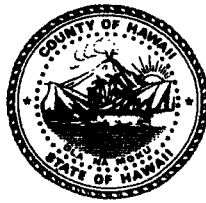


William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
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County of Hawai'i
PLANNING DEPARTMENT

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Hilo, Hawai'i 96720
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Fax (808) 961-8742

CERTIFIED MAIL
7009 3410 0001 3138 0297

January 18, 2012

Mr. Roy A. Vitousek III
Cades - Schutte
75-170 Hualalai Road, Suite B-303
Kailua-Kona, HI 96740

Dear Mr. Vitousek:

SUBJECT: Application: VARIANCE APPLICATION - REVISED
(VAR 09-036 & 09-037)
Agent: ROY A. VITOUSEK III/CADES - SCHUTTE
Applicant: ANDREW L. TAMASESE
Owner: ANDREW L. TAMASESE AND
ISAAC MIKIO TANAKA, TRUSTEE
Request: Variance from Chapter 23, Subdivisions, Article 6, Division 2,
Improvements Required
TMK: 7-6-004:022 (SUB 07-000618)

After reviewing your variance applications, the prior decision dated October 3, 2011 approving VAR 09-036 for relief from water requirements and denying VAR 09-037 for relief from road requirements, recent discussion with the applicant's representative and analysis by staff, the department has reconsidered the matter. The Planning Director hereby certifies the **approval of VAR 09-036 and VAR 09-37 with conditions.**

The variances are from Hawai'i County Code, Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply, Section 23-86, Requirements for dedicable streets, and Section 23-95, Right-of-way improvement.

This revised variance decision maintains the prior analysis and decision regarding the approval of private rainwater catchment, however reconsideration of the road variance is deemed necessary. The Planning Director has rendered the above-referenced decisions for variance from the County Subdivision Code requirements based on the following findings:

BACKGROUND

1. **Location.** The subject property measures approximately 2.034 acres in size and is identified as Lot 45-A, situated in the Mauka Section of Holualoa 1st and 2nd Hui Partition, North Kona, Hawaii. The property is identified as TMK 7-6-004:022 with street address of 78-6824 Makenawai Street in Kailua-Kona.
2. **Zoning.** The subject property is zoned Agriculture 1-acre minimum lot size (A-1a) by the County and designated Agriculture ("A") by the State Land Use Commission (LUC).
3. **Subdivision Application.** On September 7, 2007 an application for a two-lot subdivision of the property (SUB 07-000618 in reference to a preliminary plat map or PPM dated June 27, 2007) was acknowledged by the department but action deferred, requesting documentation regarding the right of access over and across the existing roadways measuring 12 feet in right-of-way (ROW) width providing access to/from Mamalahoa Highway. Within said acknowledgement letter, the applicant was informed of the anticipated minimum roadway requirements of 20-foot agricultural-standard pavement within 50-foot wide ROWs.

On February 13, 2008, the department released to the applicant a second letter deferring action on the subdivision following receipt of information from the Department of Water Supply (DWS). The DWS, in a letter dated September 24, 2007, identified that its existing water system could not support the proposed subdivision at that time without extensive improvements and additions. Furthermore, funding was not available and no time schedule was set for the referenced improvements.

The above-referenced letter of February 13th also included a copy of comments provided by the Department of Public Works (DPW), dated October 15, 2007 and requesting road improvements to include construction of 20-foot wide dedicable pavement with paved shoulders and swales within a minimum 50-foot ROW.

4. **Variance Applications.** The owner submitted concurrent variance applications for relief from water requirements (VAR 09-036) and road improvements (VAR 09-037) on August 12, 2009. Due to varied reasons, the applications were not acknowledged for processing until April 4, 2011. The department initially intended to render a decision by June 6, 2011, however additional time was deemed necessary to conduct the background research and analysis.

The subject property is currently improved with a residence, which is designated on proposed Lot 45-A-1. Per a letter dated May 9, 2011 from DWS, an existing water service (Account No. 880-03521) has been designated for said lot. The **water variance**

request would be for approval to use an individual rainwater catchment system for the second lot (Lot 45-A-2) created through the subdivision process.

