

CERTIFIED MAIL

October 4, 1979

Wes Thomas & Associates, Inc.  
75-5722 Kalawa Street  
Kailua-Kona, HI 96740

Gentlemen:

Variance Application  
Petitioner: Robert Cole, et al  
Tax Map Key 7-5-01:05

The Planning Commission at its continued preliminary hearing on September 27, 1979, considered your application for a variance to allow the provision of a thirty (30)-foot wide right-of-way with a sixteen (16)-foot wide pavement in lieu of the minimum requirements of fifty (50) and twenty (20) feet, respectively, for a proposed five (5) lot subdivision. Also requested is the waiving of the street lights installation requirement for the subdivision. The property involved is located approximately two (2) miles south of the Honokohau Junction, and approximately 1,600 feet mauka of the Old Mamalahoa Highway, Keopu 2nd, North Kona, Hawaii.

This is to inform you that the Commission voted to deny your request based on the following findings:

In the past, we have recommended approval of similar variances from the roadway requirements; finding that unusual conditions exist with respect to the difficulty and/ or inability of the petitioner to acquire the necessary twenty (20) foot additional right-of-way from various owners without the governmental powers of "eminent domain".

However, while similar special or unusual circumstances may apply in this case, it is determined that the granting of this request and subsequent development of the subject area will result in a situation which may be materially detrimental to the public welfare and therefore be contrary to the variance provisions of the Subdivision Code.

The existing thirty (30)-foot right-of-way serving the subject area is presently substandard with respect to the minimum width requirements of the Subdivision Code as well as with respect to the minimum sight distance requirement for roadways. The code requires that the non-passing distance visibility for minor streets be a minimum of 300 feet and cul-de-sacs be a minimum of 200 feet. The sight distance along portions of the existing right-of-way has been found to be less than sixty (60) feet. The hazard created by the short sighting distance is compounded even further by the relative steepness of the roadway which exceeds ten percent (10%) in slope in places.

In addition, there are two extremely tight curves along the lower portion of the right-of-way. These curves have an approximately thirty (30) foot radius in the center of the right-of-way. The minimum turning radius for the average automobile is approximately twenty (20) feet, consequently, automobiles will have difficulty negotiating these turns, particularly where two (2) way traffic is involved.

These three conditions, the lack of visibility, the steepness of the roadway, and the tight curves result in the creation of an extremely hazardous situation for the drivers along this road.

It is recognized that the improvement of the right-of-way with the proposed sixteen (16) foot wide pavement will alleviate some of these hazard to some extent, especially considering the existing improvements which consists of two narrow strips of concrete along the makai half of the road and of gravel pavement above. However, this improvement in the roadway pavement will be off-set by the potential increase in the driving speed as well as by the increase in traffic which will result should the four (4) additional dwellings be constructed on the subject area.

Furthermore, the granting of this request will result in a situation whereby similar variances from the roadway standards may be requested for the other lots along this roadway. Should this occur, there would be the potential for the creation of a total of approximately thirty eight (38) lots which gain access from the roadway with the corresponding potential for the development of thirty eight (38) dwellings. This would further compound the traffic hazards along this roadway.

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Further, given the topography and the development potential of the area in question and the existing road alignment the provision of the required street lights is felt to be necessary for safety purposes. While appropriate signage can indicate the general curves in roadway, they cannot illuminate potential driving hazards, nor show the actual road alignment to the extent that street lights would.

Based on the above, it is determined that the granting of this request will be contrary to the General Plan Transportation Element Goal which calls for the provision of "a safe, efficient and comfortable (emphasis added) movement of people and goods between and within the various sections of the County."

As your request has been denied, you may appeal the decision of the Planning Commission if you feel that the action of the Planning Commission was based on an erroneous finding of a material fact, or that the Commission has acted in an arbitrary or capricious manner, or had manifestly abused its discretion.

