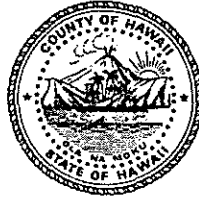


Stephen K. Yamashiro
Mayor



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 179 517 489

February 23, 1998

Mr. Gregory R. Mooers
MOOERS ENTERPRISES
P.O. Box 1101
Kamuela, HI 96743

Dear Mr. Mooers:

Variance Permit No. 897 (VAR 97-78)
Applicants: EDWARD ROUNTHWAITE, ET AL.
Owner: EDWARD ROUNTHWAITE, 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: 4-5-011:003

Please accept our sincere apologies for this tardy confirmation of the approval granted to allow the requested variances. We have been working within the department to improve the efficiency of this process which will hopefully result in more timely responses to future variance applications. Your understanding and patience is appreciated.

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 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.

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Special and Unusual Circumstances-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 three (3) lot subdivision:

1. The subject property is Parcel 13-14-B-2 containing an area of approximately 15 acres +/- . The subject lot is a Portion of Lot 13, Grant 6251, Ahualoa Homesteads, 3rd Series, and Lot 14, Grant 7868, Ahualoa Homesteads, 3rd Series, Ahualoa, Hamakua, 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. Gregory R. Mooers, President, Mooers Enterprises submitted a subdivision application (SUB 97-101) on August 18, 1997 which includes a preliminary plat map dated August 8, 1997, to further subdivide the existing lot or "PARCEL 13-14-B-2" into three (3) lots. Further action on the proposed 3-lot subdivision application has been deferred pending consideration of the subject variance application.
4. The Department of Water Supply (DWS) memorandum dated November 21, 1997, state in part:

"We have reviewed the subject application for the proposed subdivision. Please refer to our memorandum of September 4, 1997 to you for our comments and requirements. We are enclosing a copy for your information."

The Department of Water Supply (DWS) memorandum dated September 4, 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 pumps, and distribution facilities, must be constructed. Currently, sufficient funding is not available and no time schedule is set."

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5. The Department of Finance-Real Property Tax memorandum dated December 2, 1997, states in part:

"Property is receiving agricultural use value"

"Possible rollback taxes if subdivided to 5.0 ac. or less"

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

8. A communication dated November 30, 1997, from Mr. David L. Becker and Mr. Paul K. Takamatsu was received by the Planning Director. A copy of the communication was forwarded to the applicants via Mr. Gregory R. Mooers for consideration and response. Please refer to applicant's response via Mr. Mooers' letter dated December 10, 1997, which address the concerns of Mr. Becker, Et al.

Therefore, considering the above facts and information submitted by the applicants on November 30, 1997 and December 10, 1997, 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 owners 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 applicants to improve the existing county water system and provide the necessary dedicable water system improvements in accordance with DWS standards. The second alternative would be to design, drill and develop private wells and install the necessary water system improvements in accordance with DWS standards.

The pro rata cost per lot to improve the existing county water system and/or construction of an approved alternative private water system for the proposed three (3) lot subdivision is economically cost prohibitive. As such, the imposition of improving the existing public water system or providing an approved alternative water system for the proposed subdivision would be putting excessive demands upon the applicants when a more reasonable alternative is available.

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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 individual or separate 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 roof catchment water systems for potable or emergency uses.

Additional provisions for water storage, water distribution, and construction of private rain water catchment system(s) on the property or proposed lots may be necessary and will be addressed by the applicant or future lot owner.

Based on the foregoing findings, the request for water variance from the minimum water requirements is approved and 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 three (3) lot subdivision without dedicable road or paved road improvements as 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 three (3) lot subdivision.

The Department of Public Works (DPW) memorandum dated December 29, 1997, in the variance file (VAR 97-78) states in part:

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"We have reviewed the subject request and refer to our comments (attached) made to the preliminary plat map dated September 12, 1997.

Although we realize the extent of constructing an agricultural standard pavement, we need to be fair and consistent with other subdivisions and in conformance with Chapter 23 requirements; Therefore, we do not concur with this request."

Alternatives-Road Variance

The pro rata cost to improve the existing private 50-foot wide roadway easement and the Homestead Road is economically cost prohibitive. The outlook for expenditure of state or county road monies to improve the affected portions of the Homestead Road fronting the private roadway easement is remote and the cost for roadway improvements within the existing private easement is borne by the owner or "users". The existing private roadway easement was permitted and created by a subdivision in 1976. The road easement fronting the affected TMK is privately owned and not maintained by the County or State. It is felt the proposed subdivision of the existing property will not contribute or further result in a significant increase in traffic using the "Homestead Road". Therefore, it is unreasonable to further impose and require DPW paved road standards within the existing privately owned roadway easement and/or paved road improvements within the portion of the Homestead Road fronting the privately owned roadway easement.

