

CERTIFIED MAIL

December 16, 1985

Mr. Edward Harada  
M & E Pacific, Inc.  
100 Pauahi Street, Suite 212  
Hilo, Hawaii 96720

Dear Mr. Harada:

Variance Application (V85-25)  
Applicant: Edward L. Silva  
Variance from Maximum Number of Lots Off of a  
Private Non-Dedicable Road  
Tax Map Key 2-4-13:9

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 seventh lot created by a proposed 2-lot subdivision to have access off of a non-dedicable private dead-end street in lieu of the maximum 6 lots as set forth in the Subdivision Code. The property, which is 32,670 square feet in size, is located on the north side of a 30-foot private roadway off of Komohana Street (east side) approximately 650 feet south of the Komohana/Komomala Street intersection, Waiakea, South Hilo, Hawaii.

The approval is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

The subject property which consists of 32,670 square feet is situated within the County's Single Family Residential (RS-15) zoned district. Under this zoning designation, two (2) single dwellings are permitted on the parcel.

There are special or unusual circumstances related to the land in this particular application with respect to the fact that there are two (2) existing single family dwellings located on the subject

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property. The petitioner is proposing to locate one house on each of the proposed lots. No increase in traffic is foreseen by the proposed subdivision action since the existing private dead-end roadway already serves as access to the existing homes.

While there may be requests for Ohana Dwellings, the petitioner will have to formally submit applications to the County, which will review and evaluate each application on its merit. 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 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 the existing property development rights.

#### ALTERNATIVES

There are no reasonable alternatives which the petitioner could use to resolve the difficulty that he is claiming for the proposed subdivision. An alternative is to acquire a strip of land 10 feet in width from property owners on both sides of the existing road to provide for a 50-foot right-of-way and increasing the pavement width to 20 feet. However, this alternative would decrease some of the existing parcels with land areas below the minimum 15,000 square foot lot size requirement. In addition, some of the existing dwellings would not meet with the minimum 20-foot front yard setback requirement if the 10-foot strip was acquired.

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 existing use and property characteristics. In this particular case, the cost/benefit ratio and the existing condition that the existing two (2) dwellings already utilize the the present roadway are specific circumstances which serve to justify the reasonableness of the request. Thus, in this particular variance application, the economic consideration is not the sole basis for the granting of the variance request.

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Therefore, in consideration of these factors, the variance request is reasonable. Although it could be argued that the other alternatives are available to the petitioner, the reasonableness and practical application of those alternatives have to be evaluated with respect to the existing conditions. In this particular case, the imposition of other alternatives in this situation is considered to be excessive when a more reasonable solution is available.

#### INTENT AND PURPOSE

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

The existing 30-foot right-of-way with a 10-foot pavement is determined to be adequate for the proposed 2-lot subdivision which will result in seven (7) lots being served by the existing road. No additional traffic will be generated by the proposed subdivision action since the existing two (2) homes already use the existing road as access. 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 2 parcels that are presently served by this road.

Inasmuch as the existing 30-foot road 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 limitation nor introduces a use not otherwise permitted within this single family residential 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 Control 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 petitioner, its assigns or successors, shall be responsible for securing final subdivision approval within one year of the date of this approval.

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3. 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,



ALBERT LONO LYMAN  
Planning Director

MO:lv

bcc: Subdivision Section (Kaoru)