Should you decide to appeal the decision of the Commission in the denial of your variance request, a petition setting forth the following shall be submitted to the Board of Appeals within thirty (30) days from the date of action and accompanied by a filing fee of ten dollars (\$10.00):

1. Name, mailing address and telephone number;
2. Identification of the property and interest therein;
3. The particular provision of the Zoning Ordinance or Subdivision Ordinance or regulation in question;
4. All pertinent facts;
5. The action of the Commission; and
6. Reasons for the appeal, including a statement as to why the appellant believes that the Commission's action was based on an erroneous finding of a material fact, or that the Commission has acted in an arbitrary or capricious manner, or had manifestly abused its discretion.

Inasmuch as no public hearing will be held on this matter, we will be returning your filing fee as soon as the refund is processed.

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We will be forwarding you a certified copy of the Order as soon as the document is prepared. Should you have any questions regarding the above, please feel free to contact the Planning Department at 961-8288.

Sincerely,



William F. Mielcke, Chairman  
Planning Commission

lgv

cc Mr. Robert Cole  
Chief Engineer, Public Works  
Kona Services Office

bcc Masa's division (Subd. 79-32)

OCT 8 1979

PLANNING COMMISSION OF THE PLANNING DEPARTMENT

COUNTY OF HAWAII

In the Matter of the Appeal    )  
                  of                    )  
          ROBERT COLE, ET AL        )  
                                      )  
Tax Map Key 7-5-01:05            )  
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Variance No. 593

FINDINGS OF FACT

CONCLUSIONS OF LAW

AND

DECISION AND ORDER

PLANNING COMMISSION OF THE PLANNING DEPARTMENT

COUNTY OF HAWAII

In the Matter of the Appeal     )  
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Variance No. 593

FINDINGS OF FACT

CONCLUSIONS OF LAW

AND

DECISION AND ORDER

The above-entitled matter was brought on preliminary hearings on August 15, 1979, in the Councilroom, County Building, South Hilo, Hawaii, and on September 27, 1979, in the second floor conference room, UH Agricultural Complex, South Hilo, Hawaii, at which time, representative Crystal Thomas, appeared before the Planning Commission.

The Planning Commission having heard the testimony and having examined the facts does hereby declare its Findings of Fact, Conclusions of Law, and Decision and Order.

FINDINGS OF FACT

1. An application for a variance to allow the provision of a thirty (30) foot wide right-of-way with a sixteen (16) foot wide pavement in lieu of the minimum requirement of fifty (50) feet and twenty (20) feet, respectively, for a proposed five (5) lot subdivision, and the waiving of the street light installation requirement for the subdivision was received on July 16, 1979.

2. The property involved is located approximately two (2) miles east of the Honokohau Junction and approximately 1,600 feet mauka of the Old Mamalahoa Highway, Keopu 2nd, North Kona, Tax Map Key 7-5-01:05.

3. More specifically, the petitioner proposed to subdivide the 9.696 acre subject area into a total of five (5) lots varying in size between one (1) and 2.3 acres in area.

4. Tentative approval for the subdivision request was granted on June 1, 1979. One of the conditions of the tentative approval was that "The entire length of the right-of-way from Mamalahoa Highway to the subdivision shall be enlarged to 50 feet in width and provided with a 20-foot wide pavement, street lights and traffic signs." In lieu of meeting the right-of-way and pavement width requirements and the provision of street lights, the petitioner requested the subject variance.

5. The subject area is situated within the State Land Use Agricultural District and is zoned by the County as Agricultural with a minimum lot size of one (1) acre (A-1a).

6. There is a single family dwelling presently situated on the subject area. Surrounding land uses include scattered single family dwellings, agricultural activities including cattle ranching, coffee and macadamia nut orchards and vacant lands.

7. Access to the subject area from the Mamalahoa Highway is from an existing thirty (30) foot wide private roadway. A total of eleven (11) lots presently front on this approximately 2,500 lineal foot roadway. These lots range in size from 0.656 acres to 11.403 acres in size and are zoned Agricultural - 1 acre (A-1a) by the County. In addition to the dwelling on the subject area, there is one other single family dwelling which gains

access from this roadway. Based on the minimum one acre lot size as well as the lot configuration, the maximum development potential of these 11 parcels along this roadway is approximately 38 lots.

