

CERTIFIED MAIL

December 29, 1986

Mr. Leo I. Fleming
P. O. Box 396
Kailua-Kona, HI 96745

Dear Mr. Fleming:

Variance Application (V86-39)
James Riggle
Tax Map Key 8-2-03:29

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 4-lot subdivision with a 30-foot wide easement and a 16-foot pavement in lieu of the minimum 50-foot right-of-way with a 20-foot wide non-dedicable standard pavement as required by the Subdivision Code. The subject property which consists of 22.128 acres and identified by TMK: 8-2-03:39, is located on the southwest (makai) side of the Old Government Main Road, approximately 750 feet east of the Old Government Main Road/Lower Government Main Road (Napoopoo Road) intersection, Waipunaula, South Kona, Hawaii.

The approval is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

The subject property which consists of 22.128 acres is situated within the County's "Unplanned" 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 4 lot subdivision. The special circumstances are 1) Access to the subject property is via an existing 30-foot wide State owned road right-of-way (paper road); 2) The property does not have any frontage on an approved private or public street; and 3) the geographical isolation of the subject property since it is accessible only through the 30-foot road right-of-way.

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The Subdivision Code requires a 50 foot right-of-way with a 20 foot pavement for properties located within the Unplanned zoned district. If the property was located in the agricultural zoned district with lot size requirement of less than 3 acres, the minimum right-of-way requirement of a private road for a 4-lot subdivision would be 20 feet with a 16-foot wide pavement, a variance from the minimum right-of-way (50 foot) and pavement requirements (16 foot) would not have been required.

Additionally, since the existing State right-of-way (paper road) theoretically serves only a limited number of properties and is not part of an overall street system, the 30 foot State right-of-way will be used only by the localized traffic of this particular subdivision and existing lots which have access over this right-of-way. Although there are other properties located off this State owned right-of-way, the property owners are required to apply for and receive approval from the board of Land and Natural Resources for access easement over this right-of-way. 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 decision 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 this 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 tried to obtain the additional 20 foot right-of-way to comply with the 50-foot requirement, but was unable to secure it.

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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. The cost/benefit ratio and the fact that the road will be used only by localized traffic are specific circumstances which serves 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 road right-of-way is determined to be adequate for the proposed 4-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 subdivision requests. Accordingly, in view of the existing zoning restriction and character of the area, we have determined that the existing 30-foot wide right-of-way will satisfy the purpose as intended by the Subdivision Code.

Inasmuch as the existing 30-foot right of way will not be a through street and is controlled by the State of Hawaii through the access non-exclusive easement arrangement, 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 use not otherwise permitted within this Unplanned zoned district.

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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.

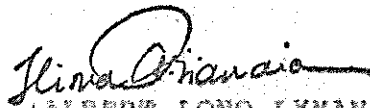
The variance request is approved, subject to the following conditions:

1. The petitioner, its assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The minimum improvements shall consist of a minimum 16 foot pavement with 7-foot shoulders on both sides meeting with the Department of Public Works road standards.
3. The construction plans shall be submitted for review and approval within one year of the date 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 voided.

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

Sincerely,


ALBERT LONO LYMAN
Planning Director

MO:dh
cc: James Riggle
Dept. of Public Works

bcc: Kaoru (Subd. File)