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County of Hawai'i
PLANNING DEPARTMENT

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January 10, 2019

Roger Fleenor
P. O. Box 383414
Waikoloa, HI 96738

Dear Mr. Fleenor:

SUBJECT: Application: Variance - VAR 17-000413
Applicant: ROGER FLEENOR
Owner: JOSEPH AND JACQUELINE SANCHEZ TRUST
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 East Front Yard Setback, North and South Side Yard Setbacks)
Tax Map Key: 7-5-002:017 (Lot 4)

The Planning Director certifies the **approval** of Variance No. 17-000413, subject to variance conditions. The variance will allow the following:

- a. The water tank to remain with a minimum 2.3-foot side (north) yard setback and side yard open space in lieu of the required 20 foot side yard setback and 14-foot side yard open space.
- b. The shed (washhouse) with a minimum 2 feet to a minimum 4.9 feet side (north) yard setback and side yard open space in lieu of the required 20 foot side yard setback and 14-foot side yard open space.

These exceptions are in lieu of the required 20-foot side yard setback and the 14-foot side yard open space requirement 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.

The variance will also allow the single-family dwelling to remain with a minimum 14.5-foot side yard setback to a minimum 19.6-foot side yard setback, and encroaching 0.4 feet (4.8 inches) into the side (north) yard setback to be approved under Section 25-4-66, De Minimis Regulation Structural Position Discrepancy.

The Storage Shed encroaching into the south side yard setback shall be permanently removed or relocated outside the side (south) yard setback.

The survey map also shows that the former Onizuka Store encroaches 6.8 feet into the Mamalahoa Highway, a County right of way. This encroachment shall be dealt with the property owner and the Hawai'i County, Highways Division.

BACKGROUND AND FINDINGS

1. **Location.** The subject property, consists of approximately 3.61 acre of land and is situated at Moeauoa, North Kona, Hawai'i. The subject property's street address is 75-5264 Mamalahoa Highway.
2. **Zoning.** Agricultural – 5 acre (A-5a).
3. **State Land Use.** Agricultural.
4. **Required Setback.** 30 feet front and rear; 20 feet for sides.
5. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on January 3, 2017, and other submittals related to the variance request and variance application. The variance application's site plan, drawn to scale and prepared by Roger D. Fleenor, LPLS, denotes the portion of the storage shed built into the side (south) yard setback and side (south) yard open space. (See Survey Map – **Exhibit A**)

The survey map shows that the storage shed encroachment ranges from 2.40 feet to 5.20 feet into the 20-foot side (south) yard setback and the associated roof eave encroaches 5.20 feet into the 14-foot side south yard open space requirement.

The encroachment leaves portion of the storage shed to remain with a minimum side (south) yard setback ranging from 14.80 feet to 7.60 feet and associated roof eave projection resulting with a minimum 8.80-foot side (south) yard open space in lieu of the minimum 20-foot side yard setback and 14-foot side open space requirement.

6. **County Building Records.** Hawai'i County Real Property Tax Division records indicate that the former Onizuka Store, consisting of 1,915 square feet, was built in 1940. The first single-family dwelling, consisting of 3 bedrooms, 1 bath with water tank and shed (former wash house and privy), was built in 1946 and the second single-family dwelling consisting of 2 bedrooms and 1 bath was built in 1955. No building permits associated with these improvements could be found.
7. **Agency Comments and Requirements.**
 - a. State Department of Health (DOH) memorandum dated September 1, 2017 states, "The Health Department found no environmental health concerns with regulatory implications in the submittals."
 - b. No comments received from Department of Public Works Building Division (Kona).

8. **Cultural Commission Review:** Email received on June 9, 2017. (See **Exhibit B**)
9. **Notice to Surrounding Property Owners.** The applicant submitted a copy of notices mailed to surrounding property owners (including affidavits) by USPS. According to these submittals, the first and second notices were mailed on September 8, 2017 and February 13, 2018, respectively. Notice of this application was published in the Hawai‘i Tribune Herald and West Hawai‘i Today on September 22, 2017.
10. **Comments from Surrounding Property Owners or Public.**
 - a. Objection letter was received from Franklin Elevitch and JoAnn Elevitch dated September 18, 2017. (See **Exhibit C**)
11. **Time Extension.** The applicant’s variance application was acknowledged by letter dated August 28, 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 January 15, 2019.

