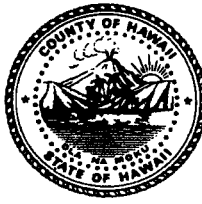


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March 6, 2019

Mr. Arie Campbell
409 Iwalani Street
Hilo, Hawai'i 96720

Dear Mr. Campbell:

SUBJECT: Application: Variance - VAR 19-000501
Applicant: ARIEH CAMPBELL
Owner: DOROTHY C. CAMPBELL & JAC A. CAMPBELL
Request: Variance from Chapter 25, Zoning, Article 5 Division 1, Section 25-5-7 Minimum Yards, Article 4, Division 4, Section 25-4-44(a) Permitted Projections into Yards and Open Space Requirements (Encroachment into Southeast Side Yard Setback)

Tax Map Key: 1-9-004:022 (Lot 1-A)

The Planning Director certifies the **approval** of Variance 19-000501, subject to conditions. The variance will allow for the as-built water tank to remain with a minimum two (2) foot side (southeast) yard setback and side yard open space in lieu of the required 15-foot side yard setback and the 10-foot side yard open space. These exceptions are in lieu of the required 15-foot side yard setback and 10-foot side 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 24,240 square feet (0.5564 acre) and is located in the Ola'a Summer Lots, situated at Kalanihonua Tract, Puna, Hawai'i. The subject property's street address is 19-4036 Haunani Road.
2. **County Zoning.** Single-Family Dwelling – 20,000 square feet (RS-20).
3. **State Land Use Designation.** Urban

4. **Required Setback.** 25 feet for front and 15 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 January 4, 2019. The variance application site map was prepared by the applicant/owner (**See Exhibit A-Site Plan**)

The as-built water tank encroaches 13 feet into the 15-foot side (southeast) yard setback and 8 feet into the 10-foot side yard open space.

The encroachment leaves the as-built water tank with a minimum two (2) foot side (southeast) yard setback and side yard open space, in lieu of the required 15-foot side yard setback and 10-foot side yard open space.

6. **County Building Records.** Real Property Tax Office records indicate that building permit (4045) issued on March 2, 1938 for the construction of a 3-bedroom and 1-bath, single-family dwelling and two (2) water tanks.

Agency Comments and Requirements.

- a. No comments received from the State of Hawai'i, Department of Health.
 - b. No comments received from the Department of Public Works, Building Division.
7. **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 January 4, 2019, and January 19, 2019, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on February 3, 2019.
 8. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. 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 as-built water tank into the 15-foot (southeast) side yard setback and 10-foot side yard open space.

No evidence has been found to show indifference or premeditation by the owners to deliberately create or intentionally allow the building encroachment problems to occur.

The “as-built” water tank replaces an 80 year old tower water tank that collapsed. The owners constructed the new ‘as-built” water tank on the same foundation as the previous tower water tank. The owners were unaware of any encroachment issues or building irregularities at the 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 as-built water tank, encroachments constructed into the affected side yard setback of the subject property include the following actions:

Relocate the as-built water tank denoted on the site plan to fit within the correct building envelope as prescribed by the Zoning Code. This alternative would be deemed unreasonable and cost prohibitive, requiring the owner to relocate the water tank would involve the owner to do major excavation to his property by having to replace and move existing water lines.

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 to re-subdivide the property to modify property lines and adjust minimum side yard setbacks are not viable options. Both of these alternatives are not practical. 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.

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 current water tank is less imposing to the adjacent property and surrounding properties than the original tower water tank. It should also be noted that the adjacent property owner (State of Hawai'i – DOE) most affected by the encroachment did not file an objection to the variance request.

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.

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 built upon the subject property ("LOT 1-A) will not meet the minimum front 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(s), 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/owner(s), 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,

Mr. Arieh Campbell

March 6, 2019

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Chapter 25, (Zoning) and be subject to State law and County ordinances and regulations pertaining to building construction occupancy.

4. 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-19-000501 null and void.

