

Harry Kim
Mayor

Roy Takemoto
Managing Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563



County of Hawai'i
PLANNING DEPARTMENT

Michael Yee
Director

April Surprenant
Acting Deputy Director

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

September 23, 2020

Niels Christensen, LPLS
The Independent Hawaii Surveyors, LLC
P.O. Box 577
Hilo, HI 96721

Dear Mr. Christensen:

SUBDIVISION WITHDRAWN

SUBDIVIDER: SALISBURY, Carol A.

Proposed Subdivision of Parcel 13-14-B-1,
Being A Portion of Lot 13, Āhualoa Homesteads, 3rd Series,
Being Also A Portion of Grant 6251,
And Lot 14, Āhualoa Lots, Being Also a Portion of Grant 7868
Into Parcel A and Parcel B,
Āhualoa Homesteads, 3rd Series, And Āhualoa Lots,
Āhualoa, Hāmākua, Island of Hawai'i, Hawai'i
TMK: 4-5-011:015 (SUB-78-000214)

Please be advised that on June 1, 2020, we deferred action on the referenced subdivision application to afford the opportunity for the new owners to continue.

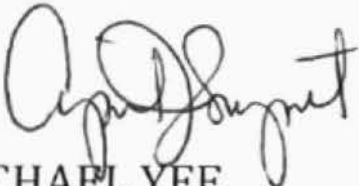
There has been no further communication on this application, therefore, we are deeming the file **withdrawn** and removing it from process. We are also deeming the approved water and road variances VAR 1207 (VAR-01-000033), 1266 (VAR-01-000058) **null & void**.

Should the landowners elect to pursue the subdivision at a later date, a new application complete with filing fee must be resubmitted to this department.

Niels Christensen, LPLS
The Independent Hawaii Surveyors, LLC
September 11, 2020
Page 2

Should you have any questions, please feel free to contact Hans Santiago at hans.santiago@hawaiicounty.gov or Jonathan Holmes at jonathan.holmes@hawaiicounty.gov.

Sincerely,


MICHAEL YEE
Planning Director

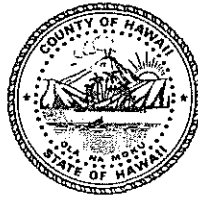
JRH:tb

\\coh33\planning\public\Admin Permits Division\Subdivision\2020\2020-3\SUB-78-000214Salisbury WD 09-23-20.docx

xc: Manager, DWS
 Director, DPW
 District Environmental Health Program Chief, DOH
 G. Bailado, GIS Section (VAR's N/V
 VAR 1207 (VAR-01-000033) N/V, 1266 (VAR-01-000058) N/V

Matthew Woodbury & Clare Mc Adam
P.O. Box 187
Honoka'a, HI 96727-0187

Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

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

March 11, 2002

Ms. Carol A. Salisbury
P. O. Box 889
Honokaa, HI 96727

Dear Ms. Salisbury:

Variance Permit No. 1266 (VAR 01-058)
Applicant: CAROL A. SALISBURY
Owner: CAROL A. SALISBURY
**Request: Variance from Chapter 23, Subdivisions,
Article 3, Design Standards, and the
Required Subdivision Road Improvements**
Tax Map Key: 4-5-011:015, (SUB 78-214)

After reviewing your variance application and the information submitted, the Planning Director certifies the approval of your variance from Chapter 23, Subdivisions, Article 3, Design Standards, Division 3, Lots, Section 23-34, Access to lot from street, Article 6, Improvements, Division 2, Improvements Required, Section 23-87, Standard for nondedicable street; escrow maintenance fund, and Section 23-88, Nondedicable street; private dead-end street, and allow a proposed two (2) lot subdivision of the subject property without installing the roadway improvements in accordance Department of Public Works (DPW) comments and memorandum dated May 18, 2001 for the proposed two (2) lot subdivision.

