

Harry Kim
Mayor



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Director

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County of Hawai'i
PLANNING DEPARTMENT

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August 16, 2018

Kekoa Hara
Accent Design Services
P. O. Box 2026
Keaau, Hawaii 96749

Dear Mr. Hara:

SUBJECT: Application: Variance - VAR 18-000480
Applicant: ACCENT DESIGN SERVICES/KEKOA HARA
Owner: O'FRIEL FAMILY TRUST
**Request: Variance from Chapter 25, Zoning, Article 5 Division 7,
Section 25-5-76 Minimum Yards, Article 4, Division 4,
Section 25-4-44(a) Permitted Projections into Yards and
Open Space Requirements (Encroachment into Southwest
Side Yard Setback)**
Tax Map Key: 1-3-002:120 (Lot 2-A)

The Planning Director certifies the **approval** of Variance 18-000480, subject to conditions. The variance will allow portion of the agricultural storage building (workshop) to remain with a minimum 19.06-foot side (southwest) yard setback. These exceptions are in lieu of the required 15-foot side yard setback as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-76, Minimum yards.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 1.10 acres and is located in the Kamāili Subdivision, situated at Kamāili, Puna, Hawai'i. The subject property's street address is 13-119 Nalu Place.
2. **County Zoning.** Agricultural – 1 acre (A-1a).
3. **State Land Use Designation.** Agricultural.
4. **Subdivision:** The subject property was created by Subdivision 06-000316-Revised (SUB 06-000316-Revised) approved on May 27, 2010.

5. **Required Setback.** 20-foot side yards; **Section 25-4-30. Minimum street frontage.** (e) No street frontage shall be required for any building site where access to the building site is by means of a roadway easement.

6. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on May 14, 2018. The variance application's survey map dated May 14, 2018, was prepared by Niels Christensen, L.P.L.S. (The Independent Hawaii Surveyors, LLC). **(See Exhibit A-Site Plan)**

The survey map shows that portion of the agricultural storage building (workshop) encroaches 0.94 feet (11.28 inches) into the 20-foot side (southwest) yard setback. The encroachment leaves the agricultural storage building (workshop) with a minimum 19.06-foot side (southwest) yard setback, in lieu of the required 20-foot side yard setback requirement.

7. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that building permit 2004-0801H was issued on May 6, 2004, and finalized on November 28, 2006, to the subject property. The single-family dwelling consists of 1 bedroom, 1 bath, living room, kitchen, dining area and doughboy water tank. A subsequent building permit B2004-0855H was issued on May 18, 2004 and finalized on December 12, 2004, to the subject property for an addition of a bath and storage to the existing workshop.

8. **Agency Comments and Requirements.**

a. State Department of Health (DOH) memorandum dated April 13, 2018. "The Health Department found no environmental health concerns with regulatory implications in the submittals."

b. No comments were received from the Department of Public Works Building Division.

9. **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 May 11, 2018 and May 24, 2018, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on May 30, 2018.

10. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or the general public were received.

11. **Time Extension.** The applicant's variance application was acknowledged by letter dated May 25, 2018, and additional time to review the application was required. The applicant granted the Planning Director an extension of time until August 25, 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 agricultural storage building (workshop) into the 20-foot southwest side yard setback.

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. The agricultural storage shed (workshop) improvements authorized were under building permit B2004-0855H which was issued on May 18, 2004 and given final inspection approval on October 23, 2004. It appears that building permit inspections of the premises by the affected agencies during construction of the agricultural storage shed (workshop) improvements did not disclose any building encroachment issues or building setback irregularities at that time.

The survey map submitted with the application shows the location of the agricultural storage building (workshop) with a notation, screened room (open projection, no walls). However, because the room is screened, it does not comply with **Section 25-4-44. Permitted projections into yards and open spaces** (1) which states: No cornice, canopy, eave, porch, balcony, terrace, fire escape, stair, ramp, or other similar feature shall be enclosed above or below the extension except that there may be individual posts or beams for support and open or grill-type railings no higher than four feet.

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 agricultural storage building (workshop) encroachment constructed into the affected side yard setback of the subject property include the following actions:

Remove the building encroachments and/or redesign the 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 agricultural storage building (workshop) was in compliance with all County requirements. Any structural or design correction of the agricultural storage building (workshop) 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 adjacent side yard property, which is owned by someone else, and re-subdivide the property to modify property lines and adjust minimum side 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 agricultural storage building (workshop) has been in existence for approximately 14 years and was constructed under valid building permits and other construction permits issued by the County of Hawai'i. As such, the issuance of this variance will not depreciate or detract from the character of the surrounding properties.

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 agricultural storage building (workshop) built upon the subject property ("LOT 2-A") will not meet the minimum side yard requirements pursuant to Hawai'i County Code, Chapter 25, Zoning.

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 agricultural storage shed (workshop) 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 Additional 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.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance-18-000480 null and void.

