

CERTIFIED MAIL

February 24, 1986

Mr. Steven Markham
P.O. Box 912
Pahoa, HI 96778

Dear Mr. Markham:

Variance Application (V85-27)
Variance from Minimum Water and Roadway Requirements
Tax Map Key 1-4-12:6

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 2-lot subdivision presently served by a 20 foot easement with a gravel road in lieu of the minimum 50 foot right-of-way with a 20-foot non-dedicable agricultural standards and without a water system meeting with the minimum requirements of the County Department of Water supply as required by Article 6, Division 2, Section 23-84(1) of the Subdivision Code. The property identified by Tax Map Key 1-4-12:6 is located on the south side and approximately 400 feet from the Kapoho-Pahoa/Kapoho-Honolulu Landing Road intersection, Kapoho, Puna, Hawaii.

The approval is based on the following:

VARIANCE FROM MINIMUM WATER REQUIREMENTS
SPECIAL AND UNUSUAL CIRCUMSTANCES

The petitioner has shown that there exists special or unusual circumstances related to the land which would warrant or necessitate a waiver from the minimum water requirements to service the proposed 2-lot subdivision.

The subject property is not served by a County water system of which the closest system is over 11,000 feet away. Further, the proposed subdivision action is to partition the land whereby each property owner is given his 1/2 undivided interest in the land.

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ALTERNATIVES

There are no other reasonable alternatives in resolving the difficulty of the petitioner in resolving the undivided interest of the property. The subject area lacks a water system with the closest system located over 11,000 feet away. As such, the imposition of providing a public water system for the proposed 2-lot subdivision would be putting excessive demands upon the petitioner when a more reasonable alternative is available.

INTENT AND PURPOSE

The intent and purpose of the water requirements for subdivision is for the purpose of providing potable water for drinking and fire protection. The Department of Water Supply Rules and Regulations does not require fire hydrants for subdivisions which are located in Agricultural zoned areas larger than one-acre lot size. This proposed 2-lot subdivision is located in the Agricultural zoned district with a minimum lot size requirement of 10 acres. Potable water for the subdivision can be provided via a catchment system which is acceptable.

Based on the foregoing findings, the variance request would be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning and Subdivision Codes and the County General Plan, will not be materially detrimental to the public's welfare, and will not cause substantial adverse to the area's character and to adjoining properties.

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 file a written agreement with the Planning Department prior to receipt of final subdivision approval containing the following stipulations and covenants:
 - a) That the subdivider agrees and accepts the fact that a County dedicable public water system is not now or in the foreseeable future available to service the subdivision, and that no portion of the subject property may be further subdivided without first having a water system meeting with the standards of the Department of Water Supply.

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- b) That the subdivider agrees and accepts the fact that the County will not at any time bear the responsibility of supplying public water to the subdivision.
 - c) That the covenants of the subdivision prohibit the construction of ohana dwellings on the subject properties. Further, that the covenants of the subdivision require for each lot the construction of a 10,000 gallon catchment system for domestic use and a separate 5,000 gallon catchment system for fire fighting and emergency back-up use with any dwelling.
 - d) That the written agreement shall be duly recorded at the Bureau of Conveyances of the State of Hawaii by the Department at the cost and expense of the subdivider. A copy of the recorded covenants shall be filed with the Department.
3. In the event that there are any amendments or changes to the subdivision after the agreement is signed, the subdivider shall be responsible for informing the Department of the amendments or changes so that the agreement can reflect the amendments or changes; further, the written agreement shall be considered as a condition and covenant running with the land and shall be binding upon the subdivider or owners, his heirs, executors, administrators and assigns or its successors and assigns and shall be incorporated by reference as an exhibit and made a part of each agreement of sale, deed, lease or other similar documents affecting the title or ownership or each subdivided lot.

VARIANCE FROM MINIMUM ROADWAY REQUIREMENTS
SPECIAL AND UNUSUAL CIRCUMSTANCES

The subject property which consists of 24.432 acres is situated within the County's "Agricultural" (A-10a) zoned district. There are special or unusual circumstances related to the property which would warrant or necessitate the narrower right-of-way to service the proposed 2 lot subdivision. The special circumstances are: 1) Access to the subject property is presently via an existing 20 foot wide road and utility easement; 2) The property does not have any frontage on an approved private or public street; 3) The geographical isolation of the subject property since it is accessible only through the 20 foot wide road and utility easement; and 4) The present zoning restricts further resubdivision of the property.

Based on these considerations, the petitioner is restricted to only a 2 lot subdivision. If the property was located in an agricultural zoned area for less than three acres, the minimum

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right-of-way would be 16 feet with a 12 foot wide pavement, a variance would not have been required. Additionally, since the existing easement serves only a limited number of properties and is not part of an overall street system, the easement will be used only by the localized traffic of this particular subdivision and existing lots which have access over the easement. 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 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 curtail or reduces existing property development rights.

ALTERNATIVES

There are no reasonable alternative the petitioner could use to resolve the difficulty that they are claiming for the proposed subdivision. The petitioner could request the adjoining property owner to grant him an additional 30 foot wide easement for a total of 50 feet. However, this alternative is unfeasible and would remove the 30 foot strip from its present agricultural use (papaya orchard). The fact that only 1 additional lot will be utilizing the existing 20 foot easement will have a minimal impact on this right-of-way.

In certain situations, the roadway needs of an area have to be evaluated, not only from the cost perspectives but whether or not the minimum roadway requirements would be excessive in light of the intended use and property characteristics. The cost/benefit ratio and the fact that the road will be used only by localized traffic are specific circumstances which serve to justify the reasonableness of the petitioner's request. 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 from the roadway requirements are determined to be reasonable. Although it could be argued that other alternatives are

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available to the petitioner, the reasonableness and practical application of those alternatives have to be evaluated with respect to the application and surrounding area. 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 and drainage, etc., are provided for.

The existing 20-foot wide easement is determined to be adequate for the proposed 2 lot subdivision it is intended to serve at this time. However, the granting of this variance shall not be construed nor used as justification for any future variances from the minimum roadway standards for future subdivision requests. Accordingly, in view of the agricultural nature and character of the area, we have determined that the existing 20-foot wide easement will satisfy the purposes as intended by the Subdivision Code.

Inasmuch as the existing 20-foot easement will not be a through street and will remain in private ownership, the granting of the 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 state conditions of approval.
2. The entire 20-foot easement shall be graded and a minimum 16 foot wide agricultural standard pavement be constructed.
3. The construction plans also be submitted and that construction of the improvements in compliance with this

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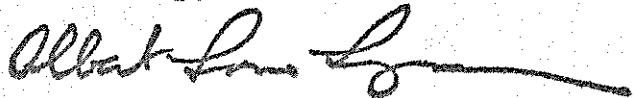
variance and with the Department of Public Works' road standards shall commence within one year from the date of receipt of final approval of the construction plans and be completed within two years thereafter.

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 void.

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

Sincerely,



ALBERT LONO LYMAN
Planning Director

MO/ALL:lv

xc: Department of Public Works
Department of Water Supply
bcc: Subd. File (Kaoru)