The **road variance request** would be to allow the existing road condition "as-is" (paved and unpaved road segments exist) within the 12-foot wide ROWs versus certain improvements identified by the Department of Public Works (DPW) in their letter dated October 15, 2007. The comments of DPW reflect general road standards and include construction of 20-foot wide dedicable pavement with paved shoulders and swales within a minimum 50-foot wide ROW.

On October 3, 2011, the department rendered a decision to approve the water variance request, however the road variance request was denied. Such denial was due to concern that emergency vehicles currently cannot reach properties should an incident occur, given that the majority of the roads in the immediate vicinity measured 12-feet in ROW width and with improvements measuring less than such width. Furthermore the roads, intersecting at right angles and bound by rock walls at their outer extents, restricted visibility at corners as well as vehicular movement for passing vehicles. Staff's view during the prior analysis was that, by allowing additional development or subdivisions without remedying the substandard access, the situation would exacerbate public safety.

On November 1, 2011, the County of Hawaii Board of Appeals (BOA) received an appeal petition from the office of Cades Schutte LLP on behalf of the applicants, concerning the denial of VAR 09-37 (road variance). The matter was initially scheduled for consideration by the BOA at its meeting of December 9, 2011 and then subsequently rescheduled for its meeting of February 10, 2012.

5. **Agency Comments and Requirements.**

Water VAR

- a. A State Department of Health (DOH) memo, dated April 5, 2011, identifies concern with private rain catchment systems and recommends the subdivision lots be connected to an existing public water system. (Refer to memo in VAR file.)
- b. A Department of Water Supply (DWS) letter, dated May 9, 2011, identifies the presence of an existing service to the subject parcel (Account No. 880-03521) and that they do not oppose the use of rainwater catchment since it will not increase the burden to the public system. (Refer to letter in VAR file.)

- c. A County of Hawaii Fire Department letter, dated April 20, 2011, identifies that if a catchment system is used for fire protection that the connection and tanks be located in an area accessible by fire apparatus. (Refer to letter in VAR file.)

Road VAR

- a. The State Department of Health (DOH) memo, dated April 5, 2011, identifies "no environmental health concerns with regulatory implications." (Refer to memo in VAR file.)
- b. A Department of Water Supply (DWS) letter, dated May 9, 2011, identified no comments to be offered as the road variance does not impact the existing water system. (Refer to letter in VAR file.)
- c. A Department of Public Works (DPW) memo, dated April 8, 2011, deferred to the authority of the Planning Department in deviations from the road standards specified in their earlier memorandum dated October 15, 2007. (Refer to memo in VAR file.)
- d. A County of Hawaii Fire Department letter, dated April 20, 2011, identified no comments to be offered at that time. (Refer to letter in VAR file.)

In discussion between the Fire Department, Department of Water Supply, Department of Public Works, and the Planning Department during preparation of the October 3rd decision, staff representatives expressed general lack of support for new developments/subdivisions (not specifically SUB 07-000618) when infrastructure was deemed substandard.

6. **Public Notice.** The applicant submitted a copy of a public notice, list of surrounding property owner(s), and other submittals. Pursuant to a signed affidavit dated April 18, 2011, the applicant posted the necessary signage notification as well as mailed notice to surrounding property owners within 300 feet of the site. Notice of the variance applications was published in the Hawai'i Tribune Herald and West Hawai'i Today on April 8, 2011.
7. **Comments from Surrounding Property Owners or Public.**
 - a. A letter of opposition from Darrelyn M. Gravett, dated April 27, 2011, and additional documentation was submitted for consideration. Said letter raises concerns with such items as the 12-foot-wide ROWs, the actual road improvements measuring narrower than said width, and navigation and visibility at corners being restricted by existing dry stack rock walls. (Refer to letter in VAR file).

ALTERNATIVES/SPECIAL AND UNUSUAL CIRCUMSTANCES

Water Supply:

The first alternative would require the applicant to extend and/or improve the nearest DWS 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 cost to construct additional water supply improvements in accordance with the DWS standards, or provide an alternative private water system meeting DWS standards for the pending 2-lot subdivision, would be putting excessive demands upon the applicant when a more reasonable alternative could be permitted (i.e. individual private rainwater catchment systems).

