

CERTIFIED MAIL

December 4, 1986

Mr. Herbert Kawainui Kane
P. O. Box 163
Captain Cook, HI 96704-0163

Dear Mr. Kane:

Variance Application (V86-14)
Herbert Kawainui Kane
Tax Map Key 7-4-04:4

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 3-lot subdivision with a 30-foot wide easement and a 16-foot wide oil treated gravel pavement in lieu of the minimum 50-foot right-of-way with a 20-foot wide dedicable pavement and without a water system meeting with the minimum requirements of the County Department of Water Supply as required by the Subdivision Code. The subject property which consists of 19.05 acres and identified by TMK: 7-4-04:4, is located on the east side of the Homesteads Road (commonly known as Tomi Tomi Road) approximately 1,650 feet from the Palani Road/Tomi Tomi Road intersection, Kealahou, North Kona, Hawaii.

VARIANCE FROM MINIMUM ROADWAY REQUIREMENT

The approval is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

The subject property which consists of 19.05 acres is situated within the County's "Unplanned" zoned district. There are special or unusual circumstances related to the property which would warrant

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or necessitate the narrower right-of-way to service the proposed 3-lot subdivision. The special circumstances are 1) Access to the subject property is via an existing 20- to 30-foot wide homestead road; 2) The geographical isolation of the property since it is accessible only through the 20- to 30-foot wide homestead road.

The basic intent of the proposed 3-lot subdivision is to create separate lots for each of the 3 family members who own a 1/3 interest in the property. Since the 390-foot long oil treated gravel surface roadway presently serves only 2 lots and is not part of an overall street system, the homestead road will be used only by the localized traffic of this particular subdivision and 1 other lot. 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 that property owners on both sides of the existing lot sell him the additional right-of-way (approximately 10-foot on each side) required to bring the homestead road up to a 50-foot right-of-way. However, this alternative is unfeasible since the adjoining property owners are reluctant to sell any portion of their property for the road widening.

In certain situations, the roadway needs of an area have to be evaluated, not only from the cost perspectives but whether or not

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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 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 30-foot wide homestead road is determined to be adequate for the proposed 3-lot subdivision it is intended to serve at this time. Accordingly, in view of the agricultural nature and character of the area, we have determined that the existing homestead road will satisfy the purposes as intended by the Subdivision Code.

Inasmuch as the existing homestead road will not be a through street and the 390 feet portion will not be maintained by the County (State perpetual access easement to petitioner), 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 unplanned 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.

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Based on the foregoing, the Planning Director has concluded that this request be approved.

VARIANCE FROM MINIMUM WATER REQUIREMENTS

The approval is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances that exist which would warrant or necessitate a waiver from the minimum water requirements to service the proposed 3-lot subdivision. The existing lot is presently serviced with a water meter located on Mamalahoa Highway which is approximately 1,900 feet mauka of the subject property. From the water meter, an 1 1/2 inch waterline traverses over the paper homestead road to the subject property. Two additional water services are available to the applicant from the waterline along Mamalahoa Highway. In lieu of providing 2 additional service lines each approximately 1,900 feet in length, the applicant is contemplating the utilization of the existing 1 1/2 inch service line to service water storage facilities for the 2 additional lots. This would cut the cost of laying and duplicating 2 additional service lines in excess of 4,000 linear feet.

Therefore, considering all of the foregoing issues, we have determined that there are special or unusual circumstances applying to the subject property which exist either to a degree which deprives the owner or petitioner of substantial property rights that would otherwise be available or to a degree which obviously interferes with the best use or manner of development of the subject property.

ALTERNATIVES

There are no reasonable alternatives in resolving the difficulty of the petitioner. The petitioner could install the 2 additional service meters on Mamalahoa Highway and extend the 2 additional service lines to the additional 2 lots. The combined length of these service lines would be in excess of 4,000 linear feet. The cost of this improvement will be approximately \$20,000 or \$10,000 per lot. In lieu of this alternative, the petitioner and/or

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potential lot owner, could construct a minimum 2,000 gallon water storage tank when constructing a dwelling. The water storage tank would be serviced with water from the existing 1 1/2 inch water service line that presently services the parcel.

As such the imposition of providing a public or private water system for the proposed 3-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 requiring a water system for a subdivision is to assure that adequate water is available for human consumption and fire protection. Since the property is within the Unplanned district, fire protection facilities (fire hydrants) is not a mandatory requirement of the water standards.

As noted previously, water for any future dwelling would be available through the use of a water storage tank that would be serviced by the existing 1 1/2 inch water service line that presently serves the parcel.

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 impact to the areas 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:

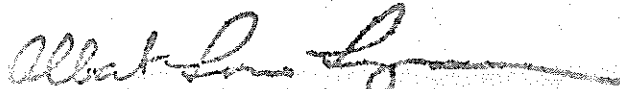
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- a. That any future dwellings constructed on the property shall have a minimum water storage facility of 2,000 gallons with water being furnished from the existing 1 1/2 inch water line.
 - b. In lieu of providing the water storage facility, the land owner may request water service if available, from the Department of Water Supply and provide their own service line from the nearest available water service (meter).
 - c. 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.
3. In the event that any of the lots are provided by a separate water service (individual meters) from the Department of Water Supply, the above covenants will no longer be in effect.

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:aeb

cc: DPW
DWS

bcc: Kaoru (Subd. file)