

CERTIFIED MAIL

December 16, 1985

Mr. Sidney Fuke
Planning Consultant
100 Pauahi Street, Suite 212
Hilo, Hawaii 96720

Dear Mr. Fuke:

Variance Application (V85-26)
Applicant: George Fontes
Variance from the Minimum Roadway Requirement
Tax Map Key 3-2-2:41

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 three (3) lot subdivision with a 10-foot wide pavement within a 30-foot easement in lieu of the minimum 16-foot wide non-dedicable private roadway standard pavement as required by the Subdivision Control Code. The property identified by Tax Map Key 3-2-02:41 is located on the mauka side of the Hawaii Belt Road, above the Ninole Post Office, Ninole, Kapena, North Hilo, Hawaii.

The approval is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

The subject property which consists of 10.840 acres is situated within the County's Agricultural (A-5a & A-1a) zoned district. There are special or unusual circumstances related to the land which would warrant or necessitate the narrower pavement width to service the proposed 3-lot subdivision. These circumstances are:

- 1) Proposed Lot 3-B-1 has frontage along the Hawaii Belt Highway with a common access point as the existing 30-foot wide easement.

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- 2) Easement C serves as access to proposed Lots 3-B-2 & 3-B-3 and the existing Department of Water Supply's two (2) tank and reservoir sites.
- 3) Easement B serves as access for proposed Lot 3-B-2 and the Department of Water Supply's tank site.
- 4) Variance No. 389 was approved by the Planning Commission to create the two (2) sites for the Department of Water Supply. The improvement of the easement with A.C. pavement was waived via the variance approval.
- 5) The result of these actions are as follows: The improvement requirements for Easement C within proposed Lot 3-B-1 is for 2 lots and portion of Easement C and Easement B within Lot 3-B-3 is to service 1 lot. A minimum 12-foot pavement is required for a private road paving 2 lots and an 8-foot pavement for 1 lot.

As such, based on the existing zoning of the parcel, no additional lots can be created. Although Easement C extends to the parcel mauka of the subject property, this parcel cannot be further subdivided unless it is rezoned. Therefore, the existing easement will be used only by the localized traffic generated by this proposed 3-lot subdivision and the occasional use by personnel of the Department of Water Supply who check or service their facilities. 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 merits. Therefore, although there is this potential development available on the petitioner's property, it should not imply the 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 exists either to a degree which interferes with the best use or manner of development of the property. Moreover, we have determined that there are conclusive evidence to show a deprivation of property rights which curtail or reduces existing property development rights.

ALTERNATIVES

There are no reasonable alternatives which the petitioner could use to resolve the difficulty that they are claiming for the proposed subdivision. The petitioner could redesign the subdivision with a series of flag lots to minimize the improvement requirements

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that is required when easements are created. However, this would result in a multiple of driveways converging at a common area along the highway which could create confusion and a hazardous condition at the point where they would connect to the Hawaii Belt Road. Although the existing pavement is only 10 feet in width, in actuality only 2 lots (Lots 3-B-2 and 3-B-3) with homes will be serviced by this existing easement. Lot 3-B-1 has frontage along the highway. The fact that only 2 lots with potential residential structures on it will have a minimal impact on the existing roadway.

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 odd configuration of the property; the cost/benefit ratio; the exclusive use of the proposed roadway for the 3-lot subdivision besides service vehicles of the Department of Water Supply; the localized traffic that would be generated; and the fact that the roadway will not be utilized from any of the surrounding properties, are specific circumstances which serve to justify the reasonableness of the petitioner. Thus, in this particular 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 is determined to be reasonable for the proposed 3-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.

INTENT AND PURPOSE

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

The existing 10-foot pavement with a 30-foot wide easement is determined to be adequate for the proposed 3 lots it is intended to serve at this time. However, the granting of the variance should not be construed nor used as a justification for any future variances from the minimum roadway standards for future subdivision requests. Additionally, the easement will remain in private ownership and the petitioner or its assigns will be responsible for its maintenance and any liabilities which would be incurred. Accordingly, in view of the proposed use and the character of the

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area, we have determined that this variance request will satisfy the purposes as intended by the Subdivision Code under the circumstances of the application.

Inasmuch as the easement will not be used as a through street and 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 this area's character or to adjoining properties. Further, this variance does not apply to density limitations nor introduces a use not otherwise permitted within this agricultural 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 existing easement be provided with a 3-foot wide stabilized shoulder on both sides of the 10-foot wide pavement within Easement C in Lot 3-B-1.
3. The construction plans for the improvements be submitted for review and approval within one year of the date of this approval and be completed within two years thereafter.
4. The petitioner, or its assigns, will submit a notarized document stipulating their responsibility for the maintenance of the easement and incurring the liability responsibility for the roadway.
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.

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)