

CERTIFIED MAIL

September 1, 1987

Mr. Keith K. Tom  
73-4329 Hawaii Belt Road  
Kailua-Kona, HI 96740

Dear Mr. Tom:

Variance Application (V87-30)  
Keith K. Tom  
Tax Map Key 7-3-04:4

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 5-lot subdivision without a water system meeting with the minimum requirements of the County Department of Water Supply as required by Article 6, Division 2, Section 23-84(1) and with access off of a 20-foot wide road right-of-way with a 10-foot concrete pavement in lieu of the minimum 16-foot wide pavement requirement as required by the Subdivision Control Code. The subject property which consists of 5.980 acres and identified by TMK: 7-3-04:4, is located along the mauka side of the Old Government Mauka Road, adjacent to and south of the Old Kalaoa School, Kalaoa 5th, North Kona, Hawaii.

The approval is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances that exists which would warrant or necessitate a waiver from the minimum water requirements to service the proposed 5-lot subdivision. On December 15, 1986, Ordinance No. 86 135 became effective which reclassified the zoning designation of the property from Agricultural (A-20a) to A-1a. As a condition of approval, the County imposed condition (C) which states "restrictive deed covenants for all of the lots shall be submitted to the Planning

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Department for review and approval prior to its submittal to the Bureau of Conveyances for recordation with final subdivision plan maps. These covenants shall include but not necessarily be limited to a restriction on the further conveyances of the subject parcels, beyond the families of the five original recipients, unless one of the following conditions are met: 1) a valid water commitment for water service is available, 2) water service is available to the subject parcel, or 3) a water catchment system, that satisfies any County standards which may be adopted for such a system, is available to the subject parcel. The restrictive covenants contained herein are encumbrances running with the land, and shall be binding on all parties and persons claiming them until such time that the change of zone ordinance is amended." Although the County knew of the petitioner's intent to subdivide the property and the lack of adequate water, they approved the rezoning of the property to permit the 5 lot subdivision.

In essence these conditions and restrictions imply approval of any subdivision request from the minimum water requirements.

Therefore, considering all of the 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

There are no other reasonable alternatives in resolving the difficulty of the petitioner. The Department of Water Supply has stated that the existing water system facilities cannot support the proposed subdivision at this time unless extensive improvements are made to it. Further, a portion of the property is outside the service limits of the existing water system. No funding is available nor any time schedule set for the improvement of the existing system. The total cost of this improvements would be prohibitive for the proposed 5-lot subdivision. The other alternative would be to drill 2 wells at a cost of over a million dollars. The cost of these two alternative improvements will be greater than the cost of the land.

As such, the imposition of providing a public or private water system in the area for the proposed subdivision would be putting excessive demands upon the petitioner when a more reasonable alternative is available.

INTENT AND PURPOSE

The intent and purpose of requiring a water system within a subdivision is to assure that adequate water is available for human consumption and fire protection. The nearest fire hydrant on Mamalahoa Highway is located approximately 750 feet away from the subject property.

The analysis of the annual median rainfall for the area shows that there is adequate rainfall to support a water roof catchment system.

Based on the foregoing findings, the variance request would be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning and Subdivision Codes and the County General Plan; 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.

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances that exists which would warrant a waiver from the minimum roadway requirements to service the proposed 5-lot subdivision. The proposed 5-lot subdivision is being requested to convey to each of the family members their share of the interest in the property (family partitioning). There presently exists a 10-foot wide concrete driveway approximately 350 foot in length within the proposed 20-foot roadway. The petitioner is proposing to utilize the existing concrete driveway as access to the proposed 5-lots subdivision. The petitioner has stated that it would cause extreme hardships financially for them to remove the existing concrete driveway or add to its width to meet County standards. The property now is owned by "Aunties" who have no immediate plans now or in the foreseeable future to build on it nor sell their interest. Presently, there exists only one single family on the property which is owned by the petitioner and the present access is deemed as adequate.

As such, these foregoing factors are considered to be special or unusual circumstances applying to the subject road property which exist either to a degree which interferes with the best use or manner of development of this property. Moreover, we have determined that there is conclusive evidence to show a deprivation of property rights which curtail or reduces existing property development rights.

