

Harry Kim
Mayor



Michael Yee
Director

Daryn Arai
Deputy Director

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County of Hawai'i
PLANNING DEPARTMENT

East Hawai'i Office
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Hilo, Hawai'i 96720
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September 5, 2018

Alan S. Konishi
Attorney at Law
P. O. Box 1456
Hilo, HI 96721

Dear Mr. Konishi:

SUBJECT: Application: Variance - VAR 18-000486
Applicant: ALAN S. KONISHI, ESQ.
Owner: PHUONG HOLLAND
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 North Side Yard Setback)
Tax Map Key: 9-9-005:007 (Lot 20)

The Planning Director certifies the **approval** of Variance 18-000486 subject to conditions. The variance will allow portion of the single-family dwelling to remain with a minimum 5.2-foot side (north) yard setback in lieu of the required 10-foot side yard setback, and the associated roof eave projection resulting with a 4-foot side (north) yard open space in lieu of the required 5-foot open space requirement. These exceptions are in lieu of setback as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-76, Minimum Yards.

This variance will allow for the associated roof eave projection to remain with a 4-foot north side yard open space in lieu of the applicants request for a 1.7-foot north side yard open space. This was based on Department of Public Works – Building Division comments that projections of eaves or overhangs within 4 feet of the property line is prohibited.

BACKGROUND AND FINDINGS

1. **Location.** The subject property consists of approximately 12,807 square feet and is located in the Volcano Golf and Country Club Subdivision, situated at Keauhou, Kau, Hawai'i. The subject property's street address is 99-1805 Painiu Loop.
2. **County Zoning.** Single-Family Residential 15,000 square feet (RS-15).

3. **State Land Use Designation.** Urban.
4. **Required Setback.** Front and rear – 20 feet; sides – 10 feet.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on June 26, 2018. The variance revised survey map is drawn to scale, prepared by Daniel L. Berg L.P.L.S. (dlb & Associates), and denotes the position of the single-family dwelling constructed into the minimum 10-foot rear (north) yard setback. **(See revised survey map – Exhibit A)**

The revised survey map shows that portion of the single-family dwelling encroaches 4.8 feet into the 10-foot side (north) yard setback and associated roof eave encroaches 3.3 feet into the 5-foot side (north) yard open space. The encroachment leaves the single-family dwelling with a minimum 4.8-foot side (north) yard setback and the associated roof eave projection resulting with a 1.7-foot side (north) yard open space.

6. **County Building Records.** Hawai‘i County Real Property Tax Office records indicate that a building permit (B2006-2131H) was issued on August 22, 2006, and finalized on April 2, 2008 for the construction of a two-story, single-family dwelling consisting of 2 bedrooms, 2 baths, living room, kitchen, dining area and garage.
7. **Agency Comments and Requirements**
 - a. State Department of Health (DOH) memorandum dated July 10, 2018: “The Health Department found no environmental health concerns with regulatory implications in the submittals.”
 - b. Email from Department of Public Works Building Division received on August 15, 2018.
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 June 21, 2018 and June 29, 2018, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on July 10, 2018.
9. **Comments from Surrounding Property Owners or Public.**
 - a. Letter requesting clarification from Lon K. Okada received on August 13, 2018. **(See Exhibit B)**
10. **Time Extension.** The applicant’s variance application was acknowledged by letter dated June 22, 2018 and additional time to review the application was required. The applicant granted the Planning Director an extension of time to September 5, 2018 for decision on the Variance Application.

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 10-foot north side yard setback as required by the Zoning Code.

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 two-story, single-family dwelling constructed in 2008, approximately 10 years ago, and subsequent construction permits were issued and closed under valid building permit by the County for the existing two-story, single-family dwelling. 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.

- (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 associated roof eave projection encroachments constructed into the affected side 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 revised survey map to fit within the correct building envelope as prescribed by the Zoning Code. This alternative would be deemed unreasonable, especially when the previous 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 side yard setback, to consolidate the subject property with the abutting rear property, which is a park site and subdivide the property to modify property lines and adjust minimum rear 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 approval of this variance does not automatically grant or sanctions requirement of the requirements of the Department of Public Works.