8. The subject roadway is substandard with respect to the minimum roadway sight distance requirement of the Subdivision Code. The Code requires a minimum non-passing distance visibility of 300 feet to minor street and 200 feet for cul-de-sacs. The sight distance along a portion of this roadway have been estimated to be under sixty (60) feet. The roadway is also relatively steep, exceeding ten percent (10%) in slope in places. The roadway along the makai portions has two extremely tight turns with a radius of approximately 30 feet. In comparison, the minimum turning radius for the average car is 20 feet.

9. According to the U. S. Department of Agriculture, Soil Conservation Service Soil Survey Report, dated December 1973, the soil of the subject area consist of the Honuaulu extremely stony silty clay loam series. This series consist of well-drained silty clay loams that formed in volcanic ash, with stones covering approximately 3-15 percent of the surface. These soil are usually over 3' deep and are underlain by pahoehoe bedrock. Permeability is rapid, runoff is slow and the erosion hazard is slight. The area receives between 60-80 inches of rainfall annually.

10. The Department of Public Works reviewed the request and commented as follows:

"We recommend that this application be denied. Should it be approved, the emphasis should be placed that the variance is not from the County dedicable standards but



from the County non-dedicable standards. The variance would then be that more than 6 lots gain access from the private road."

11. The Department of Public Works further stated that, "This is in response to Mr. Robert Cole's letter. We feel that this application should still be denied because it far exceeds the maximum number of lots permissible for a private road.

Additionally, this roadway is particularly bad because of its alignment, steepness, drainage that comes down the road, and poor intersection with an abrupt drop to Mamalahoa Highway."

12. The Department of Water Supply had no objections to the request, commenting that, "a waiver from the minimum water requirement be granted by this Department. The subdivider must subsequently file a formal waiver agreement before final approval of the subdivision will be recommended."

13. None of the other cooperating agencies had any comments on or objections to the subject request.

14. In support of this request the petitioner submitted the following:

"Generally speaking the hui members are in favor of keeping the land available for viable agriculture and the rural lifestyle now enjoyed by the residents of the area.

"As you are aware the roadway leading to the property is currently 30-ft. wide and fronts some 11 different lots owned by various individuals. The road lot is also owned by various individuals.

"It would be virtually impossible for our clients to acquire all the necessary pieces of land adjoining the road

in order to comply with the requirement as stipulated in the tentative approval letter.

"We feel that the additional requirement of street lights is not in keeping with the rural and agricultural zoning and lifestyle of the area. Our clients would be willing to provide a 16-ft. wide pavement within the existing 30-ft. right-of-way, installing signs where necessary to insure traffic flow and safety.

"We do not feel that the granting of the variance will constitute a grant of personal or special privilege inconsistent with the limitations upon other properties under this identical A-1a district classification. We instead are convinced that all A-1a and larger parcels that are provably to be utilized for, and in furtherance of viable agricultural purposes in consonance with the County General Plan and the intentions of the State Department of Agriculture, should be afforded the opportunity to utilize roadway standards similar with those requested here.

"The County is currently studying the present subdivision roadway standards with an eye towards possibly revising them in situations such as this one. In the interim, other similar properties could apply for a variance if their situation were similar.

"We remain convinced that the granting of the variance will be consistent with the general purpose of the district and with the purpose of the subdivision and zoning codes, will not militate against the County General Plan and will instead be supportive of same, and will not materially be

detrimental to the public welfare, nor be injurious to improvements or property rights of those in the near vicinity."

15. The petitioner further stated, in part, the following:

"Thanks for your telephone report of the proceedings of the County Planning Committee. Although I haven't received a written report from that committee yet, I will respond now to the points that were raised in hopes of meeting their time table for a September 13 meeting on our request for a variance on the road requirements. I've also included some general comments regarding our understanding of the purposes of A-1 zoning (which could possibly be in error) and our intentions in putting forth our road variance request. I've included extra copies for the committee in hopes that they would find this information useful in their deliberations.

