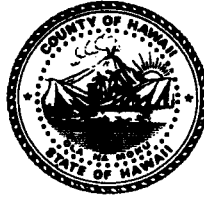


Harry Kim
Mayor

Wil Okabe
Managing Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563



County of Hawai'i
PLANNING DEPARTMENT

Michael Yee
Director

Duane Kanuha
Deputy Director

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

September 24, 2019

Karen Wakata
P.O. Box 123
Kealahou, HI 96750

Dear Ms. Wakata:

SUBJECT: Reassignment of Variance 469
Tax Map Key: (3) 8-1-003:073, Lot 2

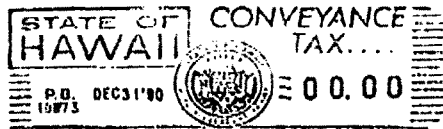
We are in receipt of your letter requesting that Variance 469 (VAR 469) be reassigned to TMK 8-1-003:073 (Lot 2).

Variance 469 (VAR 469) was approved on May 8, 1992, and was issued to TMK (3)8-1-003 parcel 69 to allow for a 7'-8" distance between two (2) main buildings in lieu of the required 15 feet minimum distance between main buildings on the same building site (Section 25-4-47).

However, the subject property (TMK: 8-1-003:069) was subdivided (SUB 5977) into two (2) separate parcels, Lots 1 and 2 (See Subdivision Map 5977 – Exhibit A)). Ironically, no parcel numbers were issued at the time the subdivision was created in 1990, except that the two (2) parcels created by the subdivision were identified as lots 1 and 2. It should be noted that at the time the subdivision was created, the City and County of Honolulu was responsible for the assignment of Tax Map Key numbers for the entire State of Hawai'i. This could be one explanation for the delay in the assignment of the parcel numbers.

The Satisfaction Deed and Subdivision Deed in Partition, (See Exhibit B) recorded with the State of Hawai'i, Bureau of Conveyance (Document No. 90-23940) on December 31, 1990, states Lot 2 (formally known as 57.49% of Parcel 69) consists of 20,394 square feet. Furthermore, the variance application cites Lot 2 as the subject parcel and the variance background report cites that the variance parcel size consists of 20,394 square feet.

CERTIFICATE
054602



90-198988

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

'90 DEC 31 AM 8 01

S. FURUKAWA, REGISTRAR

LAND COURT

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY MAIL () PICK UP ()

TITLE GUARANTY ESCROW SERVICES, INC.
P. O. Box 1837
Kailua-Kona, Hawaii 96740

TG: 319501
TGE: 903010968
JULIE A. TOY

P/S
④

AFFECTS TAX MAP KEY: (3) 8-1-3-Portion 69 (Lot 2)

**SATISFACTION DEED
AND SUBDIVISION DEED IN PARTITION**

SELLER: KONA SCENIC LAND, INC., a Hawaii corporation, having its principal place of business in Kealahou, South Kona, County and State of Hawaii, and whose mailing address is Post Office Box 727, Kealahou, Hawaii 96750.

BUYER: LEIGHTON H. WAKATA and KAREN Y. WAKATA, husband and wife, whose residence is in Kealahou, South Kona, County and State of Hawaii and whose mailing address is Post Office Box 2925, Kailua-Kona, Hawaii 96745.

DESCRIPTION OF PROPERTY:

The property covered by this Satisfaction Deed is described in Exhibit "A" attached to this document.

EXHIBIT

B

SALE AND TRANSFER OF PROPERTY:

In return for the Buyer's payment of the purchase price as agreed between Seller and Buyer, the Seller sells and transfers the property described in Exhibit "A" to the Buyer.

SALE AND TRANSFER OF OTHER RIGHTS:

Seller also sells and transfers to the Buyer the following:

(A) All improvements, if any, located on the property;

(B) All rights the Seller has in other property because of the Seller's ownership of the property being sold (these rights are known as "easements and appurtenances");

(C) All rents or royalties from the property;

(D) Any mineral and metallic rights owned by the Seller in the property, if any; and

(E) All other rights, interests or privileges that the Seller owns because of the Seller's ownership of the property.

BUYER'S TENANCY:

The Buyer will take and own the property as Tenants by the Entirety. The Buyer will also own the other rights described above in the same tenancy.

