

CERTIFIED MAIL

June 16, 1986

Mr. Joseph Fagundes, III
Fagundes & Seiter
Attorneys at Law
75-5744 Alii Drive, Suite 245
Kailua-Kona, HI 96740

Dear Mr. Fagundes:

Variance Application (V86-5)
Michael Krall
Tax Map Key 8-1-16:41

After reviewing the above application and the information submitted in behalf of it, the Planning Director by this letter hereby certifies the approval of the above variance request to allow the creation of a three-lot subdivision with a 30-foot wide easement and a 12-foot wide pavement in lieu of the minimum 50-foot right-of-way with a 20-foot wide dedicable standard pavement as required by the Subdivision Code. The subject property which consists of 3.945 acres and identified by TMK: 8-1-16:4, is located on the mauka side of the Hawaii Belt Road approximately 230 feet from the highway, and to the rear and north of the County of Hawaii Baseyard and Hawaiian Telephone Company complex in Keopuka, South Kona, Hawaii.

The approval is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

The property which consists of 3.945 acres is situated within the County's Agricultural (A-1a) 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 3-lot subdivision. The special circumstances are 1) Access to the subject property is presently via an existing 30-foot wide road and utility easement; 2) The property does not have any frontage on an

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approved private or public street; 3) The geographical isolation of the subject property since it is accessible only through the 30 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 only a 3 lot subdivision. Presently there is a paved road at the beginning of the 30-foot wide easement that services 5 lots on a dead end street. The proposed 12-foot wide paved road is to serve the proposed 3-lot subdivision and an existing lot. When the subject property was subdivided in 1955 (Subdivision No. 935), no improvements (paving, etc.) to the easement was required. A condition of approval was that a perpetual easement over the 30 foot wide easement and roadway would be available to all purchasers. 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 the existing lot which have access over the easement. While there may be requests for Ohana Dwellings, the petitioner will have to formerly 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.

In addition, the existing approved private roadway is substandard in regards to today's standard. The pavement width varies with the average being approximately 10 to 12 feet in width. The petitioner is proposing to construct a 12-foot wide pavement with 2 feet shoulders on both sides of the pavement. This improvement would be equal to or better than the present approved access.

As such, these foregoing factors are considered to be special or unusual circumstances applying to the subject real property which exists 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 is no reasonable alternative the petitioner could use to resolve the difficulty that they are claiming for the proposed

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subdivision. The petitioner could request the adjoining property owners to grant him a 20-foot wide easement for a total of 50 feet. However, this alternative is unfeasible and would have impacts on the adjoining lots.

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. Although the existing easement presently serves 7 lots and the proposed 2 additional lots, 5 lots only utilize approximately the first 30 feet of the easement. The remainder of the 30 foot wide easement is used by an existing lot and the subject lot which is proposed to be subdivided into 3 lots for a total of 4 lots. The minimum width of an easement that would serve 4 lots is 20 feet with a 16 foot wide pavement. Thus, in this particular variance application, the economic consideration is not the sole basis for the granting of the variance request.

Therefore, in consideration 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 easement is determined to be adequate for the proposed 3-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 existing zoning restrictions and character of the area, we have determined that the existing 30-foot wide easement will satisfy the purpose as intended by the Subdivision Code.

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Inasmuch as the existing 30-foot wide easement will not be 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, it assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The minimum improvements shall consists of a minimum 12-foot wide pavement with 2-foot shoulders on both sides meeting with the Department of Public Works private road standards.
3. The construction plans shall be submitted for review and approval within one year of the date of this variance permit. Construction 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 voided.

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

Sincerely,


ALBERT LONO LYMAN
Planning Director

MO:lv
cc: Department of Public Works
bcc: Subd. File (via Kaoru)