

CERTIFIED MAIL

November 14, 1984

Mr. Roland Higashi
Honolii Partners
714 Kanoelehua Avenue
Hilo, HI 96720

Dear Mr. Higashi:

Variance Application (V84-34)
Variance from the Minimum Roadway Improvement Requirements
Tax Map Key 2-7-03:26

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 an 8-lot subdivision with an 18 foot pavement within a 20 foot right-of-way in lieu of the minimum 20 foot pavement within a 50 foot right-of-way as required for this single family residential zone in Paukaa, South Hilo, Hawaii.

The approval is based on the following:

VARIANCE CRITERIA NO. 1

The subject property which consists of 8.71 acres is situated within the County's "Single Family Residential (RS-15)" zoned district. There are special or unusual circumstances related to the land which would warrant or necessitate the narrower pavement width to service the 8 lots in the proposed subdivision. These special circumstances are 1) the geographical isolation location of the subject property because of the streams at both ends of the property; 2) its location adjacent to the ocean; 3) the undulating and steep sloping topography of the property, the irregular shape of the makai property boundaries; 4) the unusually long length of the property's frontage on the Hawaii Belt Road; 5) the lack of any need to consider road connections on an off-site basis because of the gulches between the adjacent properties; and 6) the restriction and location of 2 access points by the State Highways Division for this proposed subdivision.

Based on these considerations, the petitioner opted to design an eight- and four-lot subdivision rather than two 6-lot subdivisions. If the petitioner opted for the two 6-lot subdivisions, a variance would not have been required. The gross density calculation of the subject property would allow a total of 25 lots. As such, based on the proposed density and subdivision, no additional lots or bonus of lots would be created to benefit the petitioner. Additionally, 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 traffic generated by this particular subdivision. While there may be requests for Ohana Dwellings, the petitioner will have to formally submit applications to the County, which will review and evaluate the each application on its merits. Therefore, although there is this potential development available on the petitioner's 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.

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. Moreover, we have determined that there is conclusive evidence to show a deprivation of property rights which curtails or reduces existing property development rights.

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. The petitioner could have designed two 6-lot subdivisions with a 20-foot right-of-way and 16-foot pavements. But because of the property's topographical and configuration conditions, and more importantly, the location of the two accesses approved by the State Highways Division, the subdivision design necessitated the proposed 8-lot alternative. The petitioner would also be making the pavement width of the roadway to 18 feet which would be 2 feet wider than the 16 feet that would be required for a 20-foot wide right-of-way. The fact that only 8 lots will utilize the proposed roadway also ensures the minimal impact in allowing the reduced right-of-way width.

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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 County, the cost/benefit ratio, the exclusive use of the proposed roadway for the 8-lot subdivision, the residential character, the localized traffic that would be generated, the length of the roadway that would have to be improved for an 8-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 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 remainder of the variance request.

Therefore, in consideration of these factors, the variance request for the proposed improvements, are determined to be reasonable for the proposed 8-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 proposed 20-foot right-of-way with an 18-foot pavement is determined to be adequate for the 8 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 further subdivision action of any of the 8 lots that the petitioner, its successors, or assigns may request. Additionally, the private 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 residential nature and character of the area and the use of the roadway for the 8 lots, we have determined that this 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 20-foot right-of-way roadway will not be 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.

As such, in view of these findings, the approval of this variance would still be consistent with the general purpose of the zoning district, and the intent and purpose of the Subdivision Code and the General Plan.

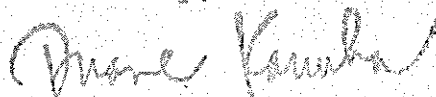
The variance request is approved, subject to the following conditions:

1. The petitioner, its assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. The construction plans also be submitted and that construction of the improvements in compliance with this variance and with the Department of Public Works' road standards shall commence within one year from the date of receipt of final approval of the construction plans and be completed within two years thereafter.
3. 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.
4. 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.

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

Sincerely,



SIDNEY M. FUCE
Planning Director

RHY:lkt
Enc.
cc: Planning Commission

bcc: Kaoru