SELLER'S WARRANTIES:

By signing this Satisfaction Deed, Seller gives Buyer a general warranty of title. This means that Seller guarantees:

(A) That the Seller lawfully owns the property and other rights being sold to Buyer;

(B) That the Seller has the right to sell and transfer the property and other rights described in Exhibit "A" and this Deed;

(C) That there are no other claims by any person against the property or the other rights being sold and no other person has any rights in the property unless those claims or rights are described in Exhibit "A" under the title "SUBJECT TO"; and

(D) That if any other person makes any lawful claim against the property or the other rights being sold, or has any rights in the property, and those claims or rights are not described in Exhibit "A," then the Seller will defend the Buyer's ownership against those lawful claims and rights. The Seller does not have any obligation to defend the Buyer's ownership against any claims or rights described in Exhibit "A."

SATISFACTION:

This Satisfaction Deed is being signed by the Seller and Buyer to satisfy the Agreement of Sale between Seller and Buyer dated February 15, 1990, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 90-23940.

SUBDIVISION:

Pursuant to a certain unrecorded Co-Owners' Agreement and Agreement for Subdivision of Land dated February 15, 1990, by and between KONA SCENIC LAND, INC., a Hawaii corporation, and LEIGHTON H. WAKATA and KAREN Y. WAKATA, husband and wife, Seller and Buyer agreed to subdivide the property described in said Agreement of Sale. Having obtained the approval of the County of Hawaii for a subdivision of the property described in said Agreement of Sale into Lot 1 and Lot 2, Lot 2 being 20,394 square feet and representing the 57.49% undivided interest which Buyer agreed to purchase from the Seller in said Agreement of Sale, the subdivision constitutes partition of land by consent of Seller and Buyer.

BUYER'S RELEASE:

By signing this Satisfaction Deed, the Seller and Buyer release each other from any and all claims they might have against each other because of the Agreement of Sale dated February 15, 1990 and/or the Buyer's ownership and possession of the property.

DEFINITIONS:

The word "person" includes natural persons, business organizations and any other entity the law allows to own property or conduct business;

The words "Seller" and "Buyer" include the persons named in this deed and those who take over or succeed to that person's rights or interests, whether by purchase, inheritance, operation of law or otherwise.

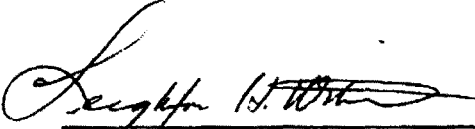
DATE:

This Deed is being signed by the Seller and Buyer on the 18th day of December, 1990.

KONA SCENIC LAND, INC.,
a Hawaii corporation

By: 
GARY E. ASHIKAWA
Its: President

Seller



LEIGHTON H. WAKATA



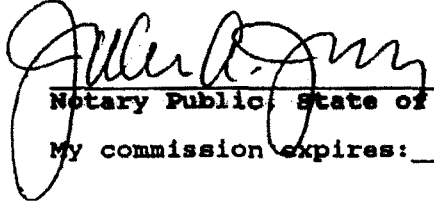
KAREN Y. WAKATA

Buyer

APPROVED AS TO FORM:
November 29, 1990/1086.doc
By Michael J. Matsukawa

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)


On this 18th day of December, 1990,
before me appeared GARY B. ASHIKAWA, to me personally known, *vice*
who, being by me duly sworn, did say that he is the President
of KONA SCENIC LAND, INC., a Hawaii corporation, and that the
seal affixed to the foregoing instrument is the corporate seal
of said corporation and that said instrument was signed and
sealed in behalf of said corporation by authority of its Board
of Directors, and the said officer acknowledged said
instrument to be the free act and deed of said corporation.



Notary Public, State of Hawaii
My commission expires: 10/14/94

STATE OF HAWAII)
) SS.
COUNTY OF HAWAII)

On this 14th day of December, 1990, before
me personally appeared LEIGHTON H. WAKATA and KAREN Y. WAKATA,
to me known to be the persons described in and who executed
the foregoing instrument, and acknowledged that they executed
the same as their free act and deed.



Notary Public, State of Hawaii
My commission expires: OCT 14 1994

EXHIBIT "A"

LOT 2
(Formerly known as 57.49% of Parcel 69)

Land situated on the easterly side of Mamao Street at Halekii, South Kona, Island and County of Hawaii, State of Hawaii.