Sincerely,



MICHAEL YEE
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone1\VAR18-000480 TMK1-3-002-0100\Friel.doc

Kekoa Hara
Accent Design Services
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cc: Exhibit A-Site Plan

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

PROPOSED SUBDIVISION OF LOT 2, KAMAII SUBDIVISION
 INTO LOTS 2-A, 2-B, 2-C, 2-D AND 2-E
 PORTION OF GRANT 2164:2 TO KAMIHI ETAL
 KAMAII, PUNA, HAWAII, HAWAII
 TMK: (3) 1-3-2: 10



OWNER: MICHAEL AND NORA O'FRIEL
 RR 2 BOX 4235, PAHOA, HI 96778
 ZONE A-1A

SUBDIVISION NUMBER **SUB-06-000316-Revised**
 APPROVED FOR RECORDATION with the Bureau of
 Conveyances, State of Hawaii

Planning Commission, County of Hawaii
 Date: **MAY 27 2010**

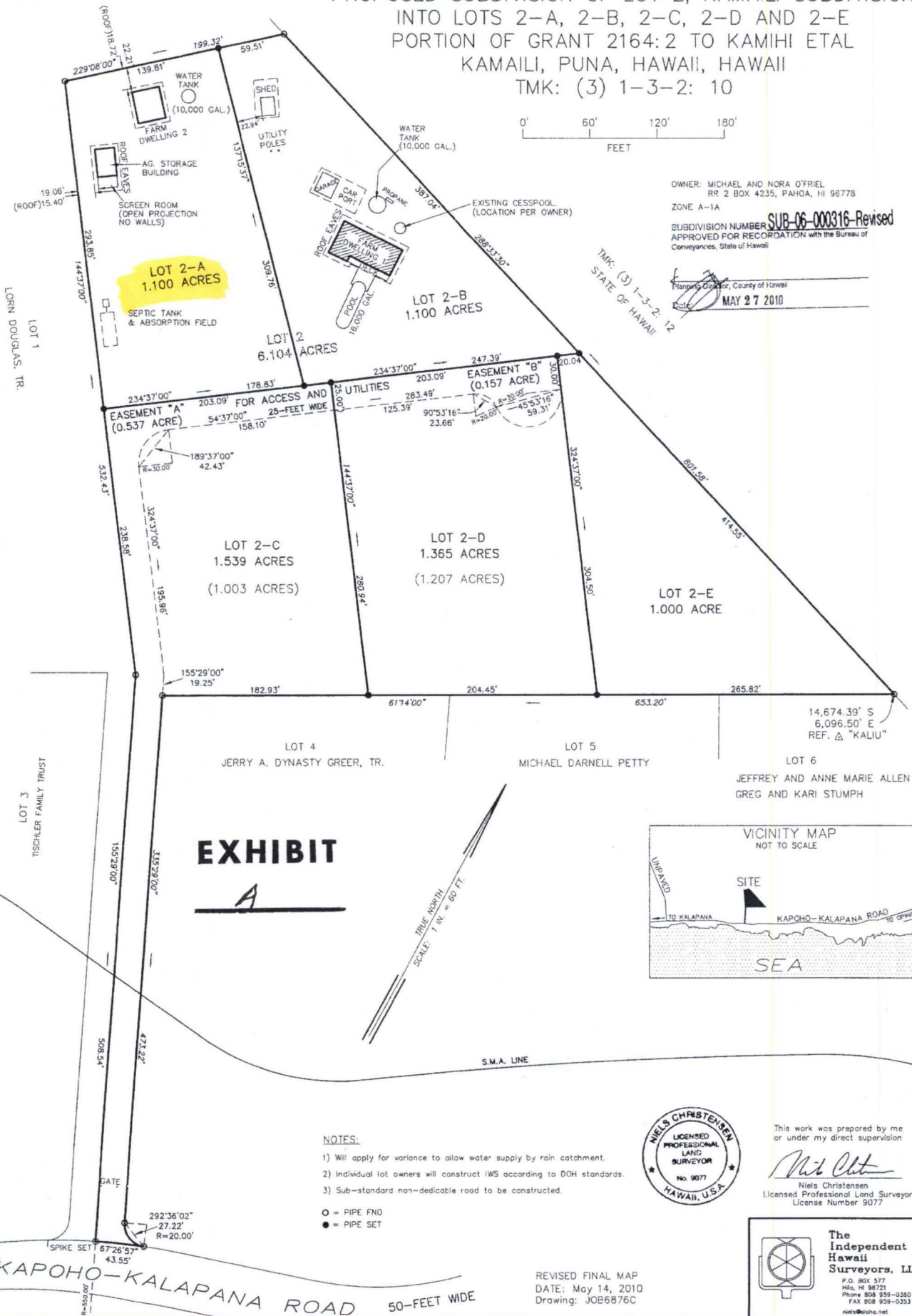
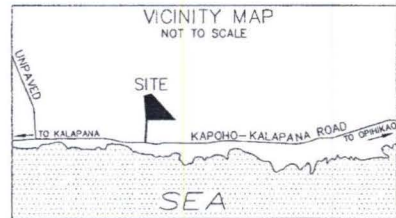


EXHIBIT
A



NOTES:

- 1) Will apply for variance to allow water supply by rain catchment.
- 2) Individual lot owners will construct IWS according to DOH standards.
- 3) Sub-standard non-dedicable road to be constructed.

- = PIPE END
- = PIPE SET



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
 Hls, HI 96721
 Phone 808 956-0360
 FAX 808 956-0353
 niels@ihs.net

REVISED FINAL MAP
 DATE: May 14, 2010
 Drawing: JOB6876C

KAPOHO-KALAPANA ROAD 50-FOOT WIDE