) yard open space in lieu of the required 14-foot front yard open space. These exceptions are in lieu of the required 20-foot front yard setback and 14-foot front yard open space as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-76, 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 13,068 square feet and is located in the Hawaiian Paradise Subdivision, situated at Kea'au, Puna, Hawai'i. The subject property's street address is 15-1919 Beach Road.
2. **County Zoning.** Agricultural – 1 acre (A-1a).

3. **State Land Use Designation.** Agricultural.
4. **Required Setback.** 20-feet for front and 10-feet for sides; Section 25-4-42, Corner building sites: (a) on any corner building site, the interior lines shall be side lot lines and all rear yard regulations shall be inapplicable.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on March 6, 2017. The variance site plan is drawn to scale, prepared by the Daniel Berg, L.P.L.S. (dlb and Associates, LLC), and denotes the position of the single-family dwelling constructed into the minimum 20-foot front (southwest) yard setback and the open lanai constructed into the 14-foot front (southwest) yard open space. The request affects the southwest front yard setback and southwest front yard open space requirement. **(See attached survey map – Exhibit A)**

The survey map shows that portion of the single-family dwelling encroaches 4.7 feet into the 20-foot front (southwest) yard setback and the associated roof eave encroaches 1.8 feet into the 14-foot front (southwest) yard open space. It also shows the open lanai encroaches 5.3 feet into the 14-foot front (southwest) yard open space.

The encroachment leaves the single-family dwelling with a minimum 15.3-foot front (southwest) yard setback, in lieu of the required 20-foot front yard setback and associated roof eave projection, resulting with a 12.2-foot front (southwest) yard open space in lieu of the required 14-foot open space requirement. The open lanai remains with an 8.7-foot front (southwest) yard open space in lieu of the required 14-foot front yard open space requirements.

6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (B2006-1096H) was issued on April 27, 2006, to the subject property for a two-story single-family dwelling consisting of 3 bedrooms, 2 baths, living room, kitchen and dining area along with entry lanai, open and covered lanai, walkway and detached water tank. Building permit was finalized on November 5, 2007.
7. **Agency Comments and Requirements.**
 - a. State Department of Health (DOH) memorandum dated March 28, 2017. "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 March 6, 2017 and May 23, 2017, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on March 28, 2017.

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 March 6, 2017 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 November 30, 2017.

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 front yard setback and front yard open space.

The survey map shows that portion of the single-family dwelling encroaches 4.7 feet into the 20-foot side (southwest) yard setback and the associated roof eave encroaches 1.8 feet into the 14-foot front (southwest) yard open space. It also shows the open lanai encroaches 5.3 feet into the 14-foot front (southwest) yard open space.

The encroachment leaves the single-family dwelling with a minimum 15.3-foot front (southwest) yard setback, in lieu of the required 20-foot front yard setback and associated roof eave projection resulting with a 12.2-foot front (southwest) yard open space in lieu of the required 14-foot open space requirement. The open lanai remains with an 8.7-foot front (southwest) yard open space in lieu of the required 14-foot front yard open space requirements.

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 authorized under building permit #BH2006-1096H was issued on December 22, 2006 and given final inspection approval October 11, 2016, prior to the purchase by Mark Neider and David Morris Dunbar. It also appears that 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 current owners purchased the property by Deed, dated April 27, 2016 after county building inspections were finalized. The new owners were unaware of any encroachment and would not have discovered any problems affecting the two-story, single family dwelling until a modern survey was conducted on January 17, 2017 by dlb & Associates, revealing the setback violation.

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 and open lanai encroachments constructed into the affected front yard setback and 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 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. Therefore, both of these alternatives are not practical.

(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 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 single-family

dwelling has been in existence for approximately 11 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.

No written comments or objections were submitted from the public.

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 and open lanai built upon the subject property ("LOT 30") 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 and open lanai 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.

Daniel Berg
dlb and Associates, LLC
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Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance-17-000417 null and void.