The Planning Director has concluded that the variance from the minimum subdivision road requirements to allow the two (2) lot subdivision be approved based on the following findings:

FINDINGS AND BACKGROUND

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 two (2) lot subdivision:

C15960 *MD*

MAR 12 2002

1. **Location.** The subject property is Lot 13-14-B-1, containing 12.228 acres, Being a Portions of Lot 13, Grant 6251 to Walter Henry Rickard, and Lot 14. Being Grant 7868 to Frank Paiva, Ahualoa Homesteads, 3rd. Series, Hamakua, Hawaii.
2. **Zoning.** The subject TMK property is zoned Agricultural (A-5a) by the County and is designated Agriculture ("A") by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** A two (2) lot subdivision application (SUB 78-214) was originally submitted and acknowledged by Planning Department's letter dated September 15, 1978. The applicant, Carol Salisbury, recently acquired the subject TMK property and resubmitted a revised 2-lot preliminary plat map dated April 6, 2001. The revised preliminary plat map, prepared by The Independent Hawaii Surveyors, is being deferred pending further review of the water system requirements and resolve of other subdivision requirements.
4. **Variance (Road) Application.** The applicant submitted the subject variance application, attachments, and filing fee on August 8, 2001.

Note: The applicant was previously granted a variance (VAR 1207) to allow the proposed two (2) lot subdivision without a water system meeting with the minimum requirements of the Department of Water Supply (DWS).

5. **Agency Comments and Requirements (Road).**
 - a. The Hawaii County Fire Department memorandum, dated August 24, 2001, states in part:

"We have no comments regarding the above-referenced Variance Application."
 - b. The State Department of Health (DOH) memorandum dated August 27, 2001 states in part:

"The Department found no environmental health concerns with regulatory implications in the submittals."
 - c. The Department of Public Works (DPW) memorandum dated September 14, 2001 states in part:

Ms. Carol A. Salisbury
Page 3
March 11, 2002

“We have reviewed the subject variance and have the following comments.

Section 23-34 states “Each subdivided lot shall abut upon a public street or approved private street.” We do not believe there are special and unusual circumstances. For subdivisions of this type, the improvements specified in Section 23-34 that will not compromise public safety and welfare. Is Section 23-88 relevant to the subject subdivision?

Please refer questions to Kelly Gomes at ext. 8327.”

- d. No comments were received from the Department of Finance-Real Property Tax Office.
7. **Notice to Surrounding Owners (Proof of Mailing).** The applicant submitted a letter and respective attachments on August 31, 2001 and September 12, 2001, respectively.
8. **Comments from Surrounding Property Owners or Public.** No oral objections or letter(s) objecting to the subject request were received by the Planning Department.

SPECIAL AND UNUSUAL CIRCUMSTANCES

Considering the above facts and findings, information submitted by the applicant, and agency comments, 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:

- A. According to the county tax maps, the parcel fronts on “KAHANA DRIVE” and abuts a private “ROADWAY EASEMENT”. This 50’-wide private easement is located within the pole of flag lot TMK: 4-5-011:011. The applicant has legal rights to use this easement for access purposes, as evidenced by a Grant of Easement dated January 5, 1977 submitted with the variance application.
- B. In 1999, the applicant installed a second 11-foot wide paved driveway from Kahana Drive within the “ROADWAY EASEMENT” to access a second dwelling located on the subject TMK property or proposed PARCEL B. This

paved driveway access is an improvement over the gravel road within the "ROADWAY EASEMENT" that also serves the adjoining and other lots "mauka" of proposed PARCEL B. This asphalt pavement is also more durable than the minimum oil-treated surfacing requirements of an agricultural road.

on the "ROADWAY EASEMENT" will be privately addressed by the easement's owners and lots dependent on THE "ROADWAY EASEMENT" for access. As such, the applicant understands that the owners of lots dependent on the "ROADWAY EASEMENT" will be responsible for access and share in the costs to maintain access and the existing paved driveway within the "ROADWAY EASEMENT".

