

CERTIFIED MAIL

February 7, 1984

Mr. William Duarte
P. O. Box 36
Holualoa, HI 96725

Dear Mr. Duarte:

Variance Application (V83-40)
Variance From Minimum Roadway Improvement Requirements
Tax Map Key 7-6-02:por. of 2, 7-6-04:1

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 with the exception of the proposed 30-foot right-of-way easement on your property and to allow the creation of the 6-lot subdivision with the existing 12 to 15 foot wide pavement within the existing 20-foot wide right-of-way easement and proposed 10-foot wide pavements within a 50-foot right-of-way easement in lieu of the minimum 20-foot wide agricultural standard pavement within a 50-foot right-of-way in Holualoa 1st and 2nd, North Kona, Hawaii.

The approval is based on the following:

VARIANCE CRITERIA NO. 1

The subject property was originally subdivided prior to 1944. In 1948, the County of Hawaii purchased in fee 5.15 acres of the makai portion of the Duartes property, which is the present Holualoa Elementary School complex. As an action of that purchase, the County designated a 20 foot wide easement to provide access to the Duartes mauka property. In 1971, the State Land Use Commission granted a boundary amendment to the Department of Accounting and General Services for the expansion

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of Holualoa School. In 1975, the State consummated the condemnation and compensation action with William and Leslie Gomes Duarte for the property now identified as Tax Map Key 7-6-04:37. As a result of this court action, 3 easements were created to provide access to the Duartes to their properties from the Hawaii Belt Road. In the creation and improvement of these easements, the court action did not comply with the requirements of the County's Subdivision Code. As a result, it would be difficult if not impossible for the petitioner to comply with the requirements of the Subdivision Control Code on the State and County owned lands.

According to the State, the petitioner is also responsible for the grading, construction and maintenance of Easement 2. The maintenance of the easements over County owned lands is also the responsibility of the petitioner according to the Department of Public Works. A document concerning these matters will be required of the petitioner as a condition of approval of this variance. However, there appears no special or unusual circumstances which would limit the petitioner in providing a 50-foot wide right-of-way easement on his property.

The number of vehicles using this subdivision roadway would be limited as only faculty and the residential traffic for the six lots are anticipated to utilize this roadway. No farm labor housing is anticipated to be constructed on the proposed lots, which would generate additional traffic demands for the use of the roadway. While there may be requests for Ohana and Farm Dwellings, the petitioner will have to formally submit applications to the County, which will review and evaluate the each application on its merits. Thus, although there is this potential development available on the petitioners property, it should not imply that automatic approval would be given for these requests should they be applied for. The necessary review by the appropriate governmental agencies would have to be done, prior to any decisions on these requests. Additionally, the proposed roadway would not be connecting to any adjacent subdivisions at this time, which may have the potential of utilizing this roadway. Therefore, the roadway will be used only by the localized traffic generated by this particular subdivision.

The length of the roadway for the proposed subdivision is over 1200 feet in length to serve the 6 lots. The petitioner does not have the condemnation powers to acquire additional

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lands for the further widening of the existing easements and the Department of Education has stated emphatically that they will not grant any approvals to increase the width of Easement no. 1. Additionally, the location of the existing school improvements which are situated right up to the easements further debilitates the petitioner efforts for any possible acquisitions for any road widening purposes. The fact that only 6 lots will utilize the existing and proposed easements also ensures the minimal impact in allowing the reduced roadway pavement width.

As such, these foregoing factors are considered to be special or unusual circumstances applying to the subject real property which exist either to a degree which interferes with the best use or manner of development of that property.

