

CERTIFIED MAIL

January 12, 1989

Ms. Chrystal T. Yamasaki, R.L.S.
Wes Thomas and Associates, Inc.
75-5722 Kalawa Street
Kailua-Kona, HI 96740

Dear Ms. Yamasaki:

Variance Application (V88-7)
Applicant: Yoshio Fukumitsu
Tax Map Key 7-5-02:33

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 3-lot subdivision with access off of a 50-foot wide roadway with a 14-foot pavement in lieu of the minimum 50-foot right-of-way with a 20-foot pavement as required by the Subdivision Code. The subject property which consists of 20.2780 acres and identified by TMK: 7-5-20:33, is located on the west side of Mamalahoa Highway adjoining (north side) of Keopu Heights Subdivision, Keopu 2nd, North Kona, Hawaii.

The approval is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances applying to the subject real property which exists either to a degree which deprives the owner or applicant of substantial property rights that would otherwise be available or interfere with the best use or manner of development of that property.

The proposed 3-lot subdivision will have an access via 50-foot wide right-of-way with a pavement of 14 feet in width. Although one of the proposed lots will result in an area of 10+ acres, a variance from the minimum water requirements was approved with a condition that no further subdivision of the property will be granted until water becomes available.

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Consequently, the traffic demands on the proposed 14-foot pavement will not be exceeded based on the private non-dedicable standards of the Subdivision Code. Although 2 other lots have frontage on this 50-foot right-of-way, the fact that only 3-lots within this proposed subdivision will utilize the 14-foot wide pavement ensures the minimal impact in allowing the reduced roadway pavement width.

ALTERNATIVES

There are no other reasonable alternatives that would resolve the difficulty that the applicant is claiming for the subdivision. The proposed 3-lot subdivision having access provided by the 14-foot wide pavement is considered reasonable. The reasonableness is determined by the minor number of lots which will be served by this roadway. Other alternatives in requiring the applicant to provide the full 20-foot pavement within the 50-foot right-of-way will not prove to be any more adequate than what the 14-foot pavement will provide. As such, although it could be argued that other alternatives are available to the applicant, the reasonableness of those alternatives have to be evaluated. As such, the imposition of the other alternatives in this particular situation, is considered to be excessive, when a more reasonable alternative is available.

INTENT AND PURPOSE

Based on the foregoing findings, this variance would be consistent with the general purpose of the zoning district, and the intent and purpose of the Subdivision Code and the General Plan. The purpose of the minimum roadway requirements is to ensure that minimum safety standards relative to traffic and drainage are provided for. In addition, these minimum standards were designed to provide for other concerns including accommodation for adequate space for emergency vehicles to maneuver and positioning when required, and to ensure services such as mail delivery, street addresses, road maintenance, etc..

The applicant's proposal of providing a pavement width of 14 feet will satisfy the subdivision's requirements in ensuring that access will be available to the proposed lots. Additionally, the proposed access will be similar to the minimum access requirements of residential type subdivision.

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

1. The applicant, its assigns or successors, shall be responsible for complying with all stated conditions of approval.

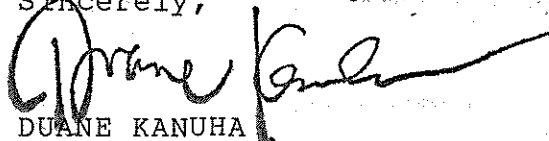
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2. The necessary construction plans showing the proposed 14-foot wide pavement within the 50-foot right-of-way shall be submitted for review and approved within 6 months from the effective date of approval of the variance permit.
3. The construction of the improvements in compliance with the Department of Public Works requirements 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. The road shall remain under private ownership and not dedicated to the County until it is brought up to dedicable standards. No further subdivision of the property will be permitted unless the roadway meets with the requirements of the Subdivision Code.
5. No ohana dwelling will be permitted on any of the proposed lots until such time that the road is brought up to County—dedicable standards.
6. That a written agreement shall be recorded with the Bureau of Conveyances of the State of Hawaii incorporating the above restriction at the cost and expense of the subdivider.
7. In the event that the roadway is constructed to dedicable standards, the above covenants will no longer be in effect.

Should any of the foregoing conditions not be complied with in a timely manner, the Planning Director may nullify this variance permit.

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

Sincerely,



DUANE KANUHA
Acting Planning Director

MO:lv

cc: Department of Public Works
Subd. 84-25