Lot Access/Roadways:

The subdivider has been requested to construct access and roadways pursuant to an earlier DPW memorandum dated October 15, 2007, or roadway requirements pursuant to Chapter 23, Subdivisions. Said memorandum identifies the access to the proposed subdivision from North Kona Belt Road as substandard and specifies improvements including, but not limited to, construction of minimum 20-foot wide dedicable pavement with paved shoulders and swales within minimum 50-foot wide ROWs.

The subdivider has proposed to retain the existing road improvements "as is". Upon review of the application material, county records and site inspections by county staff, the roads providing access to subject property, as well as a significant number of surrounding properties, are indeed substandard as previously identified by the DPW. Road ROWs measure 12 feet in width, the improvements within said ROWs measure less than the 12 feet, and vehicular movement and visibility are hampered by right-angled road intersections as well as the presence of rock walls at the outer limits of the ROWs.

The difficulty encountered in this specific situation is that the requirement for *one* property owner to widen and improve a significant number of linear feet of private road (much of which is *not* along the subject property and *not* specifically under the ownership of the applicant) may be considered impractical and an undue hardship. Furthermore, even should the County, applicant and area owners desire to have the road ROWs widened and improved, the resultant need to relocate or remove the existing rock walls raises concern relative to historical preservation.

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.

Section 23-84 of the Subdivision Code requires that all new subdivisions have a water system meeting with the minimum requirements of the Department of Water Supply. The State Department of Health has no specific rules or regulations relating to the utilization, construction or inspection of private roof or rain catchment water systems for potable or emergency uses.

The alternative to the above would be the approval of a "water variance," to allow and utilize privately-owned individual rain water catchment systems for the proposed two-lot subdivision. This alternative meets the intent and purpose of the Subdivision Code and is allowed pursuant to Planning Department Rule 22-Water Variance, effective February 25, 2006. Generally, Rule 22 is both a rule and statement of criteria to be used so that consistent decisions can be made on water variance requests. Section 23-84 of the Subdivision Code requires a water system. Rule 22 limits subdivisions requesting a variance from water supply to six (6) lots and requires that a proposed subdivision requesting a variance to allow individual rainwater catchment systems for potable and emergency needs must receive a minimum 60 inches of annual rainfall for each lot served by catchment. Rule 22, states, in part:

"22-4 Minimum rainfall.

Except as provided in Rule 22-6, all lots to be served by catchment shall have an average annual rainfall of not less than 60". The annual rainfall can be proven by rainfall records at comparable rain gauges, or by the USGS rainfall map."

The analysis of existing rainfall within the subject property, provided by the applicant, indicates that there is adequate rainfall to support individual private rainwater catchment systems for potable and emergency uses for the proposed subdivision. The GIS rainfall data maintained by Planning Department indicates the subject property is within an elevation that received between 40 and 60 inches of annual rainfall, but immediately borders an elevation that identifies approximately 60 to 80 inches of annual rainfall. In review of the above, the proposed subdivision would meet Rule No. 22-Water Variance.

Roadway 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.

As identified under the "Alternatives/Special and Unusual Circumstances" section of this variance analysis, county staff has conducted site inspections of the property and roads servicing the vicinity. Roads have been measured at 12-foot wide ROW widths, with improvements within said ROWs measuring less than the 12 feet and generally allow only one-way vehicular movement at a time. Vehicular movement and visibility are hampered by right-angled road intersections and the presence of rock walls and vegetation at the outer limits of the ROWs.

As identified within the October 3rd staff analysis and decision, during prior inspection by county staff, departmental representatives personally encountered difficulty in maneuvering a standard size vehicle; needing to back out around blind corners to allow other traffic movement. Concern was raised that emergency vehicles currently cannot reach properties should an incident occur. Allowing additional development or subdivisions without remedying substandard access was viewed as exacerbating public safety problems.