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 Onizuka Store, single-family dwelling and storage sheds constructed into the 20-foot side (south) yard setback and 14-foot side (south yard open space).

As mentioned above, the Hawai‘i County Real Property Tax Office records indicate that the former Onizuka Store and the single-family dwellings along with other improvements were built prior to 1967.

No evidence has been found to allow indifference or premeditation by the owners or builders to deliberately create or intentionally allow the single-family dwelling encroachments problem to occur.

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 the best use and development of the 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 encroachment constructed into the affected side yard setback and side yard open space of the subject property include the following actions:

1. Remove the building encroachments and/or redesign the single-family dwelling upon the subject property to fit within the correct building envelope denoted on the recent survey map as prescribed by the Zoning Code. This alternative would be deemed unreasonable, especially when the current owners were under the impression that the single-family dwelling was in compliance with all County requirements.
2. Consolidate the subject property with the adjoining side (south) yard property which is owned by another party, and resubdivide the property to modify property lines and adjust minimum yard setbacks.

Both of these alternatives are not practical. Therefore, there are no reasonable alternatives to resolve the difficulty.

(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 building setbacks within a subdivision are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines. The encroachment of the storage shed still allows for adequate air circulation, as the affected area is within the front and side yard setback.

A letter of objection was received expressing concerns to the approval of the variance application. The objection from Mr. and Mrs. Elevitch states:

"We strongly object to relief of the 20-foot setback violation on the northern side of the Sanchez property. Our parcel is narrow – about 100 feet wide. Structures in the 20-foot setback would bring unacceptable noise and intrusion that would limit our privacy and personal enjoyment of our property – the very reason for the setback."

(See Objection Letter – **Exhibit C**)

The shed (former wash house and privy), the Elevitch's refers to, is situated along the north side boundary and was built in 1946, approximately 71 years ago prior to the adoption of the zoning code in 1967. Therefore, the shed is considered a legal, non-conforming structure. The storage shed in question is situated along the south side boundary. (See Site Plan-**Exhibit D**)

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.

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. 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.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

Based on the variance application's survey map, the storage shed built upon the subject property (TMK: 7-5-002:017) will not meet the minimum side yard setback and side yard open space requirements pursuant to Hawai'i County Code, Chapter 25, Zoning.

This variance request is **approved** subject to the following 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. The storage shed encroaching into the south side yard setback shall be permanently removed or relocated outside the side (south) yard setback within six months from the issuance of this variance.
4. Should the store, single-family dwellings, and storage sheds built on the subject property be destroyed by fire or other natural causes, the replacement structures 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. An Ohana or Farm Dwelling permit 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.
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 occupancy.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance VAR-17-000413 null and void.

Sincerely,



MICHAEL YEE
Planning Director

LHN

P:\Admin Permits Division\Variances From CoH02\Zone7\VAR17-000413TMK7-5-002-017 Sanchez.doc