"I was, of course, disappointed that the committee did not approve our request at their first meeting and I'm somewhat puzzled by apparent contradictions between our understanding of the purposes of A-1 zoning and some of the points raised. Our intent was to provide a small but safe road that was adequate for the few land owners presently in that area and especially one that would be in harmony with the rural life style that exists there today. A larger road, engineered for higher speeds would almost certainly attract more traffic to the area and increase pressure for the type of suburban development that is already too common in our towns and cities. Our understanding of

the concept of agricultural zoning is that its purpose is to preserve areas where agricultural products can be raised either to supplement a family's food supply or their income directly through marketing of the products raised. While that may have been the idea behind such developments as Kona Palisades it simply didn't work. Once the broad streets are built, the sidewalks, curbing, and lights are in place, the large expensive homes are built, who has the guts or even the inclination to plow up half of his acre, spread on the cow manure and raise a garden. Not many I would guess from a drive through such developments as Kona Palisades. The rural life style that we envisage is a fragile commodity, for sure, but one whose appeal led us to forego the attractions of the mainland, suburban style development in preference for an agricultural type development that is less intrusive to the natural features of the land. That, in fact, is what we mistakenly thought we were acquiring, and how A-1 zoned land was represented to us, when we purchased our acreage. It was only after the sale was completed that we learned of the county's many zoning restrictions. Now some two years after the purchase, we are still trying to satisfy those requirements, and to realize our goal of each of the five members of our hui having their own small acreage.

"We hope that the committee in considering our request, will take into account along with our needs, the benefits to the community of maintaining some areas where an agricultural life style is encouraged. We also hope that they are aware of the tremendous costs involved in major road construction and the fact that individuals who can bear these costs are

probably not the same people who want to or need to plant a crop or raise livestock.

"As to the Committee comments:

"1. It was suggested that the road would exceed the maximum allowed 18% grade in places. We would of course meet any existing standards for grade. This could possibly be accomplished by cutting down the steep areas or if that cannot be done within the overall existing grade, a single switch-back into our property along with grading down the steep spots would certainly accomodate the maximum grade requirements. It was suggested that an engineering study should be initiated by us at this point. However, this would seem to be wasteful of time and effort until we know that all other considerations can be satisfied. The county agencies, even though approving the initiation of the subdivision request, would still maintain ultimate control because approval of the final subdivision rests with them.

"2. The proposed road is too narrow. The existing road which presently serves 9 property owners is a set of deeply rutted, nearly impassable tire tracks that is dangerous to travel and damaging to cars. We are proposing to pay for grading, and paving to a 16' width (at considerable cost) in return for increasing the potential usage of the road by only four additional property owners. This would seem to be a good trade off for both the County and the existing property owners.

"3. Mention was made that our proposed road would not accomodate possible future subdivision requests in that area. It would seem unjust to require that we be held responsible

for providing a road that would accomodate all possible future requests for development. Future requests should be considered within the conditions that exist at the time of those requests and should be paid for by the developer.

"4. It was suggested that the existing turns at the bottom of the road were too sharp. From our point of view, this feature is consistent with our wish for a quiet safe country road since it discourages high speed driving. The curves might possibly be a hazard at night, however, and we would be agreeable to providing lighting at the committee's direction."

16. At the preliminary hearings on August 15, 1979 and September 27, 1979 staff recommended that the request be denied based on the following considerations:

In the past, we have recommended approval of similar variances from the roadway requirements; finding that unusual conditions exist with respect to the difficulty and/or inability of the petitioner to acquire the necessary twenty (20) foot additional right-of-way from various owners without the governmental powers of "eminent domain."

However, while similar special or unusual circumstances may apply in this case, it is determined that the granting of this request and subsequent development of the subject area will result in a situation which may be materially detrimental to the public welfare and therefore be contrary to the variance provisions of the Subdivision Code.