Following receipt of the October 3rd decision, the applicant's representative submitted to the BOA a petition to appeal the decision of the Director to deny the road variance request. Additionally, during the interim prior to the case being heard by the BOA, the applicant's representative has requested the Director to reconsider the matter. The property and others in this vicinity are considered appropriate for development; substantiated by the presence of existing homes, access roads, utility lines, and the like. In this situation, the subject subdivision request would also be in compliance with its Agricultural A-1a zoning relative to lot size and configuration. The unique circumstance relative to this property concerns the presence of existing substandard private roads and the improvements requirement, for a single individual to upgrade access from the main public road to the property's frontage, which would be considered an inequitable hardship.

Consequently, the department believes that certain safeguards could be put in place to remedy the road deficiency. Specifically, a deed document could be recorded against the property to disclose to future owners that the private roadways in the immediate vicinity are substandard to a degree that there should not be an expectation that access to/from the property will be easily navigable, let alone accessible by emergency response vehicle. Furthermore, the subject owner and abutting owners are encouraged to coordinate on the creation of (or improvement to) a road maintenance agreement/association in order to address necessary upgrades to the private roads.

REVIEW CRITERIA

Pursuant to Hawaii County Code Section 23-15. *Grounds for variances*, no variance will be granted unless it is found that:

- (a) There are special or unusual circumstances applying to the subject real property which exist either to a degree which deprives the owner or 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 that property; and
- (b) There are no other reasonable alternatives that would resolve the difficulty; and
- (c) The variance will be consistent with the general purpose of the district, the intent and purpose of this chapter, and the County general plan and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or to adjoining properties.

After reviewing the variance applications, County records, and other documentation, the Planning Director finds that granting the **VAR 09-036** for relief from water requirements is permissible as the request complies with Planning Department Rule 22. Furthermore, the Director has reconsidered the prior decision regarding **VAR 09-037** for relief from road requirements and finds that such request can be granted along with conditions to mitigate concerns on public safety.

VARIANCE DECISION

VAR 09-036 (concerning relief from water system requirements) and **VAR 09-037** (concerning relief from road requirement) to allow the applicant's proposed two-lot subdivision are hereby **approved with conditions**.

General Conditions:

1. The applicant, subdivider, owners, their assigns, or successors shall be responsible for complying with all stated conditions of approval. The term "applicant" in the following conditions is further understood to collectively mean the applicant, subdivider, owners, their assigns, or successors.
2. The applicant acknowledges that the parcel was created by a variance from the normal subdivision requirements of Hawai'i County, and that there are no special or unusual circumstances applying to the property, which deprive the owner of substantial property rights, or to a degree which obviously interferes with the best use or manner of development of the property, and hence, no grounds exist, or will exist, for a variance from the subdivision code to permit further subdivision of the property, and that changes in the owner's personal or financial situation after acquiring the property also will not constitute grounds for a variance from the subdivision code to permit further subdivision of the property.

3. No condominium property regime (CPR) shall be permitted on any lots created by SUB 07-000618.
4. No Planning Department or Building Division permits shall be issued to allow construction of an "ohana" dwelling on the subject property upon lots created by the proposed subdivision, subject to provisions of the Zoning Code or State Law, which may change from time to time.
5. The subdivision application's final plat map for proposed two-lot subdivision shall meet all the requirements of the Hawai'i County Zoning Code and the Subdivision Code not covered by this variance. No further subdivision of lots created by SUB 07-000618 will be permitted unless county water system and road requirements, and other requirements of Chapter 23, Subdivisions, are met.
6. The applicant shall pay any outstanding real property taxes and comply with all other applicable State statutes and County ordinances pertaining to building improvements and land use.

Water Variance Conditions:

1. The applicant agrees and accepts the fact that the County will not, at this time, bear the responsibility to supply public water to the proposed or affected additional lot created by SUB 07-000618 not serviced by a County water system.
2. The applicant shall file a written agreement or approved written document with the Planning Department prior to receipt of final subdivision approval of SUB 07-000618. This written agreement, which shall contain the following deed language, being covenants, conditions, and restrictions affecting the proposed 2-lot subdivision, shall be duly recorded with the Bureau of Conveyances of the State of Hawai'i at the cost and expense of the owners:
 - a. The applicant agrees and accepts the fact that a County dedicable public water system is not now able to service the proposed subdivision SUB 07-000618. 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.
 - b. Any dwelling constructed on a lot not serviced by a County water system shall be provided with and maintain a private potable rain catchment system that includes a minimum 6000-gallon water storage capacity for domestic

consumption or potable uses. This private water 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.

