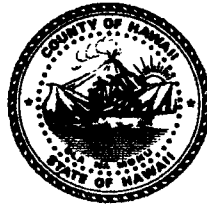


William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

West Hawai'i Office
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County of Hawai'i
PLANNING DEPARTMENT

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

January 25, 2016

Donald B. Sheik
2290 Via Puerta #D
Laguna Woods, CA 92627

Dear Mr. Sheik:

SUBJECT: Application: Variance - VAR-15-000332
Applicant: DONALD B. SHEIK
Owner: DONALD B. SHEIK AND JEAN SHEIK
Request: Variance from Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76 Minimum Yards Requirements and Article 4 Division 4, Section 25-5-44 Permitted Projections into Yards and Open Spaces (Encroachment into the West Rear Yard Setback)
Tax Map Key: 1-1-053:067; Lot 2104

The Planning Director certifies the **approval** of Variance 15-000333, subject to conditions. The variance will allow a section of the water tank, seven feet in height to remain on Lot 2104, with a minimum 11.55-foot rear (west) yard setback and rear (west) yard open space, in lieu of the required 20-foot rear yard setback and in lieu of the required 14-foot open space requirement. The variance is from the subject property's minimum 20-foot rear yard setback and 14-foot rear yard open space requirement. These exceptions are in lieu of the required 20-foot side yard setback and 14-foot side yard open space, as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, 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 10,000 square feet and is located in the Royal Hawaiian Estates Subdivision, situated at Kea'au, Puna, Hawai'i. The subject property's street address is 11-3059 Kanilehua Place.
2. **County Zoning.** Agricultural – 1 acre (A-1a).

3. **State Land Use Designation.** Agricultural.
4. **Required Setback.** 20-feet for front and rear; 10-feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on November 24, 2015. The variance site plan is drawn to scale, prepared by the Niels Christensen L.P.L.S. (The Independent Hawaii Surveyors, LLC) and denotes the position of the 7-foot water tank, constructed into the minimum 20-foot rear (west) yard setback and 14-foot side (west) yard open space. The request affects the west rear yard setback.

The survey map shows that portion of the water tank encroaches 8.45 feet into the 20-foot rear (west) yard setback and 2.55 feet into the 14-foot rear (west) yard open space.

The encroachment leaves a minimum 11.55-foot rear (west) yard setback, in lieu of the required 20-foot rear (west) yard setback and with an 11.55-foot rear (west) yard open space in lieu of the required 14-foot rear (west) open space requirement.

6. **County Building Records.** Hawai'i County Real Property Tax Office Records indicate that a building permit (#2006-1666H) was issued on June 27, 2006, to the subject property for a single-family dwelling consisting of 2 bedrooms, 1 baths, living room, kitchen and dining area.
7. **Agency Comments and Requirements.**
 - a. No comments were received from the State of Hawai'i – Health Department.
 - b. No comments were 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 December 7, 2015 and December 14, 2015, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on December 15, 2015.
9. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or the general public were received.

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 7-foot water tank into the 20-foot northwest side yard setback.

The survey map shows that portion of the water tank encroaches 8.45 feet into the 20-foot rear (west) yard setback and 2.55 feet into the 14-foot rear (west) yard open space.

The encroachment leaves a minimum 11.55-foot rear (west) yard setback, in lieu of the required 20-foot rear (west) yard setback and with an 11.55-foot rear (west) yard open space in lieu of the required 14-foot rear (west) open space requirement.

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 constructed in 2006, nearly 9 years ago, 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 water tank encroachments constructed into the affected rear yard setback of the subject property include the following actions:

Remove the building encroachments and/or redesign the water tank 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 water tank to meet setback requirement would leave unattractive reconstruction scars.

Another alternative is to consolidate the subject property with the adjoining rear 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.

Furthermore, 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. This can be substantiated, to some degree, by the fact that this office did not receive any complaints from surrounding property owners during the existence of the 7-foot water tank.

In addition, objections were not received from the surrounding property owners or general public in response to the Notification of Surrounding Property Owners. As such, it is felt that the issuance of this variance will not depreciate or detract from the character of the immediately- surrounding properties.

Based on the foregoing findings and circumstances, the applicant's request for variance would be consistent with the general purpose of the zoning district and the intent and purpose of the Zoning Code, Subdivision Code and the County General Plan.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

Based on the variance application's survey map, the 7-foot water tank built upon the subject property ("LOT 2104") 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. An Ohana or additional farm dwelling shall not be granted upon the subject property, subject to provisions of the Hawai'i County Code, Chapter 25 (Zoning) or State Law, which may change from time to time.

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4. Should the water tank 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.
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-15-000332 null and void.

