

PLANNING DEPARTMENT  
County of Hawaii  
Hilo, Hawaii

APPLICATION FOR ADMINISTRATIVE VARIANCE )  
by )  
KAAWALOA FARMS SUBDIVISION ) ADMINISTRATIVE  
from ) VARIANCE NO. 28  
Minimum Lot Size, Building Setback, )  
and Roadway Improvement Requirements )  
in )  
Kaawaloa, South Kona, Hawaii )  
\_\_\_\_\_ )

ADMINISTRATIVE VARIANCE PERMIT

An administrative public hearing was held by the Planning Director of the County of Hawaii Planning Department on August 19, 1980, on the application of KAAWALOA FARMS SUBDIVISION for a variance from the minimum lot size, building setback, and roadway improvement requirements, more specifically, to allow the creation of a subdivision which would result in substandard roadways, substandard lot sizes, and inadequate setbacks at Kaawaloa, South Kona, Hawaii, Tax Map Key 8-1-08:1.

After hearing the case, the Planning Director has found:

There is evidence to show that various tenants lived on the property since 1948 with the understanding that their leases were legal. The various properties were actively farmed, and in many instances, homes and other related structures were erected. Then, too, there were even attempts to sell the lots/leases. Those are activities generally associated with legal lots or leases. Such practice has been on-going for over 30 years and no definitive enforcement action on the part of the County took place during that period. As such, by its failure to rigidly enforce the subdivision ordinance, the County may have indirectly contributed to the "appearance" of legitimacy of these lots. This is felt to be an unusual and special circumstance.

Further, there will be no material impact to the surrounding area. There have been residential/agricultural uses of the area for 30 years. As such, the community's perception of that area should not change, as approval of the variance request would amount to a confirmation of a situation that existed over 30 years. This would be unlike a situation where additional or increased traffic, density, etc., will come to an area suddenly.

Additionally, the lots will still be used agriculturally. Thus, this request would not amount to a "ruralization" or "urbanization" of that area, and the land use impact to the surrounding agricultural areas would not be significant. The continued agricultural use would thus be consistent with the general purposes of the Zoning Code (Agriculture) and the General Plan.

The requested 20-foot road right-of-way and the location of the existing structures confirm the existing situation. While the ideal would be to have a fifty (50)-foot right-of-way, such an imposition would have an adverse impact on many existing structures. Many structures would be situated within the right-of-way; and the wholesale relocation and/or demolition of those affected structures would create an unnecessary hardship on the existing tenants who--in some instances--lived there a good part of their lives.

While the right-of-way is critical; it is felt that a system to gradually increase the right-of-way would be more equitable and reasonable. Additionally, this subdivision will not generate expectations consistent with a conventional subdivision; it will merely confirm 30 years of existence. As such, the existing right-of-way should be sufficient until such time that changes caused by the construction of new or additional structures or the further subdivision of that area occur.

The level of road improvements is related to the width of the right-of-way. As such, since it is unfeasible to require a full or wider right-of-way at this point, it would be inappropriate to require the full standard road improvements. Nevertheless, to assure continued access to all of the proposed lots, some improvements would have to be made. Appropriate conditions will be imposed to satisfy that concern. There are special circumstances applying to the subject property which are generally not found in other properties. Further, the variance would not be substantially in contravention of the Zoning Code and General Plan regarding use.

Therefore, the Planning Director hereby grants to the applicant a variance to allow the creation of a subdivision which would result in substandard roadways, substandard lot sizes, and inadequate setbacks at Kaawaloa, South Kona, Hawaii, pursuant to the authority vested in him by the County Charter, subject to the following conditions:

1. That prior to final subdivision approval, the petitioner or his authorized representative shall submit to the Planning Department appropriate documents/agreement which would assure that all lots have the following deed restrictions and/or covenants:
  - a. holding the County of Hawaii harmless from damages resulting from the approval of this substandard subdivision;
  - b. no further subdivision or lease of the lots without prior approval from the County Planning Department;
  - c. all improvements to existing buildings/structures, as well as the construction of new buildings/structures shall be situated a minimum of 45 feet from the front property line and 20 feet from the side property lines; and
  - d. within 3 months of final subdivision approval, formal application for the dedication of the land for agricultural use shall be made to the State Department of Taxation. A copy shall be filed simultaneously with the Planning Department. All subsequent

landowners or lessees shall make a similar agricultural dedication application as long as the land is zoned Agricultural.

The said documents shall meet with the approval of the Corporation Counsel and must be executed prior to issuance of final subdivision approval.

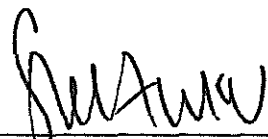
2. That the final subdivision plat map shall reflect a 15-foot future road right-of-way along all lots fronting the various roads.
3. That the petitioner or his authorized representative shall be responsible to submit a request to rezone proposed Lot Nos. H-2 through H-6B to the Agricultural 5-acre district within 30 days of issuance of final subdivision approval.
4. That portions of the roadways in excess of 12% slope shall be improved and stabilized, meeting with the approval of the Chief Engineer. Said improvements shall be made prior to granting of final subdivision approval.
5. That all other applicable rules, regulations and requirements be complied with.

