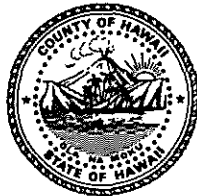


Stephen K. Yamashiro  
Mayor



Virginia Goldstein  
Director

Norman Olesen  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252  
(808) 961-8288 • Fax (808) 961-9615

CERTIFIED MAIL  
Z 416 229 174

June 4, 1995

Mr. David Basque  
B & B Construction  
P.O. Box 135  
Kealahou, HI 96750

Dear Mr. Basque:

Variance Application No. 667 (95-26)  
Applicant: B & B Construction  
Request: Variance From Subdivision Code Sec. 23-88  
on the Number of Lots Serviced by a Nondedicable  
Private Dead-End Street  
Tax Map Key: 2-5-27:12

After reviewing your application and the comments received from consulting agencies, the Planning Director approves the variance request for a 7-lot subdivision serviced by a private dead-end street which will exceed the minimum 6 lots or less requirement of Subdivision Code Sec. 23-88(a).

The subject property is located on the north side of Kaumana Drive, Ponahawaii House Lots area, described as Kaumana II Subdivision, por. Ponahawaii and Kaumana, Hilo, Hawaii.

The approved variance from the Subdivision Control Code to exceed the minimum number of lots that can be serviced by a nondedicable private dead-end street is based on the following.

C7751

JUL 05 1995

Mr. David Basque  
Page 2  
June 4, 1995

#### SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances that exist which warrant or necessitate a waiver from the maximum lot requirements permitted for a nondedicable private dead-end street of the proposed seven (7) lot subdivision. The private roadway leading to the proposed subdivision is approximately 220 feet in length and is approximately 379 feet north of Kaumana Drive. The roadway is not considered to be a major thoroughfare or a secondary arterial. According to the applicant, additional land for the road right-of-way cannot be obtained; the roadway is paved and constructed; and, the water line is installed with ten (10) installed water meters, approved, and paid for.

#### ALTERNATIVES

There are no reasonable alternatives in resolving the minimum requirements. To upgrade the substandard private roadway by the applicant would not be economically feasible; and according to the applicant, no further land can be obtained for the road right-of-way. The imposition of these off-site improvements to the petitioner alone is unfair and unreasonable as others who stand to benefit are not contributing to the cost of the improvements.

Based on the above circumstances, the off-site requirements are determined to be financially infeasible and would place unnecessary burden and hardship on the petitioner for this subdivision.

#### INTENT AND PURPOSE

The intent and purpose of the minimum roadway width standard is predicated on the traffic load it is estimated to bear and to assure adequate access is available to serve the subdivision. For nondedicable private dead-end streets, the required standard of four to six residential sized lots is a 16 foot pavement within a 20 foot right-of-way. The next higher standard is a 20 foot pavement within a 50 feet right-of-way.

The total lot area of parcel 12 is approximately 3.9776 acres; it is in the County's Single Family Residential (RS-15) Zone District. The minimum building site area of a RS-15 Zone District are 15,000 square foot parcels. The applicant is proposing to re-subdivide three lots into four lots which will result in a total 7-lot subdivision from the existing six lot subdivision.

According to comments from the Department of Public Works, the existing subdivision and improvements were done in 1994 under Subdivision No. 91-156. A total of eight (8) lots is presently accessing onto the private nondedicable roadway. There are proposed to be a total of twelve (12) lots, not including potential ohana dwellings, which will be accessing onto this roadway.

Mr. David Basque  
Page 3  
June 4, 1995

Any further subdividing of the property served by this access will not be permitted unless the roadway standards of the Subdivision Control Code are met; therefore, no further variance will be considered for this roadway.

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

The variance 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.
2. Further Subdivision Prohibited. Any further subdivision of the property served by the roadway access shall be prohibited unless the roadway standards of the subdivision control code are complied with; therefore, subsequent variance applications will be denied or not considered. A subsequent subdivision can be considered providing the roadway meets subdivision control code requirements without a variance.
3. Indemnification Covenant Requirement Re: Subdivision No. 91-156 & Subdivision No. 94-150. The subdivider shall submit to the Planning Director a restrictive deed covenant indemnifying the State and County of any and all liability related to vehicular access; the indemnification covenant is required to be recorded with the deeds of the new lots created by pending Subdivision No. 94-150 and on the deeds of the lots created by Subdivision No. 91-156.
4. Requirement of Covenant Prohibiting Ohana or Second Dwelling. An ohana or second dwelling is to be prohibited on the proposed lots 1 through 7, inclusive. The subdivider will prepare and submit to the Planning Director for review a restrictive deed covenant stating that on Lots 1 through 7, inclusive, the construction of an ohana or second dwelling is prohibited.
5. Covenant Preparation, Recordation, & Payment of Filing Fee Costs. The subdivider is to prepare the documents of the restrictive covenants required by conditions 3 and 4, above. The draft documents are to be submitted to the Planning Director for review and approval in consultation with the Corporation Counsel's office.

The final approved covenant documents are to be submitted for recordation by the Planning Department to the Registrar - Bureau of Conveyances - State of Hawaii. The subdivider is to pay for all recordation fees and costs.

6. Covenants to Run with Land Requirement. For the restrictive deed covenants the subdivider shall create covenants running with the land; it 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 a part of each agreement of sale, deed, lease or other similar documents affecting the title or ownership of lots 1 through 7, inclusive, Subdivision No. 94-150.
7. Amendments or Changes to Subdivision. In the event 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.
5. Requirement of Covenant Re: Roadway - Private Ownership; Maintenance; Liability. The subdivider shall submit to the Planning Director a deed covenant stipulating the private ownership of the roadway, the subdivider's responsibility for maintenance of the roadway, and incurring the liability responsibility for the roadway. The format, content, and substance of this document shall be developed with the Department of Public Works and the Corporation Counsel's office.
6. Comply with all comments of Department of Public Works - Engineering Division Memorandum (May 11, 1995). Building Construction. Any building shall conform to all building construction code and statute requirements. Runoff Requirement. All development generated runoff shall be disposed on site and shall not be directed toward any adjacent properties. Flood Zone Requirements. Proposed lots 2 through 7 are affected by Flood Zone "A" with lots 3 through 6 being almost entirely within this flood zone. Zone "A" are areas of special flood hazards for which detailed engineering studies were not done by the Federal Emergency Management Agency (FEMA), to determine the base flood elevations and to identify the floodway. Any new construction or substantial improvements within Flood Zone "A" will be subjected to the requirements of Hawaii County Code Chapter 27 - Flood Control. LOMR Requirement. Comply with the DPW recommendation to complete the LOMR through FEMA, as a condition of this variance.


Mr. David Basque  
Page 5  
June 4, 1995

7. Comply with all other applicable State and County rules and regulations.

Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare the Variance Permit null and void.

Review of Director's Action; Interested Party. Zoning Code sec. 25-27.0(a)(3), provides that an "interested party" may request Planning Commission review of the director's action. The request must be made within ten (10) working days after notice of the director's decision, in writing. Consequently, the variance becomes effective after the ten (10) day appeal period has passed; and, an interested party does not request a review of the director's action. Should a request be made we will inform you of the procedures that must be complied with.

Sincerely,

  
VIRGINIA GOLDSTEIN  
Planning Director

EML:mjs  
6600D

xc: Subdivision No. 94-150  
Department of Water Supply  
Department of Public Works