xc: Planning Department-Kona

Roger Fleenor, LPLS

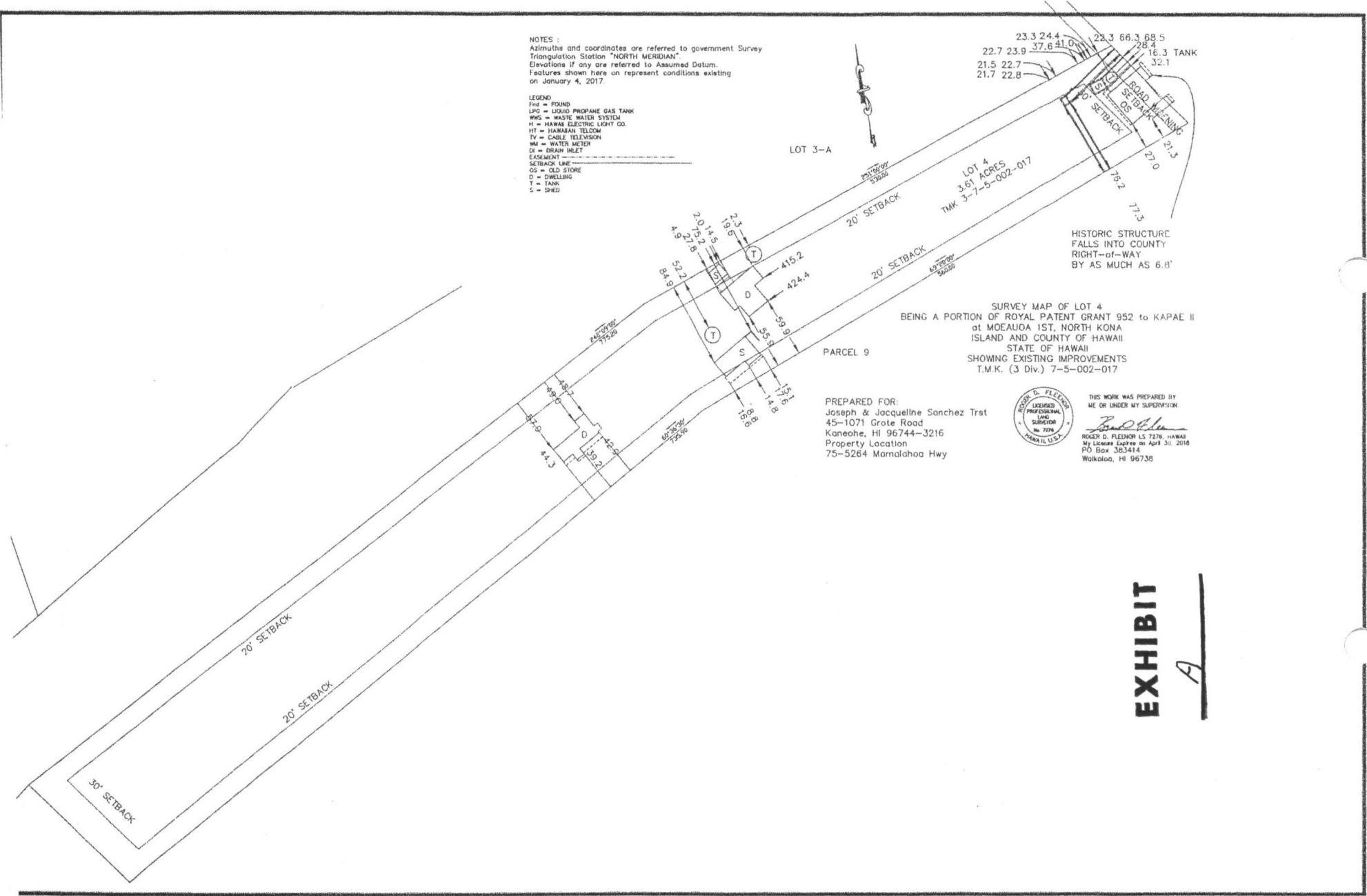
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January 10, 2019

Real Property Tax Division-Kona
Gilbert Bailado, GIS (via email)

NOTES:
 Azimuths and coordinates are referred to government Survey
 Triangulation Station "NORTH MERIDIAN"
 Elevations if any are referred to Assumed Datum.
 Features shown here on represent conditions existing
 on January 4, 2017.

LEGEND:
 Fnd = FOUND
 LPG = LIQUID PROPANE GAS TANK
 WWS = WASTE WATER SYSTEM
 H = HAWAII ELECTRIC LIGHT CO.
 HT = HAWAIIAN TELECOM
 TV = CABLE TELEVISION
 WM = WATER METER
 DI = DRAIN INLET
 EASEMENT
 SETBACK LINE
 OS = OLD STORE
 D = DWELLING
 T = TANK
 S = SHED



23.3 24.4
 22.7 23.9 37.6 41.0
 21.5 22.7
 21.7 22.8

23.3 66.3 68.5
 28.4 16.3 TANK
 32.1
 ROAD WIDENING
 27.0
 21.3
 76.2
 77.3

HISTORIC STRUCTURE
 FALLS INTO COUNTY
 RIGHT-OF-WAY
 BY AS MUCH AS 6.8'

SURVEY MAP OF LOT 4
 BEING A PORTION OF ROYAL PATENT GRANT 952 to KAPAE II
 at MOEAUDA 1ST, NORTH KONA
 ISLAND AND COUNTY OF HAWAII
 STATE OF HAWAII
 SHOWING EXISTING IMPROVEMENTS
 T.M.K. (3 Div.) 7-5-002-017

PREPARED FOR:
 Joseph & Jacqueline Sanchez Trst
 45-1071 Grote Road
 Kaneohe, HI 96744-3216
 Property Location
 75-5264 Mamalohoa Hwy



