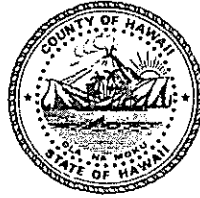


Stephen K. Yamashiro  
Mayor



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 364 305 327

May 12, 1998

Mr. Stanley H. Roehrig, AAL, ALC  
101 Aupuni Street, Suite No. 124  
Hilo, Hawaii 96720

Dear Mr. Roehrig:

Variance Permit No. 917 (VAR 98-18)

Applicants: STANLEY H. ROEHRIG, AAL, ALC

Owner: FRANCIS B. THOMPSON

Request: Variance From Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply, (1); and Variance From 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: 5-5-009:030

WATER VARIANCE: After reviewing your variance application and the information submitted, the Planning Director certifies the approval of your variance request from Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply, (1), 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).

Please accept our sincere apologies for this tardy confirmation of the approval to allow the requested variances. Your understanding and patience is appreciated.

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

MAY 14 1998

04518

Mr. Stanley H. Roehrig, AAL, ALC  
Page 2  
May 12, 1998

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 contains approximately 2.55 acres +/- and consists of portions of Grant 8239 to T.S. Pereira and R.P. 6292. L. C. Aw. 10,575 to Lonoheana, Situated at Kaauhuhu, North Kohala, Hawaii.
2. The subject property is zoned Single-Family Residential (RS-15) and is designated Urban "U" by the State Land Use Commission (LUC).
3. Stanley Roehrig, Esq., of Roehrig Roehrig Wilson & Hara Attorneys At Law, submitted a subdivision application for the owners on January 30, 1997 which includes a preliminary plat map dated January 9, 1997, to subdivide the existing property into three (3) lots. Further action on the proposed 3-lot subdivision application (SUB 97-012) has been deferred pending consideration of the subject variance application.
4. The Department of Water Supply (DWS) memorandum dated April 9, 1998, states in part:

"We reviewed the subject application for the proposed subdivision and have the following comments.

Please refer to our memorandum of July 1, 1997 to you for our comments and requirements. We are enclosing a copy for your information."

The Department of Water Supply (DWS) memorandum dated July 1, 1997, states:

"At the request of counsel for the applicant, we provide the following additional information:

It is our understanding that the applicant is an elderly widow who desires to subdivide her residence parcel in order to provide a lot to each of her three sons as an estate planning family goal. The County water system does not extend to this proposed subdivision. The system is located approximately 230 feet away

from the proposed subdivision. The estimated cost of extending a 4-inch line to Lot No. 3 of the proposed subdivision is \$20,000. The additional cost for two water meters, effective July 1, 1997, is an additional \$6,750, for a total cost of approximately \$26,750."

5. The Department of Finance-Real Property Tax memorandum dated March 31, 1998, states in part:

"There are no rollback taxes as the property is not in ag. use. Please note that the majority of this land parcel is in a large gulch, and would seem difficult access for Lot #1 and Lot #2."

"Real Property taxes are paid through June 30, 1998."

6. The Department of Health memorandum date April 2, 1998 states:

"The Department of Health's authority on drinking water quality is based on the definition of 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 of regularly serves an average of at least twenty-five (25) individuals daily at least sixty 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."

Therefore, considering the above facts and information submitted by the applicants, 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 county's existing water system and provide the

Mr. Stanley H. Roehrig, AAL, ALC  
Page 4  
May 12, 1998

necessary dedicable water system improvements in accordance with the 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 water system 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 individual or separate private rain water catchment systems for portable 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 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.

Mr. Stanley H. Roehrig, AAL, ALC  
Page 5  
May 12, 1998

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) submitted a memorandum dated April 16, 1998, and a copy of a March 12, 1997, memorandum on April 22, 1998, for the subject application. The memorandum dated April 16, 1998 states:

"We stand by our comments as expressed in the DPW Engineering Division March 12, 1997 memo."

The attached copy of the DPW memorandum dated March 12, 1997 states:

"We have reviewed the preliminary plat and have the following comments:

1. §23-30. Identify all watercourses and drainage ways and encumber with drainage easements.
2. §23-46. Provide future road widening setback fronting Hoesa Road to at least one-half the difference between the existing right-of-way and 50 feet.
3. The preliminary plat shows several encroachments over adjacent property TMK: 5-5-09:24. Planning Dept resolve with applicant.
4. Access from Hoesa Road to Lots 2 and 3 is via the existing easement along the southern boundary of TMK: 5-5-09:24 and Easement 1.
  - a. Provide proper turning radius at the joint of the existing easement and Easement 1.
  - b. §23-88. Construct minimum 12 ft wide non-dedicable pavement within a minimum 16 ft width right-of-way conforming to Std Det R-39.
5. Planning Dept determine the necessity of extending Keawe Iki Street to the western boundary of the subdivision or to Hoesa Road.

