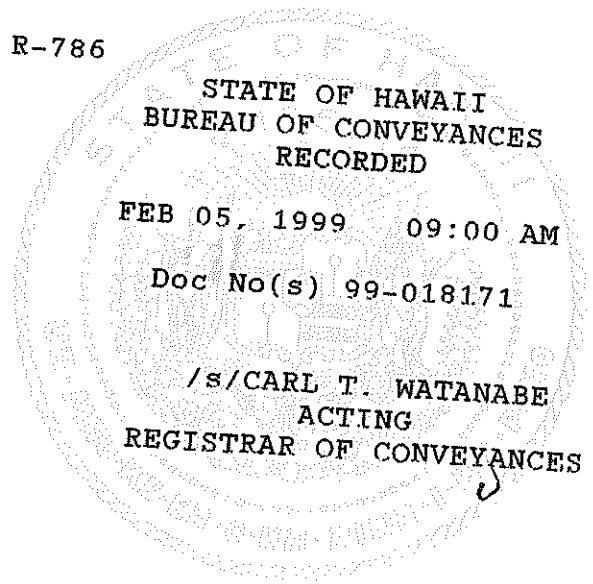


C 20

R-786



AFTER RECORDATION, RETURN BY: MAIL (x) PICKUP () TO:

Planning Department
County of Hawaii
25 Aupuni Street, Room 109
Hilo, Hawaii 96720

TITLE OF DOCUMENT:

"WATER VARIANCE AGREEMENT"

PARTIES TO DOCUMENT:

DEBORAH K. LAMBERT

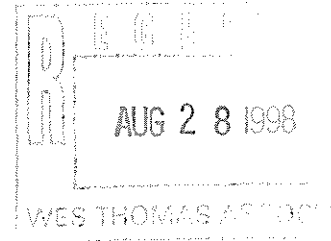
PROPERTY DESCRIPTION:

LOTS #16-A and 16-B at KEOPU 2nd, NORTH KONA,
HAWAII. COUNTY OF HAWAII, TMK: 7-5-001-041
(SUB 97-138)

RECORDATION REQUESTED BY:

AFTER RECORDATION, RETURN TO:

RETURN BY: Mail () Pick up ()



AGREEMENT

This agreement is made this 12th day of August 1998. Whereas, Deborah K. LAMBERT is the owner of real property situated at; Keopu 2nd, North Kona. County of Hawaii, Tax Map Key 3-7-5-01-41 more particularly described herein on Exhibit A; and

Whereas the owner desires to subdivide the above-described parcel of land into 2 lots.

Whereas Chapter 23, Article 6, Division 2, Section 23-84 of the Hawaii County Subdivision Code requires that a subdivision laid out after December 21, 1966, shall be provided with water as follows:

- (1) A water system meeting the minimum requirements of the County Department of Water Supply; and
- (2) Water mains and fire hydrants installed to and within the subdivision in accordance with the Rules and Regulations of the Department of Water Supply.

Whereas the Planning Director for the County of Hawaii has by letter dated Feb. 20, 1998 agreed to grant a variance from the water requirements applicable to the proposed subdivision of the above-referenced property; and

WHEREAS, the grant of such a variance by the Planning Director is subject to certain express conditions contained in the letter granting the variance, a copy of which is attached to this agreement as Exhibit B and is incorporated herein by reference;

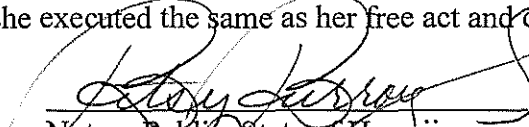
THEREFORE, the owner, his successors and assigns, in consideration of the decision of the Planning Director to grant such a variance, does hereby covenant and agree with the County of Hawaii to comply with all the express conditions contained in the grant of variance letter (Exhibit B). The undersigned owner, his successors and assigns, will pay for the costs of recordation of this agreement with the Bureau of Conveyances of the State of Hawaii, which shall be done by the Planning Department. The undersigned owner, her successors and assigns, acknowledges that a breach of any or all of the named conditions is grounds for termination of the variance.


DEBORAH K. LAMBERT

STATE OF HAWAII)
)
COUNTY OF HAWAII)

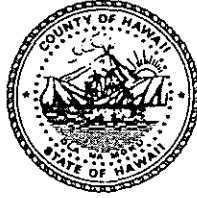
SS:

On this 12th day of August 1998, before me personally appeared DEBORAH K. LAMBERT, to me known to be the person described in and who executed the foregoing instrument, and who acknowledged that she executed the same as her free act and deed.


