

CERTIFIED MAIL

June 2, 1988

Ms. Barbara Robertson
P.O. Box 171
Kamuela, HI 96743

Dear Ms. Robertson:

Variance Application (V88-2)
Variance from Minimum Roadway Requirements
Tax Map Key 6-5-09:85

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 access off of an existing 30-foot wide roadway easement with a 13-foot wide pavement in lieu of the minimum 50-foot right-of-way and a 20-foot pavement requirement as required by the Subdivision Code. The subject property which consists of 20,098 square feet and identified by TMK: 6-5-09:85, is located on the south side approximately 30 feet from the Kawaihae Road and 800 feet west (makai) of the Kawaihae/Laelae Road intersection, Waimea Homesteads, South Kohala, Hawaii.

The approval is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

The property which consists of 20,098 square feet is situated within the County's Single Family Residential (RS-7.5) zoned district. Under this zoning designation, two (2) single family dwellings are permitted to be built on the property. 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 30-foot wide roadway and utility easement; 2) The property does not have any frontage on an approved private or public street; 3) The location of the subject property is such that it is accessible only from the 30-foot wide road and utility easement; and 4) The present zoning restricts further resubdivision of the property.

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Based on these considerations, the applicant is restricted only to a 2-lot subdivision. Presently, there is a 13-foot wide paved road beginning from the Kawaihae Road that services 7 lots. Since the easement serves only a limited number of properties and is not part of an overall street system, the easement will be utilized only by the localized traffic of this particular subdivision and the existing lots which have access over the easement. While there may be requests for Ohana Dwellings, the applicant 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 applicant'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 exists 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 is no reasonable alternative the applicant could use to resolve the difficulty that they are claiming for the proposed subdivision. The applicant could request the adjoining property owner to grant her an additional 20-foot wide easement for a total of 50 feet. However, this alternative is unfeasible and would have an impact on the adjoining property.

In certain situations, the roadway needs of an area has 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 easement will be used only by localized traffic are specific circumstances which serves to justify the reasonableness of the applicant's request. As noted previously, the applicant can construct an additional single family dwelling on the property. In doing so, she can construct the dwelling without improving the existing easement.

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 applicant, 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 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 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.

Inasmuch as the existing 30-foot wide easement will not be a through street and will remain in private ownership, the granting of the variance will not 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 residential 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.

Based on the foregoing, the Planning Director has concluded that this variance request be approved subject to the following conditions:

1. The applicant, its assigns or successors shall be responsible for complying with all stated conditions of approval.
2. That portion of the road along the frontage of the property shall be provided with a minimum 4-foot wide shoulder meeting with the minimum requirements of the Department of Public Works.
3. The restrictive covenant be included in the deed restriction that prohibits the construction of an ohana dwelling on the proposed lots until such time that the

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existing easement meets with the minimum requirements of the County. Copy of the deed restriction shall be submitted to the Planning Department prior to final approval of the subdivision.

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, the Planning Director may nullify this variance request.

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

Sincerely,



ALBERT LONO LYMAN
Planning Director

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cc: Department of Public Works
Subd. 87-59