#### ALTERNATIVES

There are no reasonable alternative the petitioner could use to resolve the difficulty that he is claiming for the proposed subdivision. The petitioner is proposing to create a subdivision to convey to each of the family members their share of the interest of the property. It is not a subdivision that is being created for the purpose of selling to the general public to develop immediately.

In certain situations, the roadway needs of an area have to be evaluated, not only from the cost perspective but whether or not the minimum roadway requirements would be excessive in light of the intended use and property characteristics. The cost/benefit ratio and the fact that the roadway will be used only by localized traffic are specific circumstances which serve to justify the reasonableness of the petitioner's request. Thus, in this particular variance application, the economic consideration is not the sole basis for the granting of the variance request.

Therefore, in consideration of these factors, the variance request from the roadway requirements are determined to be reasonable. Although it could be argued that other alternatives are available to the petitioner, the reasonableness and practical application of those alternatives have to be evaluated with respect to the application and surrounding area. In this particular case, the imposition of the other alternatives in this situation, is considered to be excessive when a more reasonable solution is available.

#### INTENT AND PURPOSE

The intent and purpose of the minimum roadway requirement is to ensure that minimum safety standards relative to traffic and drainage, etc., are provided for.

The proposed 20-foot roadway with a 10 foot wide concrete pavement is determined to be adequate for the proposed 5-lot subdivision it is intended to serve at this time. However, the granting of the variance shall not be construed nor used as justification for any future variances from the minimum roadway standards for future subdivision or rezoning requests.

Inasmuch as the proposed 20-foot roadway will not be a through street and will remain in private ownership, the granting of the variance application will not be materially

detrimental to the public's welfare nor cause any substantial adverse impact to the area's character or to adjoining properties. Further, this variance application does not apply to density limitations nor introduces a use not otherwise permitted within this Agricultural zoned district.

As such, in view of these findings, the approval of this variance would still be consistent with the general purpose of the zoning district, and the intent and purpose of the Subdivision Control Code and the General Plan.

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

1. The petitioner, its assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. The petitioner, its assigns or successors, shall file a written agreement with the Planning Department prior to receipt of final subdivision approval containing the following stipulations and covenants:
  - a. That the subdivider agrees and accepts the fact that a County dedicable public water system is not now or in the foreseeable future available to service the subdivision, and that no portion of the subject property may be further subdivided without first having a water system meeting with the standards of the Department of Water Supply.
  - b. That the subdivider agrees and accepts the fact that the County will not at any time bear the responsibility of supplying public water to the subdivision.
  - c. That any future dwellings constructed on the property shall have a minimum of 3,500 roof catchment surface with a minimum 15,000 gallon water storage facility.
  - d. That the written agreement shall be duly recorded at the Bureau of Conveyances of the State of Hawaii by the Department at the cost and expense of the subdivider.
3. In the event that there are any amendments or changes to the subdivision after the agreement is signed, the subdivider shall be responsible for informing the Department of the amendments or changes so that the

agreement can reflect the amendments or changes; further, the written agreement shall be considered as a condition and covenant running with the land and shall be binding upon the subdivider or owner, his heirs, executors, administrators or assigns or its successors and assigns and shall be incorporated by reference as an exhibit and made part of each agreement of sale, deed, lease or other similar documents affecting the title or ownership of each subdivided lot.

4. In the event that any of the lots are provided by a separate water service (individual meters) from the Department of Water Supply, the above covenants will no longer be in effect.

Should any of the foregoing conditions not be complied with, the Planning Director may nullify the variance permit.

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

1. The petitioner, it assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. The petitioner, its assigns or successors, shall file a written agreement with the Planning Department prior to receipt of final subdivision approval containing the following stipulations and covenants:
  - a. That no ohana dwelling will be permitted on any of the proposed lots until such time that the private road is brought up to the private road standards of the Subdivision Control Code. This requirement is a 16 foot wide pavement within a 20-foot wide road right-of-way.
  - b. That the written agreement shall be duly recorded at the Bureau of Conveyances of the State of Hawaii by the Department at the cost and expense of the subdivider.
3. In the event that the roadway is constructed to the required County non-dedicable private roadway standards, the above covenants will no longer be in effect.

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Should any of the foregoing conditions not be complied with, the Planning Director may nullify this permit.

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

Sincerely,



*for* ALBERT LONO LYMAN  
Planning Director

MO:dh

cc: Dept. of Public Works  
Dept. of Water Supply  
Subd. No. 87-17