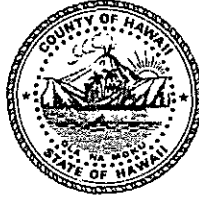


Stephen K. Yamashiro
Mayor



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
Z 179 517472

December 22, 1997

Alfred N. Montgomery, Trust Estate
P. O. Box 6050
Ocean View, HI 96737

Gentlemen:

Variance Permit No. 883 (VAR 97-73)
Applicant: ALFRED N. MONTGOMERY, TRUST ESTATE
Owner: ALFRED N. MONTGOMERY, TRUST ESTATE
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: 4-3-014:011

WATER VARIANCE: After reviewing your variance application and the additional information submitted, the Planning Director certifies the approval of your variance request to allow the creation of a five (5) 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 Circumstance-Water Variance

There are special and unusual circumstances that exist which would warrant consideration of and necessitate a variance from the minimum water requirements for the proposed five (5) lot subdivision:

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12538

Mr. Alfred N. Montgomery, Trust Estate

Page 2

December 22, 1997

1. The subject property is commonly identified by the following tax map key number: TMK: (3) 4-3-014:011 and consists of approximately 40.447 acres. The subject lot consists of a Portion of Lot 7, Grant 4730, and, a Portion of Lot 8, Grant 4434, Paauilo Homesteads, Second Series, Paauilo, Hamakua, Island and County of Hawaii.
2. The subject property was zoned Agricultural (A-5a) by the County in 1967 and is designated Agriculture "A" by the State Land Use Commission (LUC).
3. Murray, Smith and Associates, Ltd. submitted a subdivision application (SUB 97-060) on May 22, 1997, which includes a preliminary plat map dated April 14, 1997, to subdivide Lot 7 into five (5) lots. Further action on the proposed 5-lot subdivision application has been deferred pending consideration of the subject variance application.
4. The Department of Water Supply (DWS) memorandum or comments dated November 5, 1997, state in part:

"Please refer to our memorandum of June 3, 1997 to your department regarding Subdivision Application No.97-060 comments. A copy is attached for your use."

The Department of Water Supply (DWS) memorandum dated June 3, 1997, states:

"Please be informed that the Department's existing water system facilities cannot support the proposed subdivision at this time. Extensive improvements and additions, including source, storage, transmission, booster pump, and distribution facilities must be constructed. Currently, sufficient funding is not available and no time schedule is set."

5. The State Department of Health (DOH) memorandum dated October 21, 1997, 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 use of these private rain catchment systems for drinking purposes."

6. The Department of Finance-Real Property Tax memorandum dated November 6, 1997, states in part:

"Property is receiving agricultural use value"

"Retroactive taxes is (sic) subdivided to 5 acres or less."

"Real Property taxes are paid through December 31, 1997."

7. 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.

Alternatives-Water Variance

There are no other reasonable alternatives in resolving the difficulty of the applicant. The first alternative requires the applicant to improve the existing water system and/or provide the necessary dedicable water system improvements in accordance with the standards required by DWS. The second alternative would be to design, drill and develop private wells and install the necessary water system improvements in accordance with the standards required by DWS.

The pro rata cost per lot to design a water system and construction of an approved dedicable or private water system for the proposed five (5) lot subdivision is economically cost

Mr. Alfred N. Montgomery, Trust Estate
Page 4
December 22, 1997

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

Intent and Purpose-Water Variance

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 and fire protection.

The analysis of existing site conditions, official maps, and rainfall summaries in the DWS and the Planning Department appear to support the rainfall data and information submitted by the applicant. The analysis of available private and public information appears to indicate that there is adequate rainfall within the subject property and surrounding areas to support private rain water catchment systems for potable and emergency uses.

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

Additional provisions for water storage, water distribution, and further construction of a private rainwater catchment system within the proposed lots for potable and emergency uses may be necessary and will be addressed by the applicant or future lot owners.

Based on the foregoing findings, the request for water variance from the minimum water requirements is approved subject to the variance conditions cited in the section:

DETERMINATION-VARIANCE CONDITIONS.

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 five (5) 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.

Special and Unusual Circumstances-Road Variance

There are special and unusual circumstances that exist which would warrant consideration of the applicant's variance request from the minimum road requirements and roadway standards within the proposed five (5) lot subdivision.

The Department of Public Works (DPW) memorandum dated October 27, 1997, in the variance file (VAR 97-73) states in part:

Mr. Alfred N. Montgomery, Trust Estate

Page 5

December 22, 1997

"We have reviewed the subject variance, particularly as it pertains to Sections 23-87 and 23-88, and have the following comments:

We do not believe there are special and unusual circumstances with regard to the requirements of Sections 23-87 and 23-88. These are the minimum non-dedicable street requirements imposed on all subdivisions of this type.

Therefore, street requirements as noted in the memo to you dated 06/18/97 regarding the review of the subject's preliminary plat should remain."

Alternatives-Road Variance

The pro rata cost to improve the existing private roadway within the existing private access road meeting DWS standards is economically cost prohibitive. The outlook for the immediate expenditure of available county road monies to improve the existing "network" of Homestead Roads leading up to the existing property from the State highway system is remote at this time. It is felt that current zoning of the property and surrounding land uses have not had an adverse affect on the Homestead Road or private roadway. It is felt the proposed subdivision of the existing property will not contribute or result in a significant increase in traffic using Homestead Road and will clearly define the location of the private 16-Foot Road. Therefore, it would be unfair and unreasonable to impose and require DPW paved roadway standards for the existing 16-foot wide roadway which exceeds the existing roadway standards and conditions within the Homestead Road fronting the property.

