

CERTIFIED MAIL

November 7, 1983

Mr. & Mrs. George Hook  
c/o Radcliffe Welles  
75-5722 Kuakini Highway, Suite 108  
Kailua-Kona, HI 96740

Dear Mr. & Mrs. Hook:

Variance Application (V83-32)  
Variance From Minimum Lot Size Requirement  
Tax Map Key 5-5-83:12 and 32

After reviewing your application and the information submitted in behalf of it, the Planning Director by this letter hereby certifies the approval of your variance request to allow the creation of a two-lot subdivision with lot sizes of 1 and 14 acres in lieu of the minimum 20 acres as required in the Agricultural 20-acre (A-20a) zoned district in the Kaaunahu Homesteads, 2nd Series, North Kohala, Hawaii.

The approval is based on the following:

Special and Unusual Circumstances

The subject property was purchased by the petitioner's father, William K. Hook, Sr. in 1945 from George Paea. At the time of the transaction Mr. Paea reserved a life estate of one acre of the property. Since 1945, a period of 38 years, this one-acre parcel has been identified as Tax Map Key 5-5-08:12. Upon Mr. Paea's death, the property reverted to the petitioner's father. Subsequently, the petitioner and his wife inherited both parcels from William K. Hook, Sr. Taking the inheritance action as being legal and the fact that there was no indication of any illegal partitioning of the 2 parcels, the petitioner sold parcel 12 to Robert Chancer, from whom it was subsequently sold to Dr. Charles Morin in a "Assumption Deed" filed and recorded with the State Bureau of Conveyances on November 14, 1980. The petitioner and his wife retained parcel 32 which is 14 acres in size.

Mr. & Mrs. George Hook  
Page 2  
November 7, 1983

The first Subdivision Ordinance for the County of Hawaii was approved in the form of Ordinance No. 136 on November 22, 1944 and subsequently amended through the years up to the present Subdivision Control Code which was adopted on March 1, 1967. In this instance, the petitioner is trying to legitimize an action over which they had no control over nor which they can rectify without the approval of their variance request.

The subject property which consists of 15 acres is a non-conforming parcel with respect to the Agricultural 20-acre zoned district's minimum land area requirements.

Therefore, considering all of these foregoing issues, we have determined that there are special or unusual circumstances applying to the subject 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 subject property.

#### Alternatives

The petitioner has no other reasonable alternatives in resolving this matter. The change of zone is not a reasonable alternative as the County could not support its approval because of the absence of the necessary infrastructural improvements to service this area. Furthermore, the sanction of a zone change to recognize the existence of the existing one-acre parcel would constitute a "spot zoning" precedent which is not consistent with the land use character of this area. Thus, the only reasonable alternative for the petitioner to resolve the difficulty in this situation is the variance procedure. The actions which led to the petitioners' belief that the two parcels were legally subdivided for the past 38 years are determined to be special and unusual circumstances related to the subject property.

Based on these circumstances, to deny this variance would foreclose the most reasonable and functional alternative available to the petitioner.

#### Intent and Purposes

Within the Agricultural zoned district, the County Zoning Code permits one single family dwelling per building site. In addition, farm dwellings with the approval of the Planning Director may be permitted. The State Land Use regulations in the "Agricultural" district allow any number of farm dwellings

on a specific parcel. The recently adopted "Ohana" legislation by the County would allow 2 single family dwellings with the appropriate County approvals on the subject property. Based on these requirements, the existing density of the subject property would be 2 dwelling units. As such, in recognizing their plight in this situation as well as to ensure that the approval of the variance is consistent with the Zoning Code, the Subdivision Code and the General Plan, the petitioners have agreed to include a restrictive covenant in the deeds of the subject properties. This covenant shall allow only one single family dwelling on each property with the exception of farm dwellings and shall be a condition of approval of this variance request. As such, the density of the subject property shall not primarily effectuate relief from applicable density limitations. It could be argued that the approval of the variance request may encourage others to record and sell illegally subdivided properties, then seek relief through the variance procedure. However, the approval taken in this specific situation is with respect to the special and unusual circumstances related to the subject property and as such, is not considered to be a carte blanche approval for all such situations.

Based on these factors, we have determined that the granting of the variance shall be consistent with the general purpose of the zoning district, the intent and purposes of the Zoning Code and the General Plan. The analysis of the above issues also has concurred that granting of the variance will not be materially detrimental to the public's welfare nor cause any substantial or adverse impact to the areas character or to adjoining properties.

The variance request is approved, subject to the following conditions:

- A. The petitioner, its successors or assigns, shall be responsible for complying with all stated conditions of approval.
- B. The tentative approval of the proposed subdivision be secured within one year from the effective date of approval of the variance permit.
- C. The resultant parcels shall contain a restrictive covenant in the respective deeds, which stipulates the restriction of one single family dwelling on each parcel, but not excluding farm dwellings. This covenant shall remain effective, unless the applicable zone is changed. A copy

Mr. & Mrs. George Hook  
Page 4  
November 7, 1983

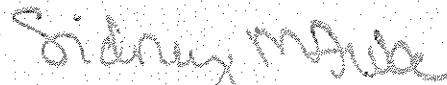
of the recorded document shall be submitted to the Planning Department within 6 months from the effective date of final subdivision approval.

- D. All other applicable State and County rules and regulations be complied with.

Should any of the above conditions not be complied with, the variance shall automatically be deemed void.

If you have any questions on this matter, please feel free to contact us.

Sincerely,



SIDNEY M. LUKE  
Planning Director

RHY:gs

Enc: Background Report

cc: Planning Commission w/enc.  
Mr. Charles Morin w/enc.

bcc: Subd. File No. 83-134 (Kaoru)