

CERTIFIED MAIL

October 19, 1989

Throughout documents this TMK is incorrectly described as 6-3-9:86.

Ms. Tomoe Maciejewski
P.O. Box 1979
Kamuela, HI 96743

Dear Ms. Maciejewski:

Variance Application (V89-16)
Minimum Roadway Requirements
Tax Map Key: ~~6-3-9:86~~ 6-5-009:086

After reviewing your application and the information submitted on 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 is 26,630 square feet in area, identified by Tax Map Key: 6-3-09:86, and is located on the east side of a private 30-foot road easement, approximately 300 feet south of its intersection with Kawaihae Road, Waimea Homesteads, South Kohala, Hawaii.

The approval is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

Access to the subject property is presently via an existing 30-foot side roadway and utility easement with a 13-foot wide pavement. The property does not have any frontage on an approved private or public street. The location of the subject property is such that it is accessible only from the 30-foot wide easement. The present location of the existing dwelling restricts further resubdivision of the property. Based on these considerations, the applicant is restricted only to a 2-lot subdivision.

OCT 20 1989

Ms. Tomoe Maciejewski
October 19, 1989
Page 2

Presently, the existing easement services eight 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 and the adjacent proposed 2-lot subdivision, and the existing lots which have access over the easement.

The property immediately adjacent and south of the subject property encompasses an area of 12,262 square feet. Under the present zoning, it cannot be further subdivided. While there is a potential for subdivision of four (4) large parcels further south, this should not imply that automatic variance approval would be given for those requests should they be applied for. The necessary review by the appropriate governmental agencies would have to be done prior to any decisions on those requests. Further, based on the zoning density of RS-7.5, the potential subdivision of all four parcels would involve the creation of a total 26 lots.

Based on the foregoing, it has been determined that there are special and unusual circumstances applying to the subject property which exist to a degree which deprive the owner of substantial property rights that would otherwise be available or which unreasonably interfere with the best use or manner of development of the property.

ALTERNATIVES

There is no reasonable alternative that 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.

As another alternative, the applicant could contribute a pro rata share of any road widening improvement imposed by the County on any further subdivision of land. However, should the property be sold in the future, then this condition would be the responsibility of the new property owner which would be unfair and unreasonable. As mentioned earlier, the adjacent property consisting of 12,262 square feet cannot be further subdivided.

Ms. Tomoe Maciejewski
October 19, 1989
Page 3

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 easement will be used only by localized traffic are specific circumstances which serve 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 the 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.

Ms. Tomoe Maciejewski
October 19, 1989
Page 4

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.

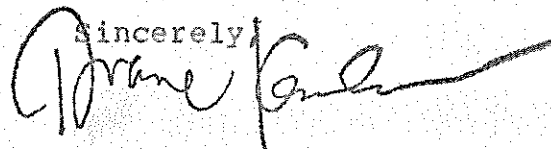
The variance request is approved subject to the following conditions:

1. The petitioner, its assigns, or successors shall be responsible for complying with all stated conditions of approval.
2. 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 existing easement meets with the minimum requirements of the County. A 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 the variance permit.

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

Sincerely,



DUANE KANUHA
Planning Director

AK:syw

cc: DPW
Subdivision No. 89-32