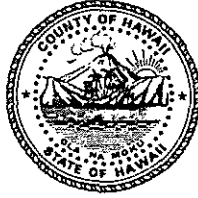


Stephen K. Yamashiro  
Mayor



Virginia Goldstein  
Director

Russell Kokubun  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252  
(808) 961-8288 • Fax (808) 961-8742

**CERTIFIED MAIL**  
P 364 305 336

October 17, 1997

Mr. George H. Robertson, Et al.  
P.O. Box 44905  
Kawaihae, HI 96743

Dear Mr. Robertson:

Variance Permit No. 861 (VAR 97-57)  
Applicant: GEORGE H. ROBERTSON, ET AL.  
Owner: GEORGE H. ROBERTSON, ET AL.  
Request: Variance From Chapter 23, Subdivisions,  
Article 6, Division 2, Improvements Required,  
Section 23-84, Water Supply, (1), and Section 23-87,  
Standard for Non-Dedicable Street; Escrow Maintenance  
Fund, and Section 23-88, Non-Dedicable Street;  
Dead-End Street; Private Dead-End Street  
Tax Map Key: 3-7-001:001

**WATER VARIANCE:** After reviewing your variance application and the information submitted on behalf of it, the Planning Director certifies the approval of your variance request to allow the creation of a three (3) lot subdivision without a water system meeting with the minimum requirements of the Department of Water Supply (DWS) as required by Chapter 23, Division 2, Section 23-84, (1), of the Subdivision Code.

The Planning Director has concluded that the variance from the minimum subdivision water system requirements be approved based on the following findings.

#### **SPECIAL AND UNUSUAL CIRCUMSTANCES**

There are special and unusual circumstances that exist which would warrant consideration of and necessitate a variance from the minimum water requirements to the proposed three (3) lot subdivision:

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1. The subject property is Lot 1-A-1 containing an area of approximately 120 acres. The subject lot is a Portion of L.P. Aw. 11216, Ap. 45 to M. Kekauonohi Situate at Maulua Nui, North Hilo, Island and County of Hawaii.
2. The subject property was zoned Agricultural (A-40a) by the County in 1967 and is designated Agriculture "A" by the State Land Use Commission (LUC).
3. George H. Robertson, Et al. submitted a subdivision application to the Planning Department on March 27, 1997, which includes a preliminary plat map dated April 1, 1996, to further subdivide the existing lot or property into three (3) lots. Further action on the proposed 3-lot subdivision application (SUB 97-035) has been deferred pending consideration of the subject variance application.
4. The Department of Water Supply (DWS) memorandum dated September 5, 1997, in (VAR 97-57) states in part:

"Please refer to our memorandum of May 2, 1997, to you for our comments and requirements. We are enclosing a copy for your information."

The Department of Water Supply (DWS) memorandum dated May 2, 1997, states:

"Please be informed that the property is situated at an elevation that is beyond the Department's existing water system facility's delivery capacity. Extensive improvements and additions, including storage, transmission, booster pump, and distribution facilities, must be constructed. Currently, sufficient funding is not available and no time schedule is set.

The nearest Department of Water Supply's water system facility is an existing 6-inch waterline within Kapehu Camp, adjacent to the Mamalahoa Highway, approximately 11,000 feet from the property.

Should there be any questions, the applicant may contact our Water Resources and Planning Branch at 961-8660."

5. The Department of Public Works (DPW) memorandum dated August 26, 1997, in the variance file (VAR 97-57) states in part:

"1. DPW does not support the subject variance. Road improvements shall be according to the requirements of the subdivision code."

6. The State Department of Health's (DOH) memorandum dated August 22, 1997, in (VAR 97-57) states in part:

"The Department of Health's authority on drinking water quality is based on the definition of a "public water system". A "public water system" means a system for the provision to the public of piped water for human consumption, if such system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year.

Past episodes of water quality concerns for lead, copper, algae and microbial contaminations in private rain catchment systems have identified the need for design standards. Without these control standards the Department of Health would not be able to support the standards the Department of Health would not be able to support the use of these private rain catchment systems for drinking purposes."

7. The applicant submitted "ATTACHMENT TO Application for Variance Variance from Minimum Water Requirements" and "ATTACHMENT TO Application for Variance from Minimum Road Requirements" with the variance application (VAR 97-57):

(Please refer to applicant's statements and reasons in the subject variance file)

8. No objections to the variance application were received from the surrounding property owners.

Therefore, considering the above facts and information submitted by the applicants with the subject variance application, the Planning Director has determined that there are special or unusual circumstances applying to the subject property which exist either to a degree which deprive the applicants or owners/subdividers 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.