Intent and Purpose-Road Variance

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 property fronts on the Homestead (Kaapahu) Road (County) which consists of a 50 foot wide right-of-way. Pursuant to the tax map and the applicant's application, the following is the description of the existing public road within the Homestead Road right-of-way and surrounding uses: "the existing Homestead Road (KAAPAHU ROAD) fronting the property is a meandering narrow pavement" and surrounding properties and uses include "approximately ten (10) scattered residences." The Homestead Road system eventually connects to Hawaii Belt Highway System (State).

Mr. Alfred N. Montgomery, Trust Estate

Page 6

December 22, 1997

The tax map identifies and denotes the location of a 16-foot wide Road along the property's entire south property line. It appears the 16-foot road identified within the subject parcel was originally created by the Okamura Coffee Planting Trust Subdivision in 1928 and is identified on the subdivision's preliminary plat map. In addition to frontage along the Homestead Road, a partially fenced 16-foot roadway provides access to fenced pastures within the property. The two (2) proposed lots, Lot 7-A and Lot 7-B, will utilize the 16-foot wide roadway as access to the Homestead Road.

The existing public road and private roadway within the property and surrounding transportation patterns were established and developed many years before the Zoning and Subdivision Codes were adopted in 1967. The information and statements provided by the applicant reveal little or no significant public access improvements have occurred within the Homestead Road and existing 16-foot wide private roadway during the past 70 years.

The property's existing agricultural or pastoral uses and land development to the immediate and surrounding areas have not significantly changed since 1967 when the Zoning and Subdivision Codes were first adopted by the County. The alignment of the existing public road and private roadway within the existing property were originally affected by natural topography and existing vegetation. Public access to the existing barn on 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 pavement within the Homestead Road and private roadway within the property may limit the use by some vehicles with low road to chassis clearances. However, public access to the existing property and proposed lots using conventional vehicles is possible. It is felt the existing and surrounding land use patterns and zoning of the existing property are not anticipated to change within the next 20 years. The primary purpose of the subdivision is for estate planning purposes.

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.

Mr. Alfred N. Montgomery, Trust Estate
Page 7
December 22, 1997

The subject variance application was deemed complete by the Planning Department by certified letter dated October 10, 1997. In subsequent discussion with the applicant's agent,

Murray, Smith and Associates, Ltd., it was agreed that the decision date by the Planning Director on the subject variance application would be extended to December 24, 1997.

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

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

1. The applicant, his assigns, or successors shall be responsible for complying with all conditions of Variance Permit No. 883.
2. WATER VARIANCE: The applicant, 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 97-060. This agreement shall contain the following deed language being covenants, conditions, and restrictions which affect the entire property and/or the proposed lots arising from the approval of the subject pending subdivision application and 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 applicant:
 - a. The applicant agrees 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 subject subdivision application.
 - b. The applicant agrees and accepts the fact that the County will not, at any time, bear the responsibility of supplying public water to those lots created by the subject subdivision application.
 - c. The permitted dwellings and accessory structures not serviced by a County water system shall be provided with and maintain a private

potable rain catchment system which includes a minimum 6,000-gallon water storage tank or equivalent facility for domestic consumption or potable uses. This private rain 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. Each permitted farm dwelling shall be provided with and maintain a private water supply system which includes an additional water storage capacity at a minimum of 3,000 gallons of water for fire fighting and emergency purposes. The design, including appropriate connector system, and location of the additional water storage capacity shall meet with the approval of the Hawaii County Fire Department.
 - e. In the event that there are any amendments or changes to the subdivision after the agreement is signed, the applicant shall be responsible for informing the County Planning Department of such amendments or changes so that the agreement can be amended thusly. Further, the written agreement shall be considered as a condition and covenant running with the land and shall be binding upon the owners, 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 97-060 are provided with water service (individual meters) from the Department of Water Supply or and a County approved private water system, the recorded conditions and covenants will no longer be in effect.
3. **ROAD VARIANCE:** The applicant, 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 97-060. This agreement shall contain the following deed language being covenants, conditions and restrictions which affect the entire property and/or the proposed lots arising from the approval of the subject pending subdivision application and 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 applicant:

Mr. Alfred N. Montgomery, Trust Estate

Page 9

December 22, 1997

- a. No further subdivision of the subject property or those lots arising out of SUB 97-060 shall be permitted unless said roadway meets subdivision control code requirements without a variance. Access to the subject property shall be limited from Homestead Road and the privately owned rights-of-way.
 - b. The owners 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 utilizing Homestead Road fronting the subject property or roadway lots arising out of SUB 97-060.
 - c. Upon written demand of the Planning Director of the County of Hawaii, the owners, their assigns, or successors shall pay their fair share contribution for future roadway improvements to the Homestead Road (Kaapahu Road) and improvements to the private road lots arising out of SUB 97-060. The owners, 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 the Homestead Road or fair share percentage of any improvement to the private 16 Foot Road arising out of SUB 97-060.
4. The owners, 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.

Thank you for your understanding and patience during our review.

Sincerely,



VIRGINIA GOLDSTEIN
Planning Director

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Mr. Alfred N. Montgomery, Trust Estate
Page 10
December 22, 1997

xc: Department of Water Supply
SUB 97-060
Murray, Smith & Associates, Ltd.