THIS WORK WAS PREPARED BY
 ME OR UNDER MY SUPERVISION:
 Roger D. Fledhor
 ROGER D. FLEDHOR LS 7278, HAWAII
 My License Expires on April 30, 2018
 PO Box 305414
 Wailuku, HI 96738

EXHIBIT
A

Nakayama, Larry

From: Mead, Lucas
Sent: Friday, June 09, 2017 10:36 AM
To: Nakayama, Larry
Cc: Gagorik, Susan; Darrow, Jeff
Subject: Review of variance request, TMK (3) 7-5-002:017

Subject: Variance Request, Joseph and Jacqueline Sanchez Trust

TMK: (3) 7-5-002:017

Aloha Larry;

I have reviewed the subject variance request on behalf of the Cultural Resources Commission and understand that the applicant is requesting a variance from the following:

- 1) violations of the front yard 30' plus 15' road widening setback by existing location of historic store, catchment tank, and shed;
- 2) violations of the side yard (north) 20' setback by existing location of catchment tank, shed, and dwelling; and
- 3) violation of the side yard (south) 20' setback by existing location of shed.

The variance request does not propose action upon any of the structures. Real Property Tax records, old field book notes, and the site plan included with the variance request indicate that there are three major structures present on the property, including:

- 1) Old Store (plus accessory tank and shed), built 1940, 1,915 ft²
- 2) Dwelling 1 [plus accessory tank and sheds (former washhouse and privy)], built 1946, 2,388 ft²
- 3) Dwelling 2, built 1955, 544 ft²

It appears that the variance request pertains only to the Old Store and Dwelling 1 (and some of their associated structures). Historic residential structures (those structures 50 years or older) are exempt from review against Hawai'i Revised Statutes (HRS), Chapter 6E relating to Historic Preservation. As such, any future proposed action upon the residential structures on the subject TMK identified above as Dwelling 1 and Dwelling 2 would not require review by the State Historic Preservation Division (SHPD) nor the Hawai'i County Cultural Resources Commission (CRC). Any future proposed action (project involving a permit, license, certificate, land use change, subdivision, or other entitlement for use from the County) on the historic store, formerly known as the Onizuka Store, would require review by the SHPD Architecture branch pursuant to HRS 6E, and review by the Hawai'i County CRC. For the landowner's information, the federal government through the Historic Rehabilitation Tax Credit Program provides a 20% income tax credit for the rehabilitation of historic, income-producing buildings that are listed on the National Register of Historic Places. Our records do not indicate that the historic Onizuka Store is on the National Register of Historic Places. Should the landowner wish to learn more information about the potential to list the historic Onizuka Store on the National Register of Historic Places, please have them contact me at 961-8140 or Lucas.Mead@hawaiicounty.gov. If the landowner has plans for future actions upon the historic Onizuka Store, they may contact me directly for scheduling of CRC review or facilitation with SHPD Architectural review. Please accept this email as a response for your request for comments dated March 7, 2017. Mahalo for providing the opportunity to comment on the subject variance application.

Luke

Lucas Mead

EXHIBIT

B

Planner to the Hawai'i County Cultural Resources Commission
(808) 961-8140 Lucas.Mead@hawaiicounty.gov

Franklin and JoAnn Elevitch
430 Nevada Avenue
Palo Alto, CA 94301

September 18, 2017

Re: VAR-17-000413
75-5264 Mamalahoa Hwy, Holualoa, HI 96725
T.M.K. 3/7-5-002:017
Joseph & Jacqueline Sanchez (owners)

PLANNING DEPARTMENT
COUNTY OF HAWAII

2017 SEP 29 PM 2 22

Michael Yee
Planning Director
Planning Department
County of Hawaii
101 Pauahi Street #3
Hilo, HI 96720

Dear Mr. Yee,

My wife and I have owned the parcel, 75-5260 Mamalahoa Hwy, Holualoa, HI, T.M.K. 3/7-5-002:018 on the north boundary of the subject property since 1978.

We strongly object to relief of the 20-foot setback violation on the northern side of the Sanchez property. Our parcel is narrow – about 100 feet wide. Structures in the 20-foot setback would bring unacceptable noise and intrusion that would limit our privacy and personal enjoyment of our property – the very reason for setbacks.

Thank you,

Franklin Elevitch

Franklin Elevitch

JoAnn Elevitch

JoAnn Elevitch

EXHIBIT

C

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