

PLANNING COMMISSION

Planning Department  
County of Hawaii  
Hilo, Hawaii

APPLICATION FOR VARIANCE )  
by )  
SIM WENNER )  
from )  
MINIMUM ROADWAY REQUIREMENTS )  
in )  
Moeauoa, North Kona, Hawaii )  
\_\_\_\_\_ )

VARIANCE NO. 530

VARIANCE PERMIT

The County of Hawaii Planning Commission at a duly held public hearing on April 13, 1978, considered the application of SIM WENNER for a variance from Article 2, Section 4.03-B of Chapter 9 (Subdivision Control Code), of the Hawaii County Code, as amended; more specifically, to allow a roadway with a 30-foot right-of-way and a 16-foot pavement in lieu of the minimum requirements of 50 feet and 20 feet, respectively, for a proposed 6-lot subdivision in Moeauoa, North Kona, Hawaii, Tax Map Key 7-5-01:13.

The Commission has found:

That there are unusual circumstances applying to the right-of-way which do not generally apply to surrounding properties or improvements. The subject property is located approximately 1,500 feet mauka of the Mamalahoa Highway. Access to it from the Mamalahoa is via an existing 30-foot wide easement over another individual's property. To require the petitioner to acquire a 20-foot width in order to create a 50-foot right-of-way and without the condemnation powers of government creates an unusual situation. Further, the inability to acquire the additional 20-foot width from the adjacent properties in order to establish a 50-foot right-of-way deprives the petitioner of substantial property rights which would otherwise be available. The zoning of the subject property allows the petitioner to create one 1-acre lot and five 5-acre lots. Although zoning in and of itself does not guarantee that lands can be automatically subdivided, in this particular case it is determined that the circumstances of the access easement are unusual and to deny the proposed subdivision because of these unusual circumstances would cause undue hardship to the petitioner.

In addition, the proposed roadway is to serve six lots. Private roadways within the Agricultural one-acre (A-1a) zone may be created to serve up to six lots with a right-of-way width of twenty (20) feet and a pavement width of sixteen

(16) feet. Although five of the proposed lots are within the Agricultural five-acre (A-5a) zone and will have areas of at least five acres, the impact of the proposed subdivision with respect to traffic is expected to be similar to six lots in the A-1a zone. Thus it is determined that the proposed roadway is adequate for the proposed subdivision and would be consistent with the Subdivision Control Code.

Approval of the subject request will not be materially detrimental to the public welfare or safety nor will it be contrary to the intent and purpose of the variance provisions.

Therefore, the Commission hereby grants to the applicant a variance to allow a roadway with a 30-foot right-of-way and a 16-foot pavement in lieu of the minimum requirements of 50 feet and 20 feet, respectively, for a proposed 6-lot subdivision, pursuant to the authority vested in it by Article 1, Section 5, of the Subdivision Control Code, subject to the following conditions:

1. That the petitioner shall secure final subdivision approval within one (1) year from the effective date of approval of the Variance Permit.
2. That the roadway improvements shall meet with the approval of the Chief Engineer of the Department of Public Works.
3. That those portions of the roadway having slopes of 8 percent or greater shall be built to pavement requirements.
4. That all other applicable rules, regulations and requirements shall be complied with.

Should any of the foregoing conditions not be met, the Variance Permit may be deemed null and void by the Planning Commission.

The effective date of this permit shall be from April 13, 1978.

Dated at Hilo, Hawaii, this 27<sup>th</sup> day of April, 1978.



WILLIAM F. MIELCKE, CHAIRMAN  
Planning Commission