6. §23-79. Submit construction plans and drainage report for review and comment. §23-92. Additional storm runoff due to development shall be disposed within the subdivision and shall not be discharged onto adjacent properties or roadways. For planned drywells, satisfy DOH drywell requirements, including issuance of an underground injection control (UIC) permit to the subdivider."

#### Alternatives-Road Variance

The pro rata cost to widen Hoesa Road and improve Hoesa Road and Keawe Iki Street is economically cost prohibitive. The outlook for expenditure of state or county road monies to improve Hoesa Road and the affected portion of Keawe Iki Street fronting the affected portions of the property are remote. It is felt the proposed subdivision for estate planning purposes will not contribute or further result in a significant increase in traffic using the Hoesa Road. Access via Keawe Iki Street to proposed Lot 1 is remote due to natural topography and existing vegetation. Therefore, it is unreasonable to further impose and require DPW paved road standards to the existing rights-of-way.

#### Intent and Purpose-Road Variance

The intent and purpose of requiring subdivision roadway access improvements is to insure 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 to the property via Hoesa Road and proposed privately owned easements shown on the preliminary subdivision map to cope with the unusual topography appear to be adequate. Pursuant to recent photographs submitted by the applicant and recent field inspection of the property, the existing property contains a dwelling and garage. The major use of the property appears to be used for pastoral and other agricultural uses. The existing driveway access to the existing dwelling and accessory structures situated on the property are via Hoesa Road. The location of the existing private dirt roads via Keawe Iki Street and off the driveway using Hoesa Road are affected by the property's natural topography and location of a large gulch which traverses through the existing property.

The existing private roadway easement and public transportation and 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

Mr. Stanley H. Roehrig, AAL, ALC  
Page 7  
May 12, 1998

by the applicant indicate little or no significant public roadway improvements have occurred within the Hoea Road during the past 40 years.

The property's existing residential and surrounding agricultural uses have not significantly changed since 1967 when the Zoning and Subdivision Codes were first adopted by the County. The alignment of the Hoea Road and location of the existing dirt roads within the property were affected by natural topography and existing vegetation. Access to the proposed lots exclusively from Hoea Road is being proposed. The outlook for the immediate expenditure of available road monies to improve the existing "network" of public roads fronting 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 Hoea Road. It is felt the proposed subdivision of the existing property will not contribute or result in a significant increase in traffic using Hoea Road. Therefore, it would be unfair and unreasonable to further impose improvements to the Hoea Road and Keawe Iki Street at this time.

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

The subject variance application was deemed complete by the Planning Department by letter dated March 2, 1998.

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. The variance approval 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:

1. The owners, their assigns, or successors shall be responsible for complying with all conditions of Variance Permit No. 917.

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 97-012. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions which affect the entire property and only the proposed lots arising from the approval of pending subdivision application without a water system . The approved written agreement 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(s) or owner(s):
  - a. The owner 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 SUB 97-012.
  - b. The owner agrees and accepts the fact that the County will not, at any time, bear the responsibility of supplying public water to the affected lots created by SUB 97-012.
  - c. Each permitted dwelling not serviced by a County water system constructed on the property shall be provided with and maintain a private potable rain 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 dwelling shall be provided with and maintain a private water supply system which includes a separate minimum 3,000 gallon water storage capacity tank for fire fighting and emergency purposes. The emergency water supply system, including the necessary 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 97-012 are provided with a water service (individual meter) from the Department of Water Supply or an approved 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 97-012. The 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 97-012 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 roadways.
    - 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 utilizing the existing roadways.
    - 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 rights-of-way. 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 existing rights-of-ways fronting the proposed lots.

Mr. Stanley H. Roehrig, AAL, ALC  
Page 10  
May 12, 1998

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,



*for* VIRGINIA GOLDSTEIN  
Planning Director

WRY/RK:pak/jkg  
F:WP60\WRY\FORMLETT\VARAPP83.41

xc: Department of Water Supply  
SUB 97-012