Sincerely,



MICHAEL YEE
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone1\VAR17-000417 TMK1-5-032-005 Neider-Dunbar.doc

Encl: Exhibit A - Survey Map

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

Mark Neider
P. O. Box 1277
Pahoa, HI 96778

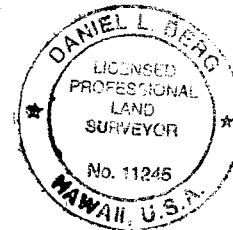
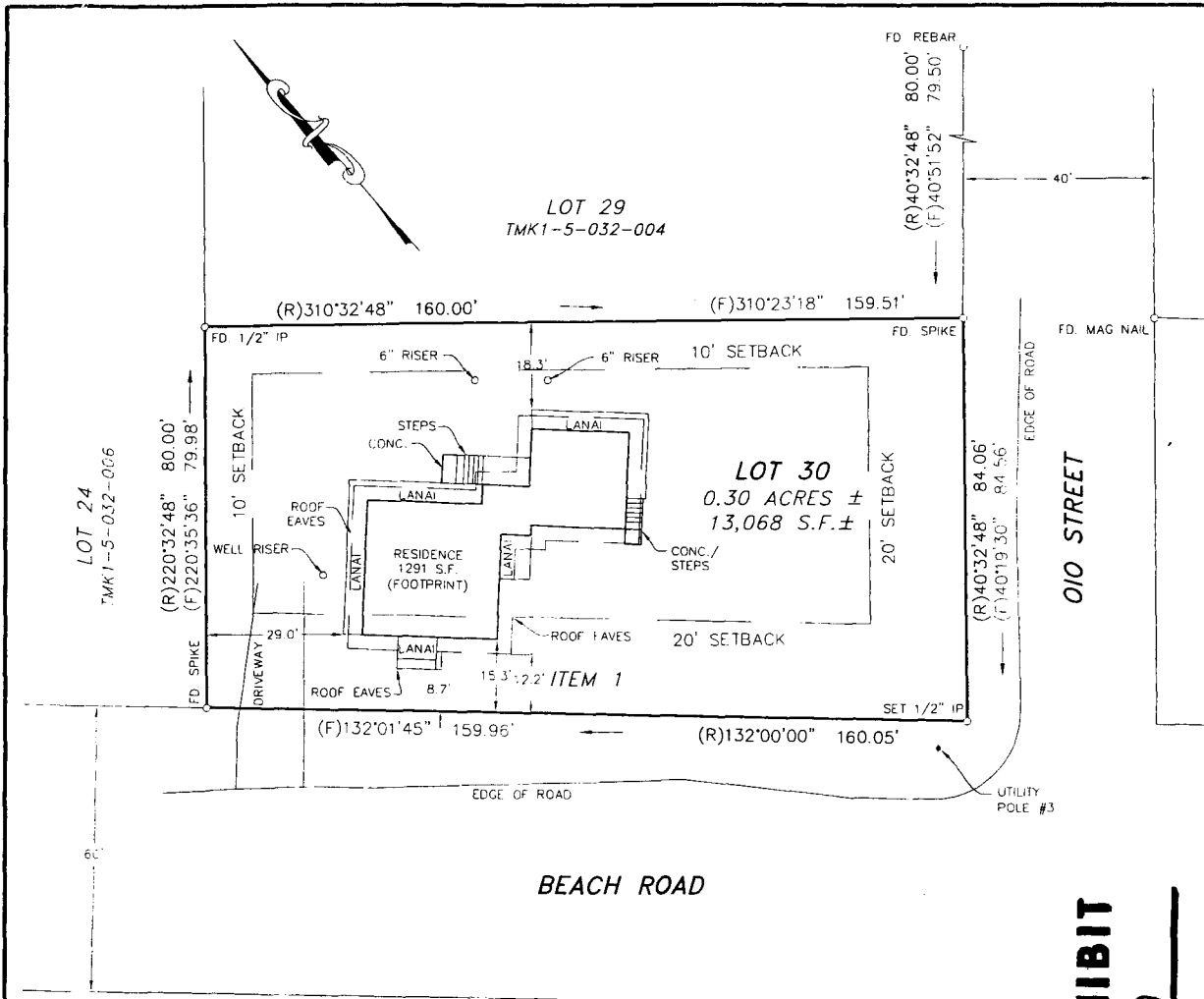
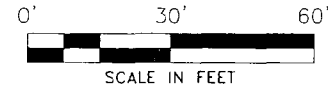
Plot Plan
 Of Lot 30, Block 11,
 Hawaiian Paradise Park Subdivision,
 Keaau, Puna, Island and County of Hawaii.
 TMK(3) 1-5-032: 005

NOTES:
 Owners;
 David Morris Dunbar, Mark Dennis Neider
 c/o 93 Scott St. # 2
 San Francisco, CA. 94117

Situs:
 15-1919-Beach Rd. Keaau, HI.

Land Use Zone:
 A-1a. Apply RS-10 to parcels of non-conforming area.

(F) indicates field measured courses.
 (R) indicates Record dimensions per Land Court Application
 1053, Map 66.



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



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EXHIBIT
 A

Date January 17, 2017
 MAP-17-
 Project: J2017-228
 SX14L