VARIANCE CRITERIA NO. 2

There are no other reasonable alternatives which the petitioner could use to resolve the difficulty that they are claiming for the proposed subdivision with the exception of the proposed 30-foot wide easements. However, the petitioner has the available land area in which to provide for the 50-foot wide right-of-way easement. The alternatives of further widening of the easement of the State and County owned lands would require diminishing the existing improvements of the existing Holualoa School complex. Additionally, the petitioner does not have the condemnation authority that government has for this type of acquisition procedure. In all alternatives, the economic factor is an issue. However, it should not be the sole issue in the granting of a variance. Only 3 additional lots are to be served by this proposed subdivision with the proposed 10-foot wide pavement within the 50-foot wide easement. In certain situations, the roadway needs of an area have to be evaluated, not only from the cost perspective but whether or not the minimum roadway requirements would be excessive in light of the intended use and property characteristics. In this particular case, the actions of the State Land Use Commission and subsequent actions by the Court, the cost/benefit ratio, the exclusive use of the proposed roadway for the 6-lot subdivision, the agricultural and rural character, the localized traffic that would be generated, the length of the roadway that would have to be improved for a 6-lot subdivision, the petitioner's proposal to provide the proposed improvements and the fact that the proposed roadway will not be utilized from any of the

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surrounding properties, are specific circumstances which serve to justify the reasonableness of the petitioner's alternative with the exception of the proposed 30-foot wide easement. Thus, in this particular variance application, the economic consideration is not the sole basis for the granting of the remainder of the variance request.

Therefore, in consideration of these factors, the variance request for the existing and proposed improvements with the exception of the 30-foot wide easement, are determined to be reasonable for the proposed 6-lot subdivision. Although it could be argued that other alternatives are available to the petitioner, the reasonableness and practical application of those alternatives have to be evaluated with respect to the land characteristics. In this particular case, the imposition of the other alternatives in this situation, is considered to be excessive, when a more reasonable solution is available.

VARIANCE CRITERIA NO. 3

The purpose of the minimum roadway requirements is to ensure that minimum safety standards relative to traffic and drainage, etc. are provided for.

The question of the future access requirements of the remaining area of lot 6 cannot be ignored and is of primary concern because of the potential demands that could be put on the existing access. The proposed 30-foot wide easement is on the petitioners property and there is land area available to provide for the 50-foot wide right-of-way easement as required by the Subdivision Code. The proposed 10-foot wide pavements is determined to be adequate for the 3 lots it is intended to serve at this time. However, The granting of this variance shall not be construed nor used as a justification for any future variances from the minimum roadway standards for subdivision action of the mauka property of the petitioner, its successors, or assigns may request. Additionally, the required 50-foot right-of-way easement which will be located on the petitioners property roadway will remain in private ownership and the petitioner will be responsible for its maintenance and any liabilities which would be incurred. Accordingly, in view of the agricultural nature and character of the area and the existing use of the roadway for the 6 lots and the school, we have determined that these proposed subdivision roadway improvements will satisfy the purposes as intended by the Subdivision Code under the circumstances of the application.

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Inasmuch as the required 50-foot wide easement roadway will not be a through street and the existing 20 foot wide easement roadway will remain in the County's and State's ownership, the granting of this variance application will not be materially detrimental to the public welfare nor cause any substantial adverse impact to the area's character or to adjoining properties. Further, this variance application does not apply to density limitations nor introduces a use not otherwise permitted within this agriculturally zoned district.

Based on the foregoing findings, this variance would be consistent with the general purpose of the zoning district, and the intent and purpose of the Subdivision Code and the General Plan.

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

1. The petitioner, its assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. The revised subdivision plans showing the existing easements and improvements and the revised 50-foot wide right-of-way easement and 10 foot pavements shall be submitted for subdivision review and approval within one year from the effective date of approval of the Variance Permit.
3. The revised construction plans also be submitted and that construction of the improvements in compliance with the Department of Public Works' requirements shall commence within one year from the date of receipt of final approval of the construction plans and be completed within two years thereafter.
4. The petitioner will submit a notarized document stipulating the petitioner's responsibility for the maintenance of the roadway, and the petitioner's incurring the liability responsibility for the roadway. The format for this document shall be developed with the Department of Public Works and the Corporation Counsel's offices.
5. All other applicable Federal, State and County rules and regulations shall be complied with.

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Should any of the foregoing conditions not be complied with,
this variance shall automatically be voided.

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

Sincerely,



SIDNEY M. DUKE
Planning Director

RHY:emf

cc: Mr. John Weeks
Planning Commission
Dept. of Land & Natural Resources
Dept. of Education