Being portions of Lot C-2-B-4-A; and Royal Patent 1670 to John D. Parish on a portion of Land Commission Award 387, Part 4, Section 2 to the American Board of Commissioners for Foreign Missions.

Beginning at the northwesterly corner of this parcel of land, being also the southwesterly corner of Lot 1 of this subdivision and being a point on the easterly side of Mamao Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU OHAU" being 2,597.11 feet north and 9,940.14 feet east and running by azimuths measured clockwise from true south:

Thence, for the next three (3) courses following along Lot 1 of this subdivision and along the remainders of Lot C-2-B-4-A and Royal Patent 1670 to John D. Parish on a portion of Land Commission Award 387, Part 4, Section 2 to the American Board of Commissioners for Foreign Missions:

Thence, following on a curve to the left with a radius of 20.00 feet, the chord azimuth and distance being:

1. 302° 47' 46.5" 27.76 feet to a point;
2. 258° 50' 33" 88.11 feet to a point;
3. 168° 50' 33" 129.29 feet to a point;
4. 270° 30' 30" 118.59 feet along Lots 4 and 3 and along Grant 865 to J. Nakookoo to a point;

5. 348° 50' 33" 135.32 feet along Lot C-2-B-1 and along the remainder of Royal Patent 1670 to John D. Parish on a portion of Land Commission Award 387, Part 4, Section 2 to the American Board of Commissioners for Foreign Missions to a point;
6. 78° 50' 33" 222.44 feet along Lots C-2-B-2-A and C-2-B-3-A and along the remainder of Royal Patent 1670 to John D. Parish on a portion of Land Commission Award 387, Part 4, Section 2 to the American Board of Commissioners for Foreign Missions to a point;
7. 166° 45' 49.30 feet along the easterly side of Mamac Street to the point of beginning and containing an area of 20,394 square feet.

SUBJECT, HOWEVER, TO:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Easement 2 for access and utility purposes in favor of Lot 1 of this subdivision and being more particularly described as follows:

Land situated on the easterly side of Mamac Street at Halekii, South Kona, Island and County of Hawaii, State of Hawaii.

Being portions of Lot 2; and Royal Patent 1670 to John D. Parish on a portion of Land Commission Award 387, Part 4, Section 2 to the American Board of Commissioners for Foreign Missions.

Beginning at the Northwesterly corner of this easement, being also the northwesterly corner of Lot 2, the southwesterly corner of Lot 1 of this subdivision and being a point on the easterly side of Mamac Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU OHAU" being 2,597.11 feet north and 9,940.14 feet east and running by azimuths measured clockwise from true south:

Thence, following along Lot 1 of this subdivision on a curve to the left with a radius of 20.00 feet, the chord azimuth and distance being:

1. 302° 47' 46.5" 27.76 feet to a point;
2. 258° 50' 33" 88.11 feet along Lot 1 of this subdivision to a point;
3. 348° 50' 33" 30.00 feet along the remainder of Lot 2 to a point;
4. 78° 50' 33" 106.30 feet along Lot C-2-B-3-A to a point;
5. 166° 45' 49.30 feet along the easterly side of Mamac Street to the point of beginning and containing an area of 3,284 square feet.

AND TOGETHER WITH AND SUBJECT TO the continued rights and obligations of the Buyer, or the Buyer's respective heirs and assigns, for maintenance, being paragraph 11 of the unrecorded Co-Owners' Agreement and Agreement for Subdivision of Land dated February 15, 1990 described above, as the same may be amended from time to time or may be supplemented hereafter by a separate writing.

AND, FURTHER, said Lot 2, being formerly subject to that certain easement described as Easement 1 (revised) (ten-foot wide) for landscaping purposes described in that survey map of the subdivision of Lot C-2-B-4-A into Lot 1 and said Lot 2, is no longer subject to said Easement 1 for reason that said Easement 1 has been extinguished.

END OF EXHIBIT "A"

112990/1086b.doc

Lorraine R. Inouye
Mayor

Norman K. Hayashi
Director

Tad Nagasako
Deputy Director



Planning Department

County of Hawaii • 25 Aupuni Street, Room 109 • Hilo, Hawaii 96720 • (808) 961-8288

PD Var. 469

CERTIFIED MAIL

May 8, 1992

Mr. and Mrs. Leighton Wakata
P. O. Box 2925
Kailua-Kona, HI 96745

Dear Mr. and Mrs. Wakata:

Variance Application (V91-28-A)
Applicants: Leighton and Karen Wakata
Minimum Distance Between Two Main Buildings on Same Lot
Tax Map Key: 8-1-3:69

In reviewing the subject application, we note that our background and recommendation was not consistent with the public notice as published in the newspaper. The Variance request was to allow a building separation of less than the required 15 feet building separation between two main buildings.

