

CERTIFIED MAIL

November 4, 1987

Mr. Edmund Hedemann  
P.O. Box 280  
Kailua-Kona, HI 96745

Dear Mr. Hedemann:

Variance Application (V87-35)  
Tax Map Key 7-9-03:31

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 requests to allow the creation of a 2-lot subdivision with one lot being served by a water system meeting with the minimum water requirements of the County Department of Water Supply as required by Article 6, Division 2, Section 23-84(1) of the Subdivision Code and with access off of a 12-foot wide private roadway easement with a 12-foot wide pavement in lieu of the minimum 50-foot right-of-way with a 20-foot pavement as required by the Subdivision Code. The subject property which consists of 37.239 acres and identified by TMK: 7-9-03:31, is located next to the Kawainui Tank Site approximately 1,100 feet mauka (east) of the Mamalahoa Highway in the vicinity of Tanaka Chevron Service Station, Kawainui 1st, North Kona, Hawaii.

The variance request from the minimum water requirements is approved based on the following findings:

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 2-lot subdivision. The basic intent and purpose of the proposed subdivision is to divide the property so each of the owners (Hedemann and Wakefield) may receive their share of the property.

NOV 4 1987

Mr. Edmund Hedemann  
Page 2  
November 4, 1987

Presently, there are 2 homes on the property. One home is served by the County's water system and the other by an existing water catchment system which has a 15,000 gallon water storage tank. The resultant subdivision action would result in one (1) home being located on each lot. No additional water service is required since both homes each has a water system.

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 owners 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 for the applicant. An alternative would be for the applicant to provide a new water storage reservoir on the highest portion of the property with a booster pumping station to pump water to the higher elevation to meet with the minimum water requirements of the Subdivision Code. This alternative would be unfeasible due to the cost. Further, this alternative would only provide County water to an existing dwelling that is already provided with water via an existing water catchment system.

As such, the imposition of providing a public or private water system for the proposed 2-lot subdivision would be putting excessive demands upon the applicant 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. Since the property is within the Agricultural (A-5a) district, fire protection facilities (fire hydrants) is not a mandatory requirement of the water standards.

As noted previously, the existing dwellings (1 per each proposed lot) are furnished with water (County and catchment system).

Based on the foregoing findings, the variance request would be consistent with the general purpose of the zoning district,

Mr. Edmund Hedemann

Page 3

November 4, 1987

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 areas character and to adjoining properties.

The variance request from the minimum roadway requirement is approved based on the following findings:

#### SPECIAL AND UNUSUAL CIRCUMSTANCES

There special and unusual circumstances that exist which would warrant or necessitate a waiver from the minimum roadway requirement to service the proposed 2-lot subdivision. The present access to the property is via the existing 12-foot wide private roadway easement. Existing on the property are 2 single family dwellings. The proposed subdivision will result in a dwelling located on each lot. No increase in traffic is foreseen by the proposed subdivision action.

While there may be requests for Ohana Dwellings, the applicant will have to formally submit applications to the County, which will review and evaluate each application on its merits. Therefore, although there is this potential development available on the applicant's property, it should not imply that automatic approval would be given for these requests should they be applied for. The necessary review by the appropriate governmental agencies would have to be done prior to any decisions on these requests.

As such, these foregoing factors are considered to be special or unusual circumstances applying to the subject 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 alternatives the applicant could use to resolve the difficulty he is claiming for the proposed subdivision. An alternative is to acquire a strip of land 38 feet in width from the property owners abutting the existing 12-foot wide roadway easement. However, this alternative would have an effect on the existing structures setback which would not meet with the minimum setback requirements of the Zoning Code.

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 existing conditions are specific circumstances which serve to justify the reasonableness of the 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 is reasonable. Although it could be argued that other alternatives are available to the applicant, 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 existing 12-foot wide roadway easement is determined to be adequate since the resultant action would not result in the increase in traffic. However, the granting of this variance shall not be construed nor used as a justification for any future variance from the Subdivision or Zoning Code requirements.

Inasmuch as the existing 12-foot wide roadway easement is not a through street and will remain in private ownership, the granting of the variance application will not be materially detrimental to the public 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.

Mr. Edmund Hedemann  
Page 5  
November 4, 1987

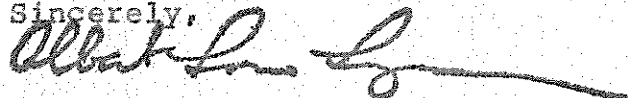
Based on the foregoing, the Planning Director has concluded that your variance requests be approved subject to the following conditions:

1. The applicant, its assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. The applicant, its assigns or successors, shall be responsible for securing final subdivision approval within one year of the date of this variance approval.
3. The applicant, 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 agricultural road standards of the Subdivision Control Code. This requirement is a 20-foot wide non-dedicable agricultural pavement 50-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.
4. 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.
5. All other applicable Federal, State and County rules and regulations shall be complied with.

Should any of the foregoing conditions not be complied with, the this variance permit may be deemed null and void.

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

Sincerely,



ALBERT LONO LYMAN  
Planning Director

MO:lv

xc: Chief Engineer-DPW  
Manager-DWS

bcc: Subd. No. 84-30 (via Wally)