Sincerely,



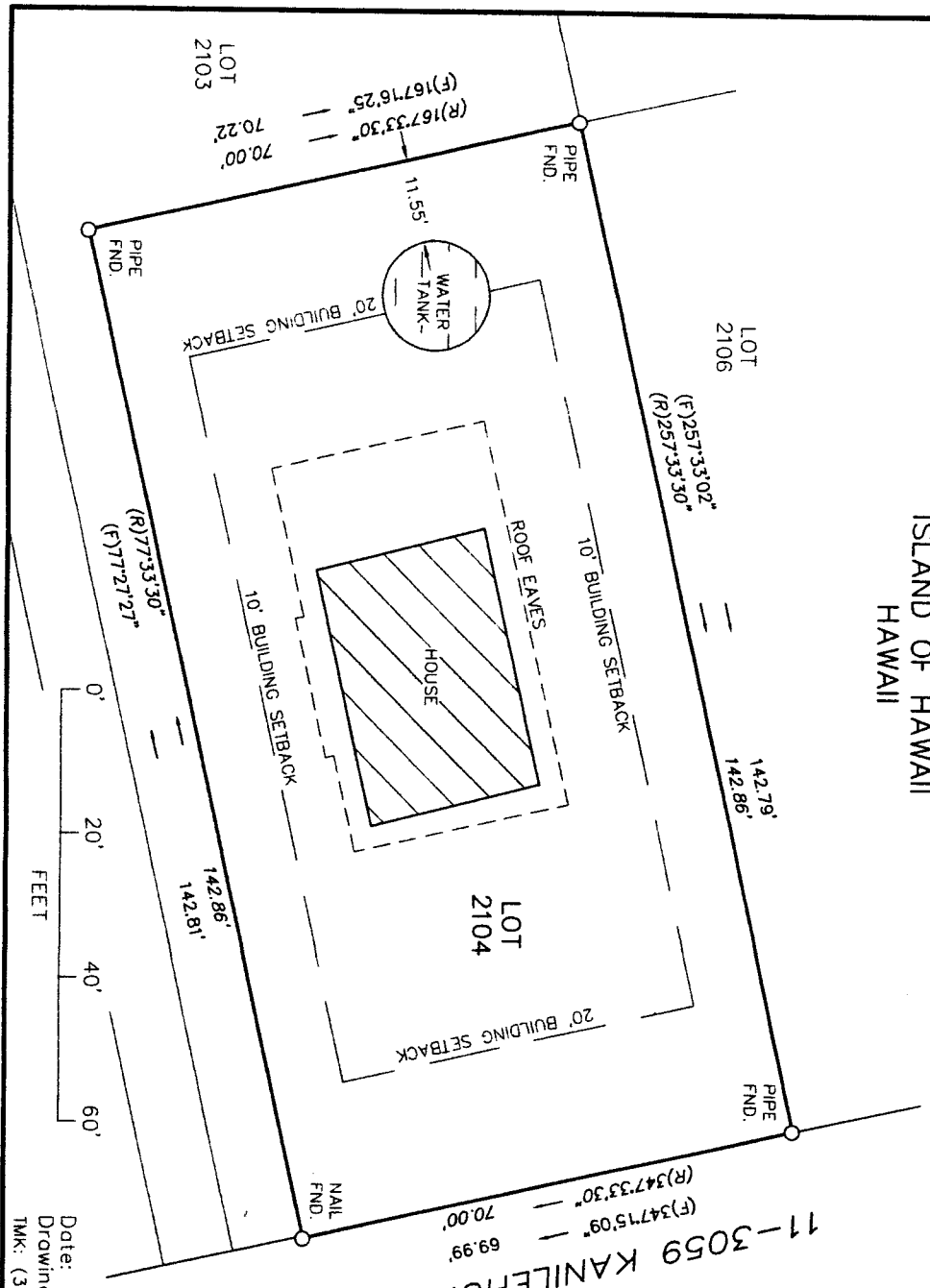
DUANE KANUHA
Planning Director

LHN:nci

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

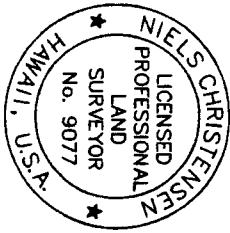
EXISTING CONDITIONS UPON LOT 2104
ROYAL HAWAIIAN ESTATES
 KEAAU, PUNA
 ISLAND OF HAWAII
 HAWAII



NOTES:

1. The features shown hereon were located by an actual field survey completed on November 3, 2015.
2. This map shows, "the location of any improvements in the vicinity of perimeter property lines", (K-2).
3. Field measured dimensions (F) are within acceptable tolerances as compared to record dimensions. (R) for land of this type and in this subdivision.
4. The attached Report pertains to improvements near property lines and County building setbacks.

TRUE NORTH
 SCALE: 1 IN. = 20 FT.



This work was prepared by me or under my direct supervision

Niels Christensen

Niels Christensen
 Licensed Professional Land Surveyor
 License Number 9077

The Independent Hawaii Surveyors, LLC

P.O. BOX 577
 Hilo, HI 96721
 PH: 808 959-0350
 FAX: 808 959-0353
 info@hawaiisurveyors.com

Date: November 4, 2015
 Drawing: JOB11114.dwg
 TMK: (3) 1-1-53: 67