

CERTIFIED MAIL

May 18, 1987

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

Dear Mr. Fuke:

Variance Application (V87-9)
AMFAC Agribusiness
Tax Map Key 1-6-03:73

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 with a 20-foot right-of-way with an oil-gravel surface in lieu of the required minimum 50-foot right-of-way and a 20-foot wide pavement as required by the Subdivision Code. The subject property which consists of 103.203 acres and identified by TMK: 1-6-03:73, is located on the east side of Mamalahoa Highway between Diamond Head Papaya Company and the Keaau Loop Subdivision, Keaau, Puna, Hawaii.

The approval is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances which apply to the subject property which exist to a degree that would otherwise be available to a degree which obviously interferes with the best use or manner of development of the property. There presently exists a 20-foot wide road easement (portion of Keaau Road) that traverses the subject property and is proposed to serve as access to the proposed 6-acre parcel. The 1949 tax map shows the existence of this road easement. It was used as access to the former Puna Sugar Company Mill and related warehouse uses and operations. The former warehouse is now used by AMFAC Tropical Products for the processing of papaya.

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Special Permit (LUC 418) was approved on June 1, 1979, by the Land Use Commission to allow the establishment of the existing papaya processing plant and a papaya puree plant on approximately 1.3 acres of land. Further, on February 13, 1986, an amendment was approved by the Planning Commission to increase the land area of the Special Permit to approximately 6 acres for which the applicant is seeking to subdivide. The Planning Department's findings and recommendations to the Planning Commission stated that "The proposed use will not unreasonably burden public agencies to provide roads, water, and other essential infrastructure or services. Access to the property is available via a privately owned 20-foot wide gravel roadway. The roadway is adequate to service the needs of the vehicles used to transport the fruits to and from the plant."

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 alternatives the petitioner could use to resolve the difficulty that they are claiming for the proposed subdivision. Under the existing condition, the petitioner can continue to use the present 20-foot wide easement (gravel road) as access to the papaya processing plant and its proposed expansion. However, because of the proposed subdivision, the minimum road right-of-way requirement is 50 feet with a 20-foot wide pavement as required by the Subdivision Code. The land over which the existing road easement and papaya processing plant is located (proposed subdivision) is not owned by the petitioner, but by W. H. Shipman, Ltd. Although W. H. Shipman, Ltd., has granted authorization to AMFAC Agribusiness to apply for the variance and subdivision, they have not consented to increasing the width of the existing roadway easement for 20 to 50 feet to meet with the Subdivision Code requirement. Without this consent, the petitioner has no alternative to meet with the minimum road right-of-way requirement.

Therefore, in consideration of these factors, the variance request from the minimum 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 areas. 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 intent and purpose of the minimum roadway requirement is to ensure that minimum safety standards relative to traffic, drainage, shoulders and etc., are provided for.

The existing 20 foot wide roadway easement has been used for years by the former Puna Sugar Company vehicles (trucks, cars, etc.) and the present AMFAC Tropical Products papaya operation without any problems and is determined to be adequate. However, the granting of this variance shall not be construed nor used as justification for any future subdivision request. Accordingly, in view of the existing zoning and character of the area, we have determined that the existing 20 foot wide road easement will satisfy the purpose as intended by the Subdivision Code.

Inasmuch as the existing easement will not be a thoroughfare or part of any overall street system, the granting of the variance 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 introduce uses not otherwise permitted within the 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 Code and the General Plan.

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

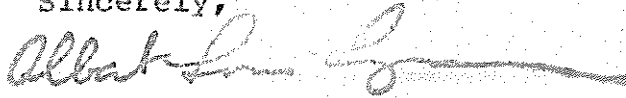
1. The petitioner, its assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The construction and specifications for the oil treatment of the existing gravel road shall be submitted for review and approval within one year of the date of this variance approval.

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3. The petitioner, it assigns or successors shall be responsible for maintaining and repairing the existing gravel road to provide a smooth and safe travelway and free of obstructions for all users. A deed covenant related to maintenance shall be reviewed and approved by the County and recorded with the Bureau of Conveyances.
4. All other application Federal, State and County rules and regulations shall be complied with.

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

Sincerely,



ALBERT LONO LYMAN
Planning Director

MO:aeb

cc: AMFAC Agribusiness
DPW

bcc: Kaoru (Subd. File)