As such, we have amended our Variance approval as follows:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances applying to the subject property which deprive the applicants of substantial property rights that would otherwise be available, or which obviously interfere with the best use or manner of development of the property.

The buildings were planned to be built 15' apart as required by the Zoning Code, Section 25-68, and the building permit was issued on that basis. However, during construction the contractor on his own volition, but because of the sloping terrain, shifted the building approximately 2'-4" such that the distance between the buildings is now 7'-8" instead of the required 15'. The owner admits that the deviation from the plan is ultimately his responsibility, but acting on a suggestion from the building official that the building be structurally connected (thus eliminating the separation distance requirement), he proceeded on that premise. As the building progressed, however, he found that a State Health regulation would render his connection to the planned and constructed waste water disposal system illegal if he connected the two buildings. He is now "caught" between two different

MAY 11 1992

Mr. and Mrs. Leighton Wakata
May 8, 1992
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regulations, as the Health rule would not allow his three cesspool disposal system for "one larger building" (two connected), but would allow it for "two smaller ones" (unconnected).

The Health Department will not allow more than two cesspools for one building. In this case, if the buildings are joined, together there would be three cesspools (which have already been constructed) for the one large building (Building A has two and Building B has one).

Based on the foregoing, it has been determined that there are special and unusual circumstances applying to the subject property which exist to a degree which deprive the owner of substantial property rights that would otherwise be available, or which obviously interfere with the best use or manner of development of the property.

ALTERNATIVES

There are limited design alternatives. The building is now 99% complete. There is now insufficient room for another waste water disposal system with the parking area installed and the retaining walls in place, and the driveway completed. The alternative of the structural attachment of one building to the other which would have been the practical and reasonable solution has been rendered unfeasible because of the Health Department's rule on the combined size of the two buildings, described earlier.

Requesting and obtaining a variance is now the only reasonable method of resolvment of this issue.

INTENT AND PURPOSE

The basic intent of the separation distance between two buildings on the same lot is to afford a modicum of open space for ease of access and safety, such as for fire fighting equipment and vehicles in an emergency. Accessibility, if limited, in this case would be of the owner's own volition. He is of his own accord willing to disaccommodate his tenants and their customers or visitors to that 2 1/3 ft. extent (7'-8" instead of 15').

By asking for this variance, the owner is voluntarily making the access opening between two buildings narrower than called for and therefore, assumes the responsibility for impeding access by 2'-4". There is adequate walk space between the buildings and if structurally attaching the building would have rendered the narrower 7'-8" space instead of 15' as being

Mr. and Mrs. Leighton Wakata
May 8, 1992
Page 3

acceptable, then not connecting it would have technical but no practical use where the width of the separation is concerned.

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 Code 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 adjoining properties.

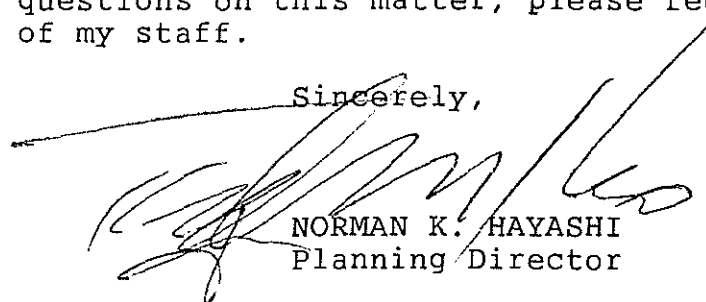
Therefore, the Planning Director has concluded that this variance request be approved subject to the following conditions:

1. The applicants, their assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. All other applicable State and County rules and regulations shall be complied with.
3. Should any of the foregoing conditions not be met, the Planning Director may initiate proceedings to revoke this permit.

Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this variance permit null and void.

If you have any questions on this matter, please feel free to contact Donald Tong of my staff.

Sincerely,



NORMAN K. HAYASHI
Planning Director

MO:smo
5222D

cc: West Hawaii Office
Building Division-DPW/Kona
Chief Sanitarian-DOH