The existing thirty (30) foot right-of-way serving the subject area is presently substandard with respect to the minimum width requirements of the Subdivision Code as well as

with respect to the minimum sight distance requirement for roadways. The Code requires that the non-passing distance visibility for minor streets be a minimum of 300 feet and cul-de-sacs be a minimum of 200 feet. The sight distance along portions of the existing right-of-way has been found to be less than sixty (60) feet. The hazard created by the short sighting distance is compounded even further by the relative steepness of the roadway which exceeds ten percent (10%) in slope in places.

In addition, there are two extremely tight curves along the lower portion of the right-of-way. These curves have an approximately thirty (30) foot radius in the center of the right-of-way. The minimum turning radius for the average automobile is approximately twenty (20) feet, consequently, automobiles will have difficulty negotiating these turns, particularly where two (2) way traffic is involved.

These three conditions, the lack of visibility, the steepness of the roadway, and the tight curves result in the creation of an extremely hazardous situation for the drivers along this road.

It is recognized that the improvement of the right-of-way with the proposed sixteen (16) foot wide pavement will alleviate some of these hazards to some extent, especially considering the existing improvements which consist of two narrow strips of concrete along the makai half of the road and of gravel pavement above. However, this improvement in the roadway pavement will be off-set by the potential increase in the driving speed as well as by the increase in traffic

which will result should the four (4) additional dwellings be constructed on the subject area.

Furthermore, the granting of this request will result in situation whereby similar variances from the roadway standards may be requested for the other lots along this roadway. Should this occur, there would be the potential for the creation of a total of approximately thirty eight (38) lots which gain access from the roadway with the corresponding potential for the development of thirty eight (38) dwellings. This would further compound the traffic hazards along this roadway.

Further, given the topography and the development potential of the area in question and the existing road alignment the provision of the required street lights is felt to be necessary for safety purposes. While appropriate signage can indicate the general curves in roadway, they cannot illuminate potential driving hazards, nor show the actual road alignment to the extent that street lights would.

Based on the above, it is determined that the granting of this request will be contrary to the General Plan Transportation Element Goal which calls for the provision of "a safe, efficient and comfortable (emphasis added) movement of people and goods between and within the various sections of the County."

17. After hearing the staff's background report and recommendation, the Planning Commission called for the petitioner or his authorized representative to providing testimony on the matter.



18. After hearing testimony on behalf of the petitioner by Crystal Thomas, the Planning Commission voted to deny the request for the reasons as presented by the staff. The vote carried with seven (7) ayes and one (1) no.

#### CONCLUSIONS OF LAW

1. Pursuant to Section 5-4.3 (g) of the Hawaii County Charter, the Planning Commission has jurisdiction to hear and determine appeals requesting variances from the Subdivision and Zoning Codes.

2. All procedural requirements as prescribed by law have been complied with.

3. Under Section 5-4.3 (g) of the Hawaii County Charter, a variance may not be granted unless there are special or unusual circumstances applying to the subject property which would result in unnecessary hardship if the ordinance were literally enforced, and the granting of the variance would not be contrary to the public interest.

4. Under Article 1, Section 5 of Chapter 9 (Subdivision Control Code) of the Hawaii County Code, as amended, a variance may not be granted unless the Planning Commission finds that there are special or unusual circumstances applying to the subject property which would result in unnecessary hardship if the ordinance were literally enforced, and the granting of the variance would not be contrary to the public interest.

#### DECISION AND ORDER

Based upon the testimony and exhibits introduced at the preliminary hearing and the foregoing Findings of Fact and

Conclusions of Law, it is the decision of the Planning Commission and it is hereby ordered that a variance from the requirements of Chapter 9 (Subdivision Control Code), Article 2, Section 4.03B, pertaining to roadway improvement requirements, for Tax Map Key 7-5-01:05 located at Keopu 2nd, North Kona, Hawaii, be and is hereby denied.

Dated at Hilo, Hawaii, this 26<sup>th</sup> day of August, 1980.

William J. Paris, Jr.  
WILLIAM J. PARIS, JR. CHAIRMAN  
PLANNING COMMISSION

APPROVED AS TO FORM  
AND LEGALITY:

Robert B. Hagahai  
DEPUTY CORPORATION COUNSEL  
COUNTY OF HAWAII

Date: 18 August 80