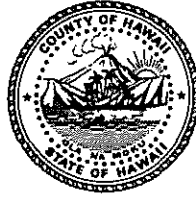


Stephen K. Yamashiro  
Mayor



Virginia Goldstein  
Director

Norman Olesen  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252  
(808) 961-8288 • Fax (808) 961-9615

August 28, 1995

Mr. Tom Adolph  
P. O. Box 1758  
Honokaa, HI 96727

Dear Mr. Adolph:

VARIANCE NO. 677  
Variance Application (VAR 95-47)  
Applicant: Tom Adolph Trust  
Variance from Minimum Water System Requirements of the  
Subdivision Control Code  
Tax Map Key: 4-4-11:21, Lot 14-A

After reviewing your application including comments received from other public agencies, the Planning Director approves your variance request for the creation of a four (4) lot subdivision without a water system meeting the minimum water requirements of the County Department of Water Supply as required by Subdivision Control Code Sec. 23-84 (1).

Location Description. Parcel 21 is located approximately three (3) miles south of Mamalahoa Highway (State Highway 19), on the east side of Ho'okahua Road, between Kaapahu Road and Waika'alualu Road, Kaapahu Homesteads, Hamakua, Island of Hawaii.

The parcel is bounded to the north by a vacant parcel, Waika'alualu Gulch to the east, a vacant parcel and a single family residence to the south, and Ho'okahua Road to the west. The property and much of the surrounding area was formerly cultivated in sugar. Surrounding land uses include both single family residences and vacant open areas.

Land Use Designation; Minimum Building Site Area. The lot area of parcel 21 is approximately 21.09 acres and is located within the County's Agricultural 5 acre (A-5a) zone district and the state land use "Agriculture" ("A") district. Surrounding areas are also in the same zoning and land use designations. The county zoning designation permits a minimum building site area of five (5) acres. Each parcel of the proposed four (4) lot subdivision is designed to comply with the required minimum five (5) acre building site area.

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Variance from Minimum Water Requirements. The Planning Director has concluded that the variance request from the Subdivision Control Code minimum water requirements should be approved based on the following.

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances that exist which would warrant or necessitate a waiver from the minimum requirements to service the proposed four (4) lot subdivision.

Parcel 21 is within the service area of the Department of Water Supply; however, because of limitations on the water system no additional water meters can be allocated to the existing meter that services this parcel. System improvements that would be required include source storage, transmission, booster pump, and distribution facilities. Sufficient public funding appears not available and it appears a time schedule has not been set to implement improvements. An upgrade of facility improvements to Department of Water Supply standards would be prohibitive and economically infeasible for a single property owner to bear. The applicant would be denied substantial property rights to create additional parcels that are otherwise permitted by the zoning density of the A-5a district.

As a result, all dwellings on the four (4) lots will be provided with separate water catchment systems for domestic consumption and fire-fighting purposes.

There are special and unusual circumstances applying to the subject property which exist either to a degree which deprive the applicant of substantial property rights that would otherwise be available or to a degree which obviously interfere with the best use or manner of development of the subject property. Approval of the variance request will allow the applicant to make the best use of the subject property consistent with the manner of development of surrounding properties.

ALTERNATIVES

There are no reasonable alternatives in resolving the required water system. Upgrading the existing County water system by the individual applicant would be economically infeasible. Another alternative requires the drilling of wells to create a private water system. This option, however, would not be cost effective for the proposed four (4) lot subdivision; and, there is no assurance that adequate water would be found.

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To impose upgrading the existing public water system or to construct a private water system for the proposed subdivision would place an excessive demand upon the applicant when a more reasonable alternative is available.

According to the applicant, the average annual rainfall of the subject area is in excess of one hundred (100) inches per year. A water catchment system is in common use in areas outside of the service limits of the Department of Water Supply. As a result, water catchment systems can be reasonably constructed to provide the necessary water for the proposed subdivision, according to the applicant. Water can also be purchased, if necessary, for the private water catchment system.

#### INTENT AND PURPOSE

The subdivision proposal is consistent with the zoning density of parcel 21 and complies with the required minimum lot size of the A-5a zone district. The intent and purpose of requiring a water system in this case is to assure that a adequate water system is available for domestic consumption and fire protection. In this situation, the substitute private water catchment system is considered adequate for the subject agricultural land.

Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning and Subdivision Control 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.

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

1. Comply with All Conditions of Approval. The applicant, his assigns, or successors shall be responsible for complying with all stated conditions of approval.
2. File Written Agreement of Stipulations & Covenants. The applicant, his assigns, or successors shall file a written agreement with the Planning Department before receiving final subdivision approval containing the following stipulations and covenants which 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:

- a. The applicant/subdivider agrees and accepts the fact that a County dedicable public water system is not now or in the foreseeable future able to service the subdivision.
- b. The applicant/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. Domestic Consumption Water Catchment System. Any existing and/or future dwellings not serviced by County water system constructed on the property shall have a minimum 6,000-gallon water storage facility for domestic consumption for water catchment. This catchment system shall adhere to the Department of Public Works, Building Division's "Guidelines for Owners of Rain Catchment Water Systems" as well as the State Department of Health requirements related to water testing and water purifying devices.
- d. Fire Fighting Water Supply System. Provide a water supply system sufficient for fire-fighting consisting of a minimum 3,000 gallons of water per existing and/or proposed future dwelling on the property meeting with the approval of the Hawaii County Fire Department. If dwellings are spaced closer than 50 feet apart, 4,000 gallons of water per dwelling will be required.
- e. For any amendments or changes to the subdivision after the agreement is signed, the applicant/subdivider shall be responsible for informing the department of the amendments or changes so the agreement can state the

amendments or changes. The written agreement shall be considered as a condition and covenant that runs with the land and shall be binding upon the applicants/subdivider or owner, his successors, and assigns and shall be incorporated 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.

- f. When any of the lots are provided water service (individual meter) from the Department of Water Supply or from an approved private water system, the above covenants will no longer be in effect.
- g. The applicant/subdivider agrees to record a covenant to prohibit any second dwelling or ohana dwelling on the individual lots of the proposed subdivision. This condition does not apply to the existing parcel 21, lot 14-A that has received ohana permit OHD 3381 (Final Approval 12/27/93); the future second dwelling is to be located on the proposed 6.9 acre lot of Subdivision No. 94-130 (Pending 12/19/94).
- h. Comply with all other applicable State and County rules and regulations.

Since a zoning change is not being sought the variance is consistent with the general purpose of the zoning district, the intent and purpose of the zoning and subdivision control codes and the County's general plan. The variance 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 because the road parcel is an existing thirty-three year access that will continue in private ownership and nonconforming use.


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

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Review of Director's Action; Interested Party. Zoning Code Sec. 25-27(a)(3), provides that an "interested party" may request Planning Commission review of the director's action.

The request must be made within ten (10) working days after notice of the director's decision, in writing. Consequently, the variance becomes effective after the ten day appeal period has passed; and, an interested party does not request a review of the director's action. Should a request be made we will inform you of the procedures that must be complied with.

Sincerely,

  
VIRGINIA GOLDSTEIN  
Planning Director

EML:mjs  
6887D

xc: Department of Water Supply  
Department of Public Works  
Fire Inspector/Fire Department  
Subdivision No. 94-130