*Handwritten note:* per appln 11/26/82

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

The effective date of this permit shall be from August 21, 1980.

Dated at Hilo, Hawaii, this 31st day of October, 1980.



SIDNEY M. FUKU, Director  
Planning Department

APPROVED AS TO FORM AND LEGALITY:

  
Deputy Corporation Counsel  
County of Hawaii

Date: 31 Oct 80

CERTIFIED MAIL

August 21, 1980

Mr. Colin Love  
77-6400 Nalani Street  
Kailua-Kona, Hawaii 96740

Dear Mr. Love:

Variance Application (V80-16)  
Kaawaloa Farms Subdivision  
Tax Map Key: 8-1-8:1

Please be informed that after reviewing your application and the information presented at the administrative public hearing on August 19, 1980, the Planning Director is certifying the approval of the request filed by Kaawaloa Farms Subdivision as noted in the background report and as amended (20+ feet front yard setbacks for the existing water tanks on proposed Lots H-19 and H-20). The reasons for the approval are as follows:

There is evidence to show that various tenants lived on the property since 1948 with the understanding that their leases were legal. The various properties were actively farmed, and in many instances, homes and other related structures were erected. Then, too, there were even attempts to sell the lots/leases. Those are activities generally associated with legal lots or leases. Such practice has been on-going for over 30 years and no definitive enforcement action on the part of the County took place during that period. As such, by its failure to rigidly enforce the subdivision ordinance, the County may have indirectly contributed to the "appearance" of legitimacy of these lots. This is felt to be an unusual and special circumstance.

Further, there will be no material impact to the surrounding area. There have been residential/agricultural uses of the area for 30 years. As such, the community's perception of that area should not change, as approval of the variance request would amount to a confirmation of a situation that existed over 30 years. This would be unlike a situation where additional or increased traffic, density, etc., will come to an area suddenly.

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Additionally, the lots will still be used agriculturally. Thus, this request would not amount to a "ruralization" or "urbanization" of that area, and the land use impact to the surrounding agricultural areas would not be significant. The continued agricultural use would thus be consistent with the general purposes of the Zoning Code (Agriculture) and the General Plan.

The requested 20-foot road right-of-way and the location of the existing structures confirm the existing situation. While the ideal would be to have a fifty (50)-foot right-of-way, such an imposition would have an adverse impact on many existing structures. Many structures would be situated within the right-of-way, and the wholesale relocation and/or demolition of those affected structures would create an unnecessary hardship on the existing tenants who--in some instances--lived there a good part of their lives.

While the right-of-way is critical, it is felt that a system to gradually increase the right-of-way would be more equitable and reasonable. Additionally, this subdivision will not generate expectations consistent with a conventional subdivision; it will merely confirm 30 years of existence. As such, the existing right-of-way should be sufficient until such time that changes caused by the construction of new or additional structures or the further subdivision of that area occur.

The level of road improvements is related to the width of the right-of-way. As such, since it is unfeasible to require a full or wider right-of-way at this point, it would be inappropriate to require the full standard road improvements. Nevertheless, to assure continued access to all of the proposed lots, some improvements would have to be made. Appropriate conditions will be imposed to satisfy that concern.

In light of the foregoing, it is preliminarily concluded that the variance requests should be approved. There are special circumstances applying to the subject property which are generally not found in other properties. Further, the variance would not be substantially in contravention of the Zoning Code and General Plan regarding use.

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The approval, however, is subject to the following conditions:

1. That prior to final subdivision approval, the petitioner or his authorized representative shall submit to the Planning Department appropriate documents/agreement which would assure that all lots have the following deed restrictions and/or covenants:
    - a. holding the County of Hawaii harmless from damages resulting from the approval of this substandard subdivision;
    - b. no further subdivision or lease of the lots without prior approval from the County Planning Department;
    - c. all improvements to existing buildings/structures, as well as the construction of new buildings/structures shall be situated a minimum of 45 feet from the front property line and 20 feet from the side property lines; and
    - d. within 3 months of final subdivision approval, formal application for the dedication of the land for agricultural use shall be made to the State Department of Taxation. A copy shall be filed simultaneously with the Planning Department. All subsequent landowners or lessees shall make a similar agricultural dedication application as long as the land is zoned Agricultural.
- The said documents shall meet with the approval of the Corporation Counsel and must be executed prior to issuance of final subdivision approval.
2. That the final subdivision plat map shall reflect a 15-foot future road right-of-way along all lots fronting the various roads.
  3. That the petitioner or his authorized representative shall be responsible to submit a request to rezone proposed Lot Nos. H-2 through H-6B to the Agricultural 5-acre district within 30 days of issuance of final subdivision approval.
  4. That portions of the roadways in excess of 12% slope shall be improved and stabilized, meeting with the approval of the Chief Engineer. Said improvements shall be made prior to granting of final subdivision approval.

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Should any of the foregoing conditions not be met, the variance may be deemed null and void.

The official Variance Permit will be forwarded under separate cover.

Should you have any questions, please feel free to contact us.

Sincerely,

SIDNEY M. FUKU  
Director

NH:ak

cc Department of Public Works

bcc: Subdivision File 79-61 (via Kaoru)