Intent and Purpose-Road Variance

The intent and purpose of requiring subdivision roadway access improvements is to insure that there is legal and physical access to the affected property and emergency access in the event of a fire or other emergency.

The existing access and road within the easement is from a privately owned 50-foot wide roadway easement and the Homestead Road. Pursuant to recent photographs submitted by the applicant and recent field inspection of the property, the existing property is currently being used for pastoral and other agricultural uses. The existing farm dwelling and farm structures utilize a privately owned roadway easement via the Homestead Road. There is a locked security fence within the privately owned roadway easement and selective areas within the private easement are improved with concrete to curtail erosion. The existing private roadway easement appears to meander within the privately owned 50-foot wide roadway easement. The security fence requires a key issued to the existing lot owners to contain roaming cattle.

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The existing private roadway easement and public transportation patterns to the subject property and surrounding areas were established and developed many years before the Zoning and Subdivision Codes were adopted in 1967. The recent photographs submitted by the applicant indicate little or no significant public roadway improvements have occurred within the Homestead Road during the past 40 years.

The property's existing agricultural or surrounding pastoral or agricultural uses have not significantly changed since 1967 when the Zoning and Subdivision Codes were first adopted by the County. The alignment of the Homestead Road and the privately owned roadway easement were affected by natural topography and existing vegetation. Existing access to the property is better suited for all terrain vehicles or off-road farming or ranching equipment. 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 the Homestead Road. It is felt that the proposed subdivision of the existing property will not contribute or result in a significant increase in traffic using Homestead Road. Therefore, it would be unfair and unreasonable to further impose improvements to the roadway within the privately owned roadway easement and the Homestead Road at this time.

Therefore, based on the representations made by the applicant 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

The subject variance application was deemed complete by the Planning Department by letter dated November 7, 1997.

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, the variances requested 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 system meeting DWS standards and with non-dedicable streets are approved subject to the following conditions:

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1. The owners, their assigns, or successors shall be responsible for complying with all conditions of Variance Permit No. 897.
2. WATER VARIANCE: The owners, 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 and prior to receipt of final subdivision approval of SUB 97-101. This written 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 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 owners:
 - a. The owners agree and accept 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 SUB 97-101.
 - b. The owners 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 SUB 97-101.
 - c. Each permitted farm dwelling constructed on the subject property not serviced by a County water system shall be provided with and maintain a private rain water catchment system which includes a minimum 6,000-gallon for domestic consumption or potable uses. 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. Each permitted farm dwelling shall be provided with and maintain a private water supply system which includes an additional minimum 3,000 gallon water storage capacity for fire fighting and emergency purposes. The emergency water supply system, including the necessary

Mr. Gregory R. Mooers

compatible connector system and location of the water storage capacity on the property, 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 or recorded agreement shall be binding upon the owner(s), their successors or assigns and shall be incorporated as an exhibit and made part of each agreement of sale, deed, lease, or similar documents affecting the title or ownership of the existing property or approved subdivided lots.
 - f. In the event that any of the lots created by SUB 97-101 are provided with water service (individual meter) from the Department of Water Supply or an approved private water system, the recorded conditions and covenants will no longer be in effect.
3. **ROAD VARIANCE:** The owners, 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 97-101. This approved written 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 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 owners:
- a. No further subdivision of the subject property or those lots arising out of SUB 97-101 shall be permitted unless the street or minimum roadway requirements of the subdivision control code are met without a variance. Access to the subject property shall be limited from the existing 50-foot wide roadway easement and Homestead Road.
 - b. The owners, their assigns, or successors shall indemnify and defend the State of Hawaii and the County of Hawaii from any and all liability

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arising out of vehicular access utilizing the existing 50-foot wide roadway easement and Homestead Road.

- 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 existing 50-foot wide roadway easement and Homestead Road. The owners, their assigns, or successors shall agree to participate and pay their fair share percentage for any improvement district adopted for the purpose of roadway improvements to existing 50-foot wide roadway easement and Homestead Road.
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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xc: Department of Water Supply
SUB 97-101
Mr. David L. Becker, Et al.