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## ALTERNATIVES

There are no other reasonable alternatives in resolving the difficulty of the applicant. The first alternative, requires the applicants/subdividers/owners of the proposed subdivision application to pay appropriate water facility charges and any fees to the Department of Water Supply to improve the existing water system and provide the necessary dedicable water system improvement in accordance with the Rules and Regulations and the Standards prescribed by Department of Water Supply. The second alternative would be to plan, explore, design, and drill private wells and install the necessary water system improvements in accordance with the Rules and Regulations and the Standards prescribed by the Department of Water Supply.

The prorata cost per lot to design a water system and construction of an approved dedicable or private water system for the proposed three (3) lot subdivision is economically cost prohibitive. As such, the imposition of requiring a public or private water system for the proposed subdivision would be putting excessive demands upon the applicants/subdividers/owners when other private water systems may be used and offer a more reasonable alternative.

## INTENT AND PURPOSE

The intent and purpose of requiring a water system for and within the proposed subdivision is to assure that adequate water is available for human consumption, farm use, and fire protection.

The analysis of existing site conditions, rainfall data, and information submitted by the applicants/owners and official maps and rainfall summaries in the DWS and the Planning Department appear to support variance request and applicant's proposed use of a private water catchment systems. The analysis or comparison of private and available public information monitoring rainfall within the area appears to support the applicant's representations that there is adequate rainfall within the subject property and surrounding areas to support private roof water catchment systems for portable and emergency uses.

The State Department of Health has no building regulations, specific rules or regulations relating to the utilization and construction of private water catchment systems and inspection of private roof catchment water systems.

The analysis of other similar subdivision and approved water system variance applications within the North Hilo and upper Hamakua Districts appear to support the applicant's statements and information submitted with the variance application. The subject property and

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surrounding areas receive adequate natural rainfall to support a private catchment water system for potable uses, farm use and emergency fire uses. The site plan submitted with the variance application identifies the location of existing water tanks within the existing property. Additional provisions for water storage, water distribution, and further construction of a private water system within the proposed lots for potable and emergency uses may be necessary and will be further addressed by the applicants/owners/subdividers or lot owners.

Based on the foregoing findings, the request for water variance from the minimum water requirements is approved subject to conditions cited below.

ROAD VARIANCE: After reviewing the variance application and information submitted, the Planning Director certifies the approval of your variance to allow the creation of a three (3) lot subdivision without non-dedicable road or paved road improvements required by Chapter 23, Division 2, Section 23-87, and Section 23-88, of the Subdivision Code. There are special and unusual circumstances that exist which would warrant consideration to the applicant's variance from the minimum lot access or road requirements to the proposed subdivision of the subject property.

#### ROAD VARIANCE-SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances that exist which would warrant consideration of and necessitate a variance from the minimum lot road requirements to the proposed subdivision of the subject property.

#### ROAD VARIANCE-INTENT AND PURPOSE

The intent and purpose of requiring subdivision roadway improvements is to designate and assure there is a legal and physical access to and between the proposed lots and permitted uses on the proposed lots and that access to the property and proposed lots are provided in the event there is a fire or emergency.

The existing access and roadway to the existing property is from the Hawaii Belt Highway system. Pursuant to recent photographs of the property in the subject variance application, the existing property is currently being used pastoral and other agricultural uses. The existing dwelling and farm structures utilize existing public and private gravel or dirt roadways to and within the existing property. Keanakolu Road and the proposed road easements currently respect existing topography and follow natural terrain conditions. In addition, it appears the planned route and on-site roadways within the "proposed easements" already exist within the subject property. The planned roadways or driveways within the proposed subdivision will

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respect existing topography and avoid removal of existing trees and natural vegetation. Existing traffic or road signs within the Keanakolu Road right-of-way recommend that 4-wheel drive vehicles be utilized.

The existing public and private road system and transportation patterns to and within the subject property and surrounding areas within the North Hilo and upper Hamakua District were established and developed many years before the Zoning and Subdivision Codes were adopted in 1967. The photographs submitted by the applicant reveal little or no significant public access improvements have occurred within the Keanakolu Road right-of-way during the past 35 years.

The property's existing agricultural uses and the immediate surrounding land use and transportation patterns have not significantly changed since 1967 when the Zoning and Subdivision Codes were first adopted by the County. Access roadways within the existing property are affected by hilly topography, cold and arid climate conditions, and location of existing vegetation. Public access to the property as well as access within the property is better suited for 4-wheel drive vehicles and off-road farming or ranching equipment. The condition of the existing public access roads limit the type of vehicles used and conventional vehicle uses are discouraged. It is felt the existing and surrounding land use patterns and zoning of the existing property are not anticipated to change within the next 35 years.

The prorata cost to design and construct paved roadways within the private access easements meeting DWS standards is economically cost prohibitive. The outlook for the immediate expenditure of available road monies to improve the existing "network" of public roads leading up to the existing property is remote at this time. It is felt that current land uses and zoning of the property has not had an adverse affect on Keanakolu Road. It is felt the proposed subdivision of the existing property will not contribute or result in a significant increase in traffic using Keanakolu Road. Therefore, it would be unfair and unreasonable to impose and require DPW paved roadway standards for the roadways within the proposed three (3) lot subdivision which exceed existing roadway standards and conditions within Keanakolu Road.