- C. Proposed lot-PARCEL A fronts Kahana Drive and will access directly from Kahana Drive. Therefore, only proposed lot-PARCEL B requires access from the "ROADWAY EASEMENT". No further subdivision of the proposed lots arising from the 2-lot subdivision will be possible without rezoning. The existing 11-foot wide paved access driveway to PARCEL B is greater than the 8-foot paved driveway width required for a private non-dedicable road serving a single lot.
- D. The existing paved 11-foot wide driveway follows natural topography and avoided mature trees growing within the "ROADWAY EASEMENT". (Refer to pictures submitted by the applicant in the variance file) According to the applicant: "There are mature trees and plantings within the easement that would need to be removed in order to create the 20-foot wide agricultural pavement."
- E. Other adjoining landowners use the "ROADWAY EASEMENT" and to require the applicant to clear and improve the easement would place an unfair and disproportionate burden to the benefit of other users. On the other hand. There is the potential for at least five additional lots mauka of the applicant's lot that would use the "ROADWAY EASEMENT". Should these future lots be created, all lots dependent on the "ROADWAY EASEMENT" should contribute their fair share to improve the "ROADWAY EASEMENT" to the minimum agricultural road standards. It would not be fair to allow this subdivision to be approved with minimum road improvement requirements, and burden future subdivisions with the entire cost of improving the "ROADWAY EASEMENT" to the benefit of existing lots. Therefore, this variance includes a condition set forth at the end of this letter for mandatory participation in the costs to improve the "ROADWAY EASEMENT" at a time when the County determines it necessary.

- F. The existing paved driveway with the "ROADWAY EASEMENT", in this application, is deemed adequate and can be used by police and emergency vehicles.

- G. The applicant understands and agrees that the paved driveway and road shoulders within the "ROADWAY EASEMENT" will require periodic maintenance and that "maintenance" will be privately addressed by the easement's uses and lots dependent on the "ROADWAY EASEMENT". As such, the applicant understands that the owners of lots dependent on the "ROADWAY EASEMENT" will be responsible for access and share in the costs to maintain access and share in the costs to maintain access and the existing paved driveway within the "ROADWAY EASEMENT". Said maintenance to the existing segment within the "ROADWAY EASEMENT" shall include, without limitation, tree pruning, grass cutting, backfilling of any all rutted areas ("potholes"), and periodic grading and shoulder maintenance to ensure that existing drainage patterns are not changed or magnified.

ALTERNATIVES

The decision alternatives include the following:

1. Improve the easement and install the paved roadway within the easement in accordance with the DPW memorandum.

2. No roadway improvements. This is the selected alternative given the special and unusual circumstances cited above and the fact that only one proposed lot, PARCEL B, will require access from the "ROADWAY EASEMENT", and, that a 11'-wide paved driveway exists from the nearest public road (Kahana Drive) to serve the additional lot. It appears that the slope of the existing 11'-wide paved driveway access to the proposed lot can be negotiated and accessed by emergency vehicular access.

3. Reasonable roadway improvements to meet minimal lot access and emergency access requirements. No further paved improvements would be required since the existing public road fronting the property and 11'-feet wide driveway within the "ROADWAY EASEMENT" appear to be adequate for the proposed 2-lot subdivision. The conditions of approval set forth at the end of this letter address shared maintenance requirements among all owners and users of the "ROADWAY EASEMENT".

Ms. Carol A. Salisbury
Page 6
March 11, 2002

INTENT AND PURPOSE-ROAD VARIANCE

The intent and purpose of access requirements to a proposed subdivision is to ensure legal and physical access to the proposed lots that is clearly defined and accessible from a public road by domestic and farm vehicles, police, fire, and other service vehicles under various weather conditions without constant maintenance. The conditions of variance approval address these concerns.

The surrounding areas are agricultural-pastoral in character. The existing network of roadways from the Belt Hawaii have not changed since the 1920s, are typical of this neighborhood and are appropriate for the current zoning and low intensity agricultural use(s). By granting this variance, there should be no adverse impact to adjoining properties of other users of the "ROADWAY EASEMENT".