Notary Public, State of Hawaii
BETSY BURROUGHS
My commission expires: 5/22/01

J. G.

Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Russell Kokubun
Deputy Director

County of Hawaii

03516, 2

PLANNING DEPARTMENT

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

CERTIFIED MAIL

P 417 369 994

February 20, 1998

Ms. Deborah Lambert
P.O. Box 75
Holualoa, Hawaii 96725

Dear Ms. Lambert:

Variance Application WH(VAR 97-97)
Variance No. 896
Applicant: DEBORAH LAMBERT
Owner: DEBORAH LAMBERT
Subdivision Application No. 97-138
Request: Variance from Water Requirements of Subdivision Code
Tax Map Key: 7-5-001: 041

After reviewing your application and the additional information submitted, the Planning Director by this letter hereby certifies the approval of your variance request to allow the creation of a two (2) lot subdivision without a water system meeting 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 Control Code.

The subject property is situated at Keopu, Being Portion of Grant 727 to Kaluahinenui, at Keopu 2nd, North Kona, Hawaii, Tax Map Key: 7-5-001: 041.

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

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances that exist which would warrant or necessitate a waiver from the minimum water requirements for the proposed two (2) lot subdivision.

EXHIBIT "B"

1. The subject property consists of 3.892 acres and is zoned Agricultural (A-1a) by the County and designated Agriculture by the State (LUC).

2. A memorandum from the Department of Water Supply (DWS), dated December 5, 1997, states in part:

"Please be informed that the property is situated at an elevation where the Department's existing water system facilities cannot support the proposed subdivision at this time without extensive improvements and additions, including source storage, transmission, booster pump, and distribution facilities being constructed. Currently, sufficient funding is not available and no time schedule is set."

3. The State Department of Health (DOH) memorandum dated January 14, 1998, states:

"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."

4. No objections from the general public or adjacent landowners were received.

Therefore, considering the foregoing issues, the Planning Director has determined that there are special and unusual circumstances applying to the subject property which exist either to a degree which deprives the applicant 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 reasonable alternatives in resolving the required water system requirements. To upgrade the existing County water system by the individual applicant would not be economically feasible. The applicant stated that to upgrade the County water system to serve the two (2) lots would be prohibitive when prorated on a per lot basis.

The other alternative would be to drill wells to create a private water system. However, due to the limited nature (2-lot subdivision not serviced by County water system) of the subdivision, this alternative would be cost prohibitive. Also there is no assurance that adequate water would be found.

As such, the imposition of upgrading the existing public water system or the creation of a private water system in this area for the proposed two (2) lot subdivision would be putting excessive demands upon the applicant when a more reasonable alternative is available.

The analysis of available private and public information appears to indicate there is adequate rainfall within the subject property and the surrounding areas to support a private rain catchment system for potable uses. The applicant can also purchase water if necessary for the private water catchment system.

INTENT AND PURPOSE

The subject property consisting of 3.892 acres is located within the County's Agricultural (A-1a) zoned district. Under this zoning designation the minimum building site area is A-1a. The applicant is proposing a two (2) lot subdivision with area not exceeding the minimum (1) acre lot size requirement of the Zoning Code.

The intent and purpose of requiring a water system is to assure that an adequate water system is available for domestic consumption and fire protection. In this situation, the substitute private water catchment system is considered adequate for this Agricultural land.

Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district and the intents and purposes of the Zoning Code, Subdivision Code and the County General plan. Furthermore, this 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.

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

1. The owners, assigns or successors, shall be responsible for complying with stated conditions of approval.
2. The owners, 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 which shall be duly recorded at the Bureau of Conveyances of the State of Hawaii at the expense of the subdivider:
 - a. The owners/subdivider agree and accept the fact that a County dedicated public water system is not now or in the foreseeable future able to service the subdivision.
 - b. The owners/subdivider agree and accept the fact that a County dedicated public water system shall not at any time bear the responsibility of supplying public water to the subdivision.
 - c. Each permitted farm dwelling not serviced by a County water system shall be provided with and maintain a minimum 6,000 gallon water catchment storage facility for domestic consumption. 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. 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. If dwellings are more than 50 feet apart, 4,000 gallons of water per dwelling will be required.
 - e. In the event that there are 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 that the agreement can reflect the amendments or changes; further, the written agreement shall be considered as a condition and covenant

Ms. Deborah Lambert
Page 5
February 20, 1998


running with the land and shall be binding upon the applicant/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 subdivider lot.

- f. In the event that any of the lots are provided with water service (individual meter) from the Department of Water Supply or an approved private water system, the above covenants for the specific property will no longer be in effect.
- g. The owners, assigns or successors, shall comply with all other applicable State and County rules and regulations, including that of the Department of Finance, Real Property Tax Division relating to Agricultural Dedication.

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

Should you have any questions, please feel free to contact Royden Yamasato of this department.

Sincerely,


VIRGINIA GOLDSTEIN
Planning Director

EMM: rld
a:\75001041\lambert.app

xc: West Hawaii Office
Subdivision File

End of EXHIBIT "B"