As stated by DPW, eaves or overhangs are prohibited within 4 feet of the property line. The current eaves extend 2.3 feet beyond 4 feet. Applicant is required to seek remedy of this directly with the Department of Public Works.

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.

Therefore, the variance would be consistent with the general purpose of the zoning district 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 associated roof eave projection built on the subject property ("LOT 20") 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. The approval of this variance grants the associated roof eave with a 4-foot north side yard open space in lieu of the applicants request for a 1.2-foot southwest side yard open space. The applicant shall comply with this condition within six months from the issuance of this Variance and shall notify the Hawaii County Planning Department upon compliance.
5. 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.
6. 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-18-000486 null and void.

Sincerely,



MICHAEL YEE
Planning Director

LHN:nci

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Alan S. Konishi
Attorney at Law
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September 5, 2018

Encl: Exhibit A – Revised Survey Map
Exhibit B – Letter of Concern

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

2018 AUG 13 PM 12 46

PLANNING DEPARTMENT
COUNTY OF HAWAII

REVISED SITE PLAN

Boundary and Improvement Survey
Of Lot 20,
Volcano Golf & Country Club, Unit I
Keauhou, Kau, Island and County of Hawaii.
TMK(3) 9-9-005: 007

- NOTES:**
1. This K-2 field survey completed September 1, 2016.
 2. (F) indicates Field measured dimensions. Basis of Azimuths is a 'best-fit' of found (FD.) property monuments to record positions. Std. Error = 0.12 ft. (n=10)
 3. (R) indicates Record dimensions per DAGS File Plan 1036.
 4. Intrusions and/or protrusions across boundaries or into zoning setbacks, if any, denoted as 'ITEM_' and described in the attached report.
 5. This Map and attached Report were prepared for the transaction indicated, and should not be used for any other purpose.

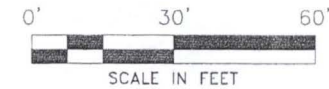
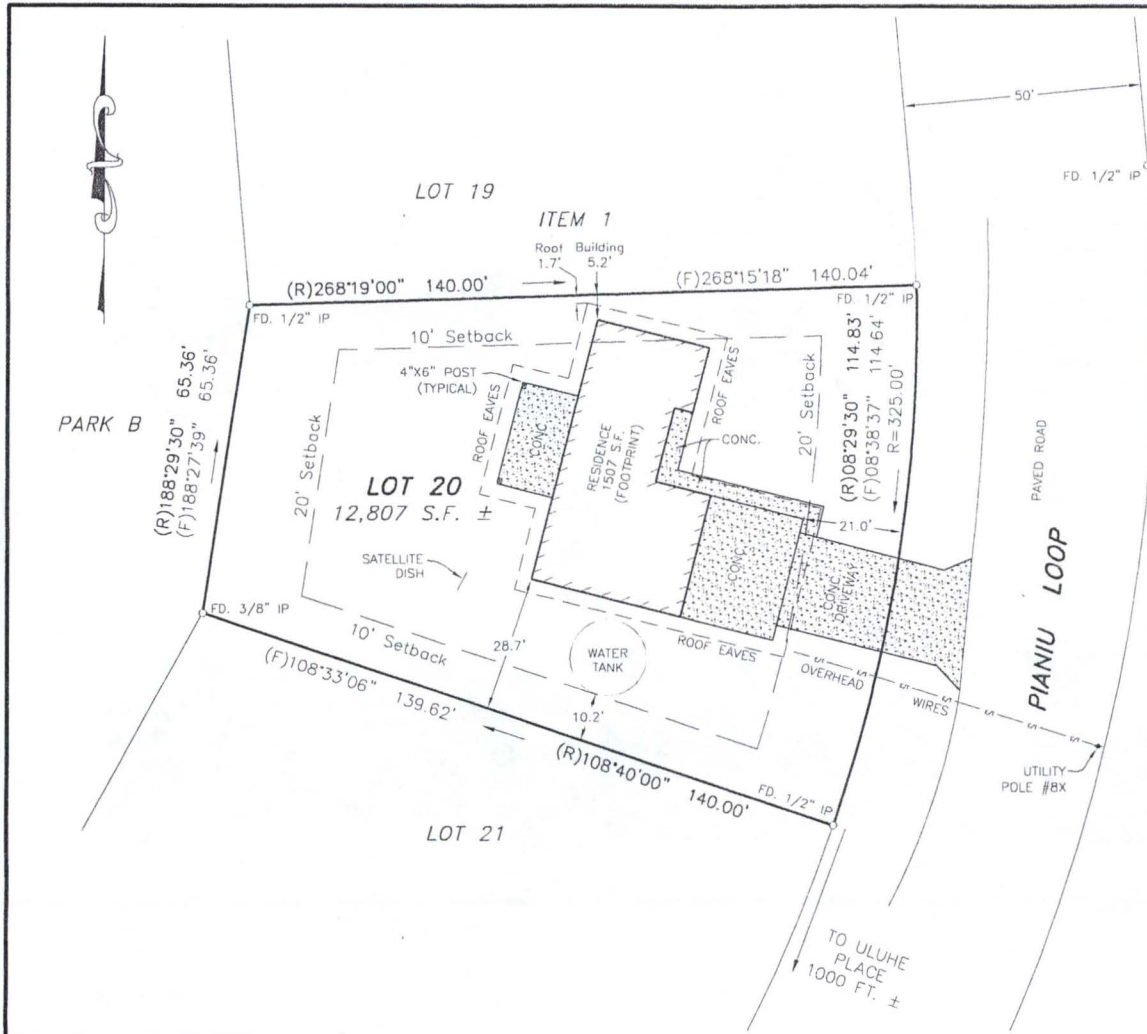