Therefore, in consideration of past subdivision approvals, existing and proposed property access, and the existence of paved driveway improvements constructed within the affected segment of the "ROADWAY EASEMENT" the Planning Director has concluded that the requirements to install 20-foot paving improvements and construction plans are not necessary.

DETERMINATION-VARIANCE CONDITIONS

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 variance 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 variance requested to allow a proposed 2-lot subdivision, without providing road improvements in accordance with all DPW comments stated in their May 18, 2001 memorandum, is further subject to the following conditions:

1. The subdivider, owner, their assigns or successors shall be responsible for complying with all stated conditions of this variance approval. The subdivider, owner, their assigns or successors understands that "PARCEL B" arising out of SUB 78-214 will use and maintain the existing "ROADWAY EASEMENT" and existing paved driveway without any expectation of governmental assistance to maintain the "ROADWAY EASEMENT" or any other access to the property permitted by the proposed 2-lot subdivision.

Ms. Carol A. Salisbury

Page 7

March 11, 2002

2. The applicant, owner, 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 78-214. This agreement shall contain the following deed language, being covenants, conditions, and restrictions, which affect the entire property and/or proposed lots arising from the approval of pending 2-lot 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 or owner:
 - a. The applicant and/or lot owner(s) shall indemnify and defend the State of Hawaii or County of Hawaii from any and all liability arising out of vehicular access to and from the subject property using the "ROADWAY EASEMENT".
 - b. Upon written demand of the County of Hawaii, the applicant and/or owners, their assigns, or successor shall agree to participate and pay their fair share percentage as set forth in an agreement among owners with rights to the "ROADWAY EASEMENT" or through an improvement district adopted for the purpose of roadway improvement to Kahana Road or the "ROADWAY EASEMENT" serving the proposed lot(s) arising out of SUB 78-214. Should the improvement district require acquisition of rights-of-way within the lots arising out of SUB 78-214, such rights-of-way shall be dedicated to the County without cost and the value of the dedication credited to the fair share contribution of the lot owner. Should the Council adopt a Unified Impact Fees Ordinance setting forth criteria for the imposition of exactions or the assessment of impact fees, conditions included herein shall be credited towards the requirements of the Unified Impact Fees Ordinance.
 - c. No ohana dwelling or "farm dwellings" or second farm dwellings shall be permitted on any lots created by SUB 78-214 for the reason that this variance is granted based on minimal increase in the number of users.
 - d. The owners understand that access and driveway access to the proposed 2-lots created by SUB 78-214 have been approved with this roadway variance, and that they will use and maintain the permitted access to their property on their own without any expectation of governmental assistance.

Ms. Carol A. Salisbury
Page 8
March 11, 2002

- e. The owners agree to participate in any road maintenance agreement agreed to among the majority of easement holders for the applicable access easement(s) serving their lot.

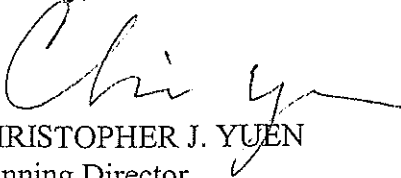
Said maintenance shall include, without limitation, grass cutting (mowing), timely repair and/or backfilling of any and all rutted areas and "potholes", and periodic grading and regrassing of existing roadway shoulders within the "ROADWAY EASEMENT" to ensure that existing drainage patterns are maintained and that soil runoff within the "ROADWAY EASEMENT" are not changed.

3. 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 concomitantly. 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 of approved subdivided lots.
4. The owner, their assigns or successor shall pay any outstanding real property taxes due and comply with all other applicable State and County rules and regulations pertaining to subdivisions, water variance conditions, and special permit conditions.

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,



CHRISTOPHER J. YUEN
Planning Director

Ms. Carol A. Salisbury
Page 9
March 11, 2002

xc: DPW-Engineering Branch (Hilo)
SUB 78-214