Therefore, based on the representations made by the applicants and evaluation of existing access and traffic patterns to and near the existing property, the Planning Director has concluded that the DPW comments and recommended road subdivision standards and requirements within the proposed easements shown and denoted on the preliminary subdivision plat map, conforming to "STANDARD DETAILS R-39", are not warranted or required at this time to develop this subdivision.

DETERMINATION-VARIANCE CONDITIONS

No objections to the subject variance were received from the surrounding property owners and the participating government agencies.

The subject variance application was deemed complete by the Planning Department by letter dated August 13, 1997, and, by subsequent discussion with the applicant's agent, Murray Smith & Associates, Ltd., the decision date by the Planning Director on the subject variance application would be extended to October 24, 1997.

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 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 variances requested to allow a proposed subdivision without water supply and non-dedicable street are approved subject to the following conditions:

This variance request is approved subject to the following conditions:

1. The applicants/owners/subdividers, his assigns or successors shall be responsible for complying with all conditions of Variance Permit No. 861 and conditions in file (SUB 97-035).
2. WATER VARIANCE: The applicants/owners/subdividers, his assigns, or successors shall file a written agreement or approved written document with the Planning Department within one (1) year from the issuance of tentative subdivision approval and prior to receipt of final subdivision approval of SUB 97-035 containing the following deed language, being covenants, conditions, and restrictions which affect the entire property and/ or the proposed lots arising from the approval of pending subdivision application (SUB 97-035) shall be duly recorded at the Bureau of Conveyances of the State of Hawaii by the Planning Department at the cost and expense of the applicants/owners/subdividers:
  - a. The applicants/owners/subdividers agree and accepts the fact that a County dedicable public water system is not now or in the foreseeable future able to service the existing property or the proposed lots created by the subdivision application (SUB 97-035).

- b. The applicants/owners/subdividers agree and accept the fact that the County will not, at any time, bear the responsibility of supplying public water to those lots created by the subdivision application (SUB 97-035).
  - c. The permitted dwellings, accessory structures and permitted uses not serviced by a County water system constructed on the property shall have a minimum 6,000-gallon water storage tank or equivalent facility for domestic consumption for water catchment. This catchment system shall adhere to the Department of Public Works, Building Divisions'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. For each permitted farm dwelling, provide and maintain a private water supply system which includes a separate water storage tank containing a minimum of 6,000 gallons of water for fire fighting and emergency purposes. The design and location of the separate water storage tank for fire fighting and emergency purposed shall meet with the approval of Hawaii County Fire Department.
  - e. In the event that there are any amendments or changes to the subdivision after the agreement is signed, the petitioners/owners/subdividers shall be responsible for informing the County Planning 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 a applicants/owners/ subdividers, 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. In the event that any of the lots created by SUB 97-035 are provided by a water service (individual meter) from the Department of Water Supply or and an approved water system, the recorded conditions and covenants will no longer be in effect.
3. ROAD VARIANCE: The applicants/owners/subdividers, their assigns, or successors shall file a written agreement or approved written document with the Planning Department within one (1) year from the issuance of tentative



subdivision approval of SUB 97-035 containing the following deed language, being covenants, conditions, and restrictions which affect the entire property and/or the proposed lots arising from the approval of pending subdivision application (SUB 97-035) shall be duly recorded at the Bureau of Conveyances of the State of Hawaii by the Planning Department at the cost and expense of the applicants/owners/subdividers.

- a. No further subdivision of the subject property or those lots arising out of SUB 97-035 shall be permitted unless said roadway meets subdivision control code requirements without a variance. Access to the subject property shall be limited from Keanakolu Road.
  - b. The applicants/owners/subdividers shall indemnify and defend the State of Hawaii and the County of Hawaii from any and all liability arising out of vehicular access to and from the subject property known as Keanakolu Road fronting the subject property or lots arising out of SUB 97-035.
  - c. Upon written demand of the Planning Director of the County of Hawaii, the applicants/owners/subdividers, their assigns, or successors shall pay their fair share contribution for future roadway improvements to Keanakoulu Road and access to the subject lots arising out of SUB 97-035. The applicants/owners/subdividers, their assigns, or successors shall agree to participate and pay their fair share percentage of any improvement district adopted for the purpose of roadway improvements to Keanakolu Road or lots arising out of SUB 97-035.
4. The applicants/owners/subdividers, their assigns or successors shall comply with all other applicable State and County rules and regulations pertaining to subdivisions and land use.

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

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Thank you for your understanding and patience during our review.

Sincerely,



VIRGINIA GOLDSTEIN  
Planning Director

WRY:pak  
F:WP60\WRY\FORMLETT\VARAPP70.1

xc: Department of Water Supply  
SUB 97-035  
Murray Smith & Associates, Ltd.