

PP Var 436

CERTIFIED MAIL

April 25, 1991

R. Ben Tsukazaki, Esq.
Menezes Tsukazaki Yeh & Moore
100 Pauahi Street, Suite 204
Hilo, HI 96720

Dear Mr. Tsukazaki:

Variance Application (WHV 90-4)
APPLICANT: THOMAS BORHO
Tax Map Key: 7-5-16:60

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 a proposed 2-lot subdivision to take access over an existing road right-of-way easement which consists of an 18-foot right-of-way with a 16-foot wide pavement and a 20-foot right-of-way with a 12-foot wide pavement in lieu of the required minimum 50-foot right-of-way with 20-foot wide agricultural standard pavement. The subject property, consisting of 11.05 acres, is situated within the Maluhia Mauka Subdivision on the mauka side of Hualalai Road approximately 400 feet east of Hua'ai Street in the Kona Orchards Subdivision, Euapuaanui, North Kona, Tax Map Key 7-5-16:60.

The approval is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special or 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.

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Access to the subject property is presently over two existing connecting segments, an existing 18-foot right-of-way easement with 16-foot wide pavement and 20-foot right-of-way easement with 12-foot wide pavement. Said non-dedicable roadway improvements were required and approved in February 1989 as part of the consolidation of 6 pre-existing lots and resubdivision into 5 lots. Although the consolidation/resubdivision action qualified under Section 23-7, it was determined that roadway improvements be constructed for public safety and welfare.

The subject property was created having an area of 11.05 acres while the other four lots consisted of a minimum 5 acres, as per the Agricultural-5 acre (A-5a) zone designation. The petitioner desires to subdivide the subject property so as to create the 5+ acre and 6+ acre lots, which would still be consistent with the zoned designation. However, the Subdivision Control Code requires that a minimum 50-foot right-of-way with 20-foot wide agricultural standard pavement be provided for the proposed 2-lot subdivision. The petitioner attempted to acquire the area for the additional right-of-way easement; however, both landowners fronting the 18-foot and 20-foot rights-of-way refused to grant the additional area needed for the required 50-foot right-of-way.

The granting of the variance from the minimum roadway standards will not be severely affected by this 2-lot subdivision. However, in the interest of public safety and welfare, it will be made a condition of approval that the existing 12-foot pavement be extended by 4 feet, thereby increasing the pavement width to 16 feet. In addition, said 4-foot pavement extension shall begin from the makai end of the Maluhia Mauka Subdivision where the existing pavement is less than 16 feet and would continue mauka, to and fronting the subject property, terminating approximately 200 feet mauka of the subject property's makai boundary.

It will also be made a condition of approval that no further variances to the minimum roadway requirement shall be granted for any upzoning or future subdivision of the two lots. The petitioner understands and agrees that any further subdivision or upzoning will require full conformance with road standards of the Subdivision Control Code.

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 petitioner 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 the alternative that the roadway be fully improved according to the requirements of the Subdivision Control Code. However, the petitioner was not able to acquire the area needed for the additional rights-of-way from the two landowners. In the interest of public safety and welfare, the petitioner will be extending pavement width of the existing 12-foot pavement by 4 feet and as a result increasing the pavement width to 16 feet. The roadway is privately owned and maintained by the landowners of the Maluhia Mauka Subdivision. The petitioner is aware, nevertheless, that any upzoning and further subdivision of the property served by this existing access roadway will not be permitted unless the road standards of the Subdivision Control Code are met, meaning no further variances will be considered for the roadway.

INTENT AND PURPOSE

The intent of the roadway standard in the Subdivision Control Code is to help provide adequate and safe access to the property involved. In this case, the existing non-dedicable roadway and drainage improvements were constructed under a previous consolidation/resubdivision action. As a condition of approval, the petitioner will be extending the existing 12-foot pavement to a 16-foot wide pavement within the existing 20-foot right-of-way. The petitioner is aware that there will be no upzoning or further subdivision of the property without meeting the minimum roadway standards of the Subdivision Control Code.

Based on the foregoing, the variance request would be consistent with the general purpose of the zoning district, the intent and purpose of the Subdivision Control Code, 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.

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 petitioner, its assigns or successors shall file a written agreement with the Planning Department prior to receipt of final subdivision approval containing the following stipulations and covenants:

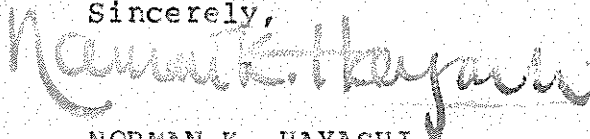
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- a. That all future rezoning and subdivision of any of the lots to be created will comply with the necessary subdivisions and zoning code requirements. No future variances from roadway requirements shall be considered or issued for any of the lots affected by this subdivision.
 - b. That the subdivider agrees and accepts the fact that the County shall not bear the liability and responsibility of improving the road access.
 - c. That no ohana dwellings will be permitted on the lots that are not served with a County dedicable paved road access.
 - d. That the written agreement 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, with a copy sent to this Department.
3. In the event that there are any amendments or changes to the subdivision after the agreement is signed, 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, its 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.
 4. The existing 12-foot wide pavement shall be extended by 4 feet, thereby increasing the non-dedicable pavement width to 16 feet. Said 4-foot pavement shall be constructed in accordance with County of Hawaii non-dedicable standards and shall begin near the makai end of the Maluhia Mauka Subdivision and continue to and fronting approximately 200 feet mauka of the subject property's makai boundary.
 5. All other applicable State and County rules and regulations shall be complied with.

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Should any of the foregoing conditions not be met, the Planning Director may declare the variance null and void. If you have any questions on this matter, please feel free to contact us.

Sincerely,



NORMAN K. HAYASHI
Planning Director

AK:syw
1520D

cc: Chief Engineer
West Hawaii Office

bcc: Subd. No. 5740
Subd. No. 89-83 (via Ed)