- c. Each permitted dwelling shall be provided with and maintain a private water supply system that includes an additional minimum 3,000 gallon water storage capacity for firefighting and emergency purposes. The location and capacity of the emergency water supply system, including the necessary compatible connector system, shall meet with the approval of the Hawai'i County Fire Department and be located in an area accessible to fire apparatus. The Hawai'i County Fire Department also advises, as a precautionary measure for other uninhabited structures, that consideration be given to the provision of a similar water storage system for firefighting and emergency purposes.
- d. In the event that the County notifies the owner(s) of any lot created by SUB 07-000618 that the County Water System has been upgraded, or an improvement district initiated to enable service to those lots, they shall participate in such improvement district or shall pay their pro-rata share of the upgrade and installation of laterals, as determined by the Department of Water Supply.

Road Variance Conditions:

1. The applicant understands that the 2-lots arising out of SUB 07-000618 will use and maintain the privately owned roads, necessary emergency access and/or utility easements on their own without any expectation of governmental assistance to maintain the non-dedicable roadway improvements within easements or rights-of-way identified on the subdivisions preliminary plat map and/or any necessary emergency access and/or utility easement(s) within the proposed subdivision.
2. The applicant shall file a written agreement or approved written document with the Planning Department prior to final subdivision approval of SUB 07-000618. The proposed subdivision shall form or take part in a Homeowner or Road Association or equivalent entity consisting of all lot owners with the power to levy mandatory road assessments, responsible to maintain, repair, and reconstruct all privately owned roads, including shoulders, swales, and associated drainage features. These requirements shall be enforced by appropriate deed language, being covenants, conditions, and restrictions, which affect the entire property and/or proposed lots arising from the approval of the pending subdivision application and be duly recorded

at the Bureau of Conveyances of the State of Hawaii at the cost and expense of the applicant that also require that:

- a. The applicant 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 utilizing the existing private roadways and/or utility and access easements.
 - b. Upon written demand of the County of Hawaii, the applicant shall agree to participate and pay their fair share percentage of any improvement district adopted for the purpose of roadway improvements serving the proposed lot(s) arising out of SUB 07-000618. Should the improvement district require acquisition of any privately owned rights-of-way fronting the lots arising out of SUB 07-000618, 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 respective lot owner(s). 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. The future lot owner(s) agree to participate in any road maintenance agreement or/and pay their fair share to maintain the roadway between the Mamalahoa Highway (North Kona Belt Road) and 2-lots created by SUB 07-000618.
 - d. The applicant shall disclose to future lot purchasers that the private roadways in the immediate vicinity are substandard to a degree that there should not be an expectation that access to/from the property will be easily navigable, let alone accessible by emergency response vehicles.
3. The applicant shall be required to provide a road widening setback, along all frontages of the subject property abutting the adjacent private roadways, to provide for ease of future road widening. The width of said setback(s) shall be determined during the review of the association SUB preliminary plat map and included as a condition of approval.

Water and Road Variance Condition:

1. In the event that there are any amendments or changes to the subdivision after the above-identified agreement(s) 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 or approved subdivided lots.

Should any of the foregoing stated conditions not be complied with, the Planning Director may proceed to declare subject Variance – VAR 09-036/09-037 null and void.

Appeals:

In accordance with Ordinance No. 99-111, you may appeal the director's decision as follows:

- (a) Any person aggrieved by the decision of the director in the administration or application of this chapter, may, within thirty days after the date of the director's written decision, appeal the decision to the board of appeals.
- (b) A person is aggrieved by a decision of the director if:
 - (1) The person has an interest in the subject matter of the decision that is so directly and immediately affected, that the person's interest is clearly distinguishable from that of the general public: and
 - (2) The person is or will be adversely affected by the decision.
- (c) An appeal shall be in writing, in the form prescribed by the board of appeals and shall specify the person's interest in the subject matter of the appeal and the grounds of the appeal. A filing fee of \$250 shall accompany any such appeal. The person appealing a decision of the director shall provide a copy of the appeal to the director and to the owners of the affected property and shall provide the board of appeals with the proof of service.
- (d) The appellant, the owners of the affected property, and the director shall be parties to an appeal. Other persons may be admitted as parties to an appeal. Other persons may be admitted as parties to an appeal, as permitted by the board of appeals.