EXHIBIT
A

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

dlb & Associates
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Ph.966-4206 Fx.82-6830
www.dlbandassoc.com



Date: September 05, 2016
Escrow: 5241158

Project: J2016-178
8X14L

8/13/2018

SCANNED
AUG 13 2018
By: 119962

Domian, Jesse

2018 JUL 19 AM 7 54

PLANNING DEPARTMENT
COUNTY OF HAWAII

From: Lon Okada <lajo2121@gmail.com>
Sent: Wednesday, July 18, 2018 9:38 PM
To: Planning Internet Mail
Subject: VAR 18-000486 (filed June 18, 2018)

To the County of Hawaii Planning Department:

RE: VAR 18-000486 (filed June 18, 2018)
Variance From Chapter 25, Zoning, Article 5, Division I, Section 25-5-7, Minimum Yards,
And Section 25-4-22, Permitted Projections into Yards and Open Spaces
Requirements (Encroachment in North Side of Yard Setback)
Applicant: Ms. Phuong Holland
Tax Map Key: (3) 9-9-005-007
99-1805 Painiu Loop, Volcano, Hawaii 96785
Lot 20, Volcano Golf & Country Club Subdivision, Unit I, file Plan 1036

This communication is to request an extension of time to comment on the referenced application for a variance. I am the owner of the adjoining lot on the side on which the setback has been encroached (TMK 9-9-005-006-0000).

I was initially notified of this variance application on or around June 21, 2018. In this notification, there was no disclosure of any deadlines for comments. On July 10, 2018, I first became aware of the July 19, 2018 deadline by telephone call from the applicant's attorney, Alan Konishi. The second notice was dated June 29, 2018 but I received it on July 11, 2018 because the letter was addressed incorrectly, returned to sender and finally re-mailed to the proper address by Mr. Konishi.

I respectfully request an extension of time to comment because I have not been able to retain a real estate attorney for counsel and advice on this matter. I understand the time constraints placed on applicant, but I need to seek advice since I am not experienced in these land matters. My intent is not to create any hardship on any of the interested parties but I do want to preserve my rights and land value and need the consultation with an expert in order to understand the ramifications of this variance.

If the extension cannot be granted, I would have no choice but to object to the variance as it has the potential for decreasing the value of my property.

I reiterate that I do not want to cause any hardship and only seek counsel on this matter before making any decisions.

Respectfully,

Lon K. Okada
2007 Laukahi Street
Honolulu, HI 96821

EXHIBIT

B

SCANNED
JUL 19 2018
19601