

CERTIFIED MAIL

February 13, 1984

Mr. Stephen Zuckerman
Farms of Kapua, Ltd.
615 Piikoi Street, Suite #1510
Honolulu, HI 96814

Dear Mr. Zuckerman:

Variance Application (V83-39)
Variance From Minimum Roadway Improvement Requirements
Tax Map Key 8-9-06:4

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 the creation of a 6-lot subdivision with a 10-foot wide pavement within an existing 80-foot wide right-of-way easement in lieu of the minimum 20-foot wide pavement as required by the Subdivision Code, in Kapua, South Kona, Hawaii.

The approval is based on the following:

VARIANCE CRITERIA NO. 1

The proposed 6-lot, Farms of Kapua agricultural subdivision will have an access via an 80-foot wide private road easement. The initial 8,672 feet of the private road easement from the State Highway to the beginning of the Farms of Kapua property is owned by the Mac Farms of Hawaii Orchards. They have retained control of the road easement area and desire to maintain private ownership of it. Easement rights have been granted to the Farms of Kapua for access to their parcel. Approximately 450 feet of roadway from the State Highway to the macadamia nut factory will be fully paved to the required 20-foot width due to the anticipated traffic resulting from the factory location. Beyond

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the factory, the roadway is proposed to be improved with a 10-foot paved roadway, 10-foot shoulders on each side with a 50-foot wide cleared and graded area. The 10-foot paved lane will serve as the primary access to the 6 lots while the cleared and graded areas will serve as a pull-over lane for passing vehicles.

The proposed roadway will remain in private ownership and the petitioner will be responsible for its maintenance and any liabilities which would be incurred. A document concerning these matters will be required of the petitioner as a condition of approval of this variance.

The number of vehicles using this subdivision roadway would be limited as only employee and truck traffic are anticipated to utilize this roadway. The traffic on this agricultural roadway will normally be one way mauka by workers going to the farm lots in the morning and one way makai by workers returning home from work in the afternoon. No farm labor housing will be constructed on the proposed lots, which would generate additional traffic demands for the use of the roadway. The proposed roadway would not be connecting to any adjacent subdivisions which may have the potential of utilizing this roadway. Therefore, the roadway will be used only by the localized agricultural traffic generated by this particular agricultural subdivision. Also, traffic signs will be posted to alert drivers of the special conditions relating to traffic on this agricultural roadway.

The length of the roadway for the one paved lane/one unpaved pull-over lane is over 25,000 feet in length to serve the 6 farm lots. The nearly five miles of roadway is an expensive feature in relation to the small number of lots to be served. Thus, we have included the economic factor in the evaluation of this variance request with the objectives of the overall large scale agricultural goal. This consideration and the type of agricultural products to be cultivated indicates that the traffic demands on the proposed 10-foot pavement will not overburden the proposed roadway. The fact that only 6 lots will utilize the 10-foot wide pavement 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.

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VARIANCE CRITERIA NO. 2

There are other alternatives which the petitioner could use to resolve the difficulty that they are claiming for the proposed subdivision. Some of which are to provide the 20-foot wide dedicable pavement the entire length of the roadway, to provide a 20-foot wide non-dedicable type pavement the entire length of the roadway, or to provide a minimum width road which would accommodate two-way traffic. In all alternatives, the economic factor is a major issue. However, with the agricultural use of the proposed subdivision, the roadway needs in certain situations need 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, with the cost factor, the exclusive use of the proposed roadway for the 6-lot agricultural farm, the agricultural and rural character, the localized agricultural traffic that would be generated from the establishment of those uses, the length of the roadway to be improved for a 6-lot subdivision, the petitioner's proposal to provide a 50-foot cleared and graded area with 10-foot compacted shoulders on each side of the 10-foot paved road, and the fact that the proposed roadway will not be utilized from any of the surrounding properties, are specific circumstances which serve to justify the reasonableness of the petitioner's alternative. Thus, in this particular variance application, the economic consideration is not the sole basis for the granting of the variance request.

Therefore, in consideration of these factors, the variance request for the 10-foot pavement is 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.

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The petitioner will clear and grade a 50-foot wide area to allow the construction of 10-foot wide compacted shoulders on both sides of the 10-foot wide paved road. This would provide a minimum 30 feet wide area for traffic movement. The Subdivision Code makes two separate distinctions between dedicable and non-dedicable road construction methods. The non-dedicable method which is primarily used in agricultural areas has construction standards which are less than the dedicable requirements. In this particular situation, the petitioner has opted to provide at least one lane constructed under the dedicable roadway standards and clearing, grading and compacting a minimum 50-foot width within the 80 foot right-of-way. In view of the agricultural nature and character of the area and the sole use of the roadway for the 6 agricultural lots, we have determined that these proposed subdivision roadway improvements will satisfy the purposes as intended by the Subdivision Code.

This variance request is consistent with the general purpose of the agricultural zone district as no zoning changes are being sought. The objective is to make idle agricultural zoned farm lands available for productive purposes. Diversified farming is the objective of the project and is in conformance with the County General Plan for South Kona to further the district's agricultural industry.

Inasmuch as the roadway is not a through street and will remain in private 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.

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2. The necessary construction plans showing the proposed cleared and graded 50-foot width, 10-foot wide pavement and 10-foot wide compacted shoulders within the 80-foot right-of-way shall be submitted for subdivision review and approval within one year from the effective date of approval of the Variance Permit.
3. The 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 private ownership of the roadway, 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.

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

Chapter 25 (Zoning Code), Section 25-27.3 allows any "interested party" to request that the Planning Commission review the Director's action. Such request must be made within ten (10) working days after notice of the Director's decision and shall be in writing, containing a statement of its grounds.

Therefore, the variance will not be effective until after the ten (10) day "appeal period" has passed and if no request is made by the "interested party." Should the "interested party" make a request, we shall inform you of the procedures that must be complied with.

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

Sincerely,



SIDNEY M. FOKE
Planning Director

RHY:emf

cc: Mr. Roy Takeyama
Mr. William Thompson
Planning Commission
Corporation Counsel
Kaoru Sub 82-79