The board of appeals may affirm the decision of the director, or it may reverse or modify the decision, or it may remand the decision with appropriate instructions if based upon the preponderance of evidence the board finds that:

- (1) The director erred in its decision; or

Mr. Roy A. Vitousek III
Cades - Schutte
Page 13
January 18, 2012

- (2) The decision violated this chapter or other applicable law; or
- (3) The decision was arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

In view of the above and for your reference, we have enclosed the GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR form.

Sincerely,



BJ LEITHEAD TODD
Planning Director

GES:mad

P:\Admin Permits Division\Variance\2009\VARs 09-036 & 09-037 Tamasese & Tanaka\Revised Decision.doc

Enclosure: BOA Application

xc: Darrelyn Gravett
Dept. Public Works -- Engineering Division
Dept. Water Supply
State Dept. of Health
HI County Fire Dept.
SUB 07-000618
TMK 7-6-004:022

COUNTY OF HAWAII
BOARD OF APPEALS

GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR

(Type or legibly print the requested information)

APPELLANT: _____

APPELLANT'S SIGNATURE: _____ DATE: _____

ADDRESS: _____

TELEPHONE: (Bus.) _____ (Home) _____

APPELLANT'S INTEREST IN THE PROPERTY: _____

APPELLANT'S NATURE OF APPEAL AND REQUEST: _____

LAND OWNER: _____

TAX MAP KEY: (land in question) _____ AREA OF PROPERTY: _____

STATE LAND USE DESIGNATION: _____ COUNTY ZONING: _____

STREET ADDRESS OF PROPERTY: _____

APPELLANT'S REPRESENTATIVE: _____

REPRESENTATIVE'S SIGNATURE: _____ DATE: _____

REPRESENTATIVE'S ADDRESS: _____

TITLE: _____ TELEPHONE: (Bus.) _____

THIS PETITION MUST BE ACCOMPANIED BY A FILING FEE OF TWO HUNDRED FIFTY DOLLARS (\$250) PAYABLE TO THE COUNTY DIRECTOR OF FINANCE AND:

1. The Original and ten (10) copies of this completed petition with the following:
 - a. A description of the property involved in the appeal in sufficient detail for the public to precisely locate the property.
 - b. A statement explaining the nature of the appeal and the relief requested.
 - c. A statement explaining:
 - (i) How the decision appealed from violates the law; or
 - (ii) How the decision appealed from is clearly erroneous; or
 - (iii) How the decision appealed from was arbitrary or capricious, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.
 - d. A clear and concise statement of any other relevant facts.
2. Proof of Service by the Appellant on the Planning Director for an appeal from the Planning Director's decision relating to the Zoning Code.
3. A list of the names, address and tax map keys of all owners of property within boundaries established by Section 8-11(d) of the Board of Appeals Rules of Practice and Procedure.

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature X <i>Terie Tanaka</i> <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>Terie Tanaka</i> Date of Delivery <i>1/23/12</i></p>
<p>1. Article Addressed to:</p> <p>Mr. Roy A. Vitousek III Cades-Schutte 75-170 Hualalai Road, Suite B-303 Kailua-Kona, HI 96740</p> <p><i>VAR 09-06, 09-037 1-6-4:22</i></p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p> <p>3. Service Type <input type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input checked="" type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> P.C.O.D.</p> <p>4. Restricted Delivery? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p>2. Article # (Transit) 7009 3410 0001 3138 0297</p>	<p>29</p>
<p>PS Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540</p>	

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Se Mr. Roy A. Vitousek III
Str Cades-Schutte
Cit 75-170 Hualalai Road, Suite B-303
Kailua-Kona, HI 96740

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