

CERTIFIED MAIL

September 2, 1982

Mr. Earl Younker
76-730 Hualalai Road
Kailua-Kona, HI 96740

Dear Mr. Younker:

Variance Application (V81-41)
Minimum Roadway Pavement Requirements
Tax Map Key 8-8-01:20

After reviewing your application and the information submitted in behalf of it, the Planning Director by this letter hereby certifies the approval of your variance request to allow a twenty (20) foot graded and compacted roadway in lieu of the required Agricultural standard pavement requirement of the Subdivision Code in Papa 1st and 2nd, South Kona, Hawaii.

The approval is based on the following:

1. That there are special circumstances applying to the subject improvements which do not generally apply to surrounding properties or improvements in similarly zoned districts. The applicant's property is situated in a subdivision which was created prior to 1964. This grandfathered status, and the manner in which it was created, inhibits the petitioner's ability to meet the higher standards of the present Subdivision Code.

The provisions of the Subdivision Control Code are intended, in part, to insure that all new lots have adequate and safe access to a public street or approved private street. In the review of all subdivision applications, the peculiarities of lot location, lot configuration, proximity to infrastructures, topography,

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character and use of an area, the level of existing improvements, etc. are issues which are relevant and are evaluated within the realm of the requirements of the Subdivision Control Code.

Since the required improvements to this section of the right-of-way easement would pose a substantial economic hardship upon the applicant, he has instead graded and compacted a twenty (20) foot wide roadway within the fifty (50) foot right-of-way easement. Although this improvement within the existing fifty (50) foot right-of-way easement is below approvable standards, it physically provides for adequate two-way passage for vehicular traffic.

The applicant intends to create this three (3) lot subdivision as a result of a court order by the Third Circuit Court, to resolve an undivided interest settlement. The circumstances of the court action alone is not the sole or primary circumstance relating to the approval of the variance request. The applicant has also executed an "Agreement Concerning Declaration of Restrictive Covenant" subjecting the subject properties to participate in an "Improvement District" if and when one is proposed for any further subdivision action for the subject properties. This "Improvement District" concept will require the petitioner or future owners of the subject properties to participate in sharing the costs of road improvements should an "Improvement District" be initiated by the County.

Inasmuch as reasonable efforts to comply with the roadway improvements have been sought as evidenced by the petitioner's construction of the twenty (20) foot graded and compacted roadway and the executed and recorded "Agreement" document, it has been determined that said special circumstances exist to a degree which would indirectly deprive the applicant of substantial property rights which would otherwise be available. Further, since the Department of Water Supply has granted the applicant a "Water Waiver" for this proposed subdivision, it gives the applicant and all future owners of the subject properties due notice that any future subdivision proposals would have no other alternative but to comply with the necessary water and access improvement requirements. Thus, the question of any granting of variances for any future subdivisions of the subject properties is moot.

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2. Although, there are many other subdivisions throughout the County which are non-conforming with respect to roadway improvements, incremental improvement commensurate with anticipated levels of impact from a proposed development is one way of upgrading these substandard private roadways. This has been determined to be the most reasonable and effectual approach for the proposed subdivision and as it is in concurrence with the above stated concept. The recorded "Agreement Concerning Declaration of Restrictive Covenant" is the vehicle chosen to implement this incremental improvement concept, in this particular situation.

In addition, the proposed subdivision of three (3) lots will not materially increase the traffic or maintenance burden along that public road, as well as on the twenty (20) foot graded and compacted roadway within the fifty (50) foot right-of-way easement. Should other developments occur within the subject area, roadway improvements would be required. Thus, under this approach, should that area be fully subdivided in accordance with present zoning, the roadway and required right-of-way would be available.

Based on these considerations, the imposition of the twenty (20) foot pavement requirement would be unreasonable and foreclose any options in the processing of the application for the three (3) lot subdivision. Any other alternatives, in resolving this issue would not only be putting excessive demands upon the applicant, when a more reasonable solution is available.

3. The granting of the variance shall be consistent with the general purpose and intent of the Subdivision Code relative to access requirements. The twenty (20) foot graded and compacted roadway already serves as an adequate access to the subject properties, even if the minimum pavement standards are not being complied with. Thus, the function of access is not being totally ignored by the applicant in terms of providing some form of access to the proposed lots.

Therefore, it is determined that the twenty (20) foot graded and compacted roadway which allows for and ensures that two-way traffic circulation will be available, satisfies the intent and purpose of the access requirement. It is further determined that because of the the rural character, existing level of improvements and the

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circumstances surrounding this subdivision application, the amount of traffic generated by this subdivision is negligible in terms of traffic impact for this area.

Based on the above, it has been determined that the granting of this variance would not be materially detrimental to the public's welfare nor cause any substantial or adverse impact to the area's character or to adjoining properties, nor will its approval violate the intent and purposes of the Subdivision Code and the General Plan.

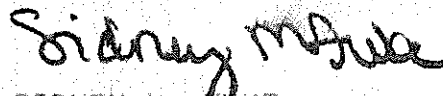
The variance request is approved, subject to the following conditions:

1. That the petitioner or authorized representative be responsible for complying with all the stated conditions of approval.
2. That "Final Subdivision Approval" be secured within one (1) year from the effective date of approval of the variance.
3. That all other State and County rules, regulations, and requirements be complied with.

Should the petitioner or authorized representative fail to comply with the above conditions, the variance shall automatically be deemed void.

If you have any questions on this matter, please feel free to contact us.

Sincerely,



SIDNEY M. LUKE
Planning Director

RHY:lgv

cc: Mr. Jon Olson (P. O. Box 129, *Captain Cook, 96704*)
Mr. Ray Olmstead (75-5722 Kuakini Hwy, Ste. 108, KK 96740)
Planning Commission

bcc: Subd. Nos. 80-70, 72-66, 74-75