Sincerely,



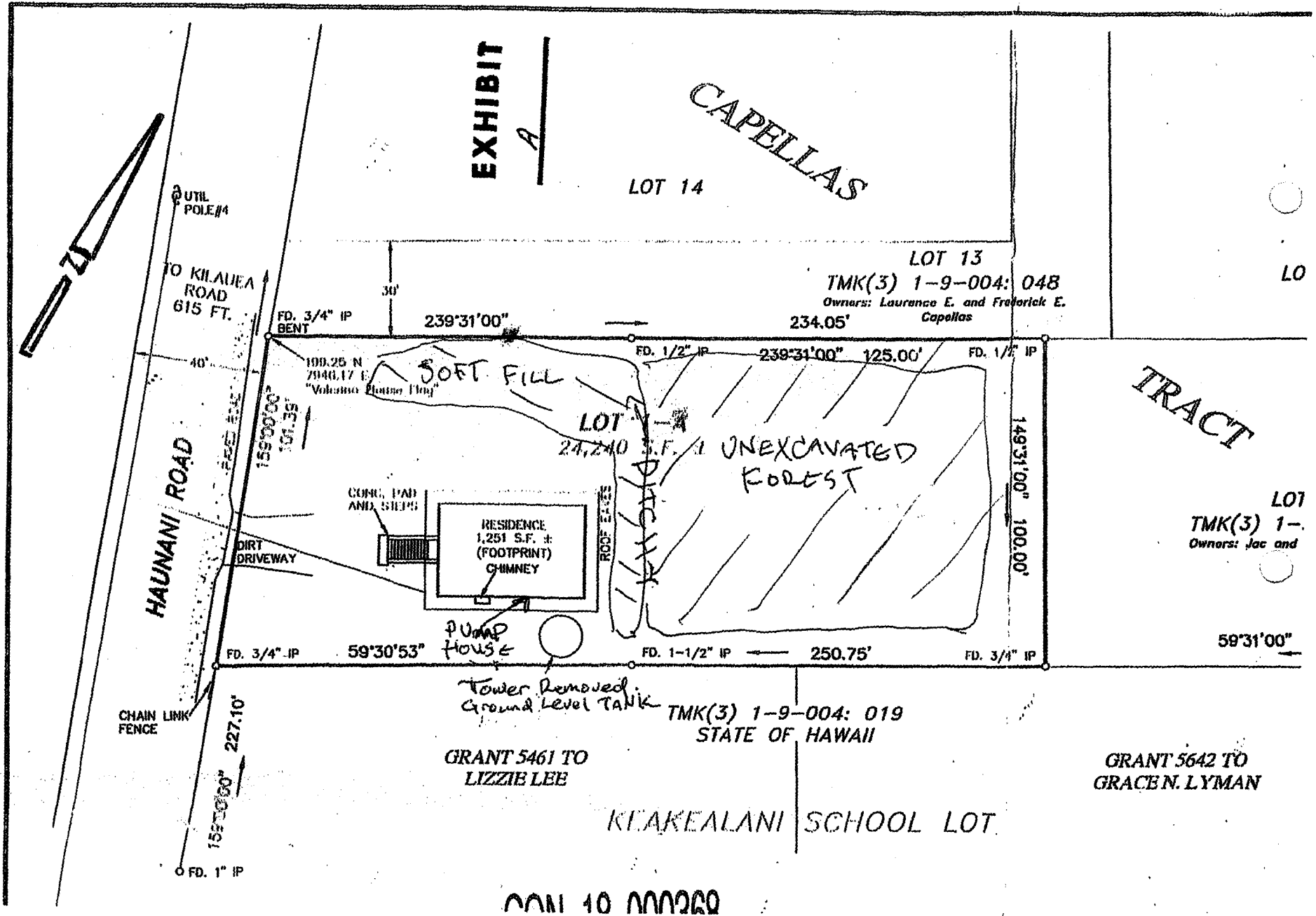
MICHAEL YEE
Planning Director

LHN:jaa

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Encl: Exhibit A-Site Plan

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



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