

CERTIFIED MAIL

June 12, 1990

Jess Frost & Dana Singleton  
 P.O. Box 709  
 Capt. Cook, HI 96704

Dear Mr. Frost & Ms. Singleton:

Variance Application (V89-38)  
Tax Map Key: 8-2-15: 28 Por. 1 & 27

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 from the subdivision code to permit a new 20 ft. wide private dead end road with 16 ft. pavement to serve 7 lots in lieu of the maximum 6 lots allowed by the Subdivision Code. The subject property is 19.4 acres in area, identified by tax map key 8-2-15:28, Por. of 1 and 27 and is located approximately 4,00 ft. south on the mauka (east) side along Lower Government Main Road (Napoopoo Road) from its junction with Mamalahoa Highway at Captain Cook, Village, Kealahou, South Kona.

The approval is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances applying to the subject property which deprive the petitioner of substantial property rights that would otherwise be available, or which interfere with the best use or manner of development of the property.

The private dead end street was located and built to Department of Public Works standards and in accordance with the Subdivision Code, wherein 6 lots were taking access from the private street (a cul de sac). While the cul de sac was being constructed, the highway inspector noted that the existing home's driveway on lot 60 (the large 1 acre+ lot) was continuing to utilize the same access point as the cul de sac's entrance turning radius, so the developer was required to move the driveway further up the street.

The additional driveway (the 7th) was constructed utilizing the cul de sac as access. Subsequently it was realized that, according to the zoning code only 6 lots are permitted to be served by a

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private dead end street with 16 ft. wide pavement and 20 ft. right of way. The developer, by heeding the inspector's directive to move his driveway up the cul de sac inadvertently violated the 6 lot maximum.

As the development was to obtain a file plan and since the 7 lots taking access off a private dead end street are in excess of the 6 lots maximum, a variance to allow the 7th lot as well as the retention of the lesser roadway standards was necessitated in order for the development to be in full compliance with the Subdivision Code.

#### ALTERNATIVES

Alternatives were available prior to the final plat being approved. However, after construction was completed (end of 1989), any changes in the street design and lot layout were not feasibly possible. Earlier, the private cul de sac could have been required to be a full size minor street, or the 7 lots involved could have been lessened, redesigned and replatted. However, none of these alternatives were imposed. There is consequently no alternative but to allow a 7th lot to take its access off the private cul de sac. To do otherwise and revert to the pre-existing driveway at the intersection's turning radius or elsewhere along Napoopoo Road would invite grave traffic situations to occur repeatedly.

#### INTENT AND PURPOSE

The imposition of roadway width standards are predicated on the traffic load they are estimated to bear. In the case of a private dead end street, the duly adopted standard for 4 to 6 residential sized lots is a 16 ft. pavement within a 20 ft. right of way. The next higher standard is 20 ft. pavement with 50 ft. right of way.

The subject subdivision of 6 lots served by this cul de sac was approved by all the appropriate government agencies, but since the Public Works Department, in the interests of safety, caused one additional lot to take access off the cul de sac instead of from the Napoopoo Road (the main primary access), the code limit of 6 lots was breached. In the interest of public traffic safety, this action is determined to be the most reasonable and sound solution given the circumstances involved.

Based on the foregoing findings, the variance request would be consistent with the intent and purpose of the Subdivision Code and the County General Plan; will not be materially detrimental to the public's welfare; and will not cause substantial adverse impact to the area's character and adjoining properties.

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*W. C. [Signature]*

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Therefore, the Planning Director has concluded that this request be approved subject to the following conditions:

1. The petitioner, his assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. No chana dwelling shall be permitted or built on any of the 7 affected lots unless the applicable road and related Subdivision Code requirements, without variances, are met. A written agreement stipulating this condition shall be duly recorded at the Bureau of Conveyances of the State of Hawaii by the Department at the cost and expense of the subdivider. In the event that there are any amendments or changes to the subdivision after the agreement is executed, the subdivider shall be responsible for informing the Department of the amendments or changes so that the agreement can reflect the amendments or changes; further, the written agreement shall be considered as a condition and covenant running with the land and shall be binding upon the subdivider or owner, his heirs, executors, administrators or assigns and its successors and assigns and shall be incorporated as an exhibit and made part of each agreement of sale, deed, lease or other similar documents affecting the title or ownership of each subdivided lot.
3. All other applicable State and County rules and regulations shall be complied with.

Should any of the foregoing conditions not be met, the Director may proceed to declare the variance null and void.

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

Sincerely,



DUANE KANUHA  
Planning Director

DT:aam

cc: Kona Office  
Subdivision File  
Public Works

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*Handwritten initials*