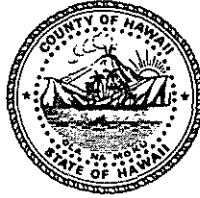


Stephen K. Yamashiro
Mayor



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
P 364 305 276

January 23, 1997

Mr. Thomas H. Yamamoto
HAWAII LAND SERVICES, INC.
P.O. Box 1359
Kamuela, Hawaii 96743

Dear Mr. Yamamoto:

Variance Permit No. 803 (VAR 96-69)
Applicant: Susan B. Reese
Request: Variance From Chapter 23, Subdivisions, Section
23-87, Standard for Non-Dedicable Street
Tax Map Key: 5-2-005:001 por.

After reviewing the variance application and information submitted, the County and the Planning Director does not have the jurisdiction of the Mahukona-Niulii Road right-of-way and the authority to grant a variance from the access requirements and sight distance requirements required by State Department of Transportation (DOH), Highways Division. Condition No. 3, of the tentative subdivision approval letter dated February 12, 1996, states:

"3. All access and sight distance requirements at the Mahukona-Niulii Road shall comply with the State Department of Transportation, Highways Division."

Please contact the State Department of Transportation (DOT), Highways Division, in Hilo, to further discuss Condition No. 3 of the tentative subdivision approval letter dated February 12, 1996.

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Otherwise, after reviewing the variance application and information submitted, the Planning Director certifies the approval of your variance to delete conditions to allow the creation of a two (2) lot subdivision without non-dedicable road or paved road improvements pursuant to Chapter 23, Subdivisions, Section 23-87, Standard For Non-Dedicable Street and your specific request to delete Conditions No. 4 and 5 in the tentative approval letter dated February 12, 1996 which states:

- "4. For the proposed easement, provide minimum 20-ft. wide agricultural pavement to Department of Public Works Standard Detail R-39 with horizontal and vertical alignment based on 30 mph design speed.
5. Submit construction plans and drainage report for review and comments."

ROAD VARIANCE-CONDITION NO. 4 AND 5-TENTATIVE SUBDIVISION
APPROVAL LETTER DATED FEBRUARY 12, 1996: SPECIAL AND UNUSUAL
CIRCUMSTANCES

There are special and unusual circumstances that exist which would warrant consideration to the applicant's variance from the minimum lot access or road requirements to the proposed subdivision of the subject property. This office notes the following:

1. The subject property, is Lot 3-B, of Land Court Application 1332, Makapala and Niulii, North Kohala, Island and County of Hawaii.

The subject property is more commonly identified by the tax map key (TMK) parcel number (TMK: (3) 5-2-005:001, por. 18), containing 1573.5 acres.
2. The subject parcel is zoned Agricultural (A-20a) and is designated Agriculture "A" by the State Land Use Commission (LUC). In addition portions of the property are within the Forest Reserve (F/R).
3. Chalon International of Hawaii, Inc. owns the subject property pursuant to their letter dated December 12, 1996, in VAR 96-69 which states in part:

"As the owner of the subject property and adjacent parcels, Chalon International of Hawaii, Inc. has no objection to the variance request to waive certain roadway improvement requirements, provided, as

represented by the applicant, that the present land uses are not intended to change and therefore no increase in traffic is expected..."

The subject variance application and related submittals were acknowledged and numerous discussions with the Planning Director occurred prior to acknowledgment of the subject variance application on December 6, 1996. There is a pending subdivision application (SUB 91-171) proposing to further subdivide the existing property into two (2) lots and further action by the Planning Department is being deferred pending consideration of the subject variance application.

The Department of Water Supply (DWS) memorandum dated December 18, 1996, in file (SUB 91-171) states:

"We have reviewed the subject application. Please refer to our memorandum of November 1, 1991, to you for our comments and requirements.

4. No objections or additional comments relating to VAR 96-069 were received from the State Department of Health (DOH) in the variance file VAR 96-069.
5. No objections or additional comments relating to VAR 96-069 were received from the Department of Finance-Real Property Tax Office.

ROAD VARIANCE: After reviewing your application and the information submitted on behalf of it, the Planning Director certifies the approval of your variance request to delete conditions to allow the creation of a two (2) lot subdivision without improvements pursuant to Chapter 23, Subdivisions, Section 23-87, Standard for Non-Dedicable Street.

ROAD VARIANCE-SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances that exist which would warrant consideration of and necessitate a variance from the minimum lot road requirements to the proposed subdivision of the subject property.

8. The following is extracted from the "APPLICANT'S REASONS FOR REQUESTING A VARIANCE" in variance file (VAR 96-69) states in part:

"A. PURPOSE OF SUBDIVISION

The purpose of subdivision 91-171 is to convey 485 acres of land to the Applicant.

B. VARIANCE REQUEST

This variance request is to delete Conditions 3, 4, and 5 of the Tentative Approval of Subdivision 91-171 dated February 12, 1996.

C. REASONS FOR REQUEST

1. Conditions 3, 4, and 5, are inter-related and therefore, should be considered together in-as-much-as they relate to road improvements.
2. The use of the lands remains the same under this application with no improvements. There is no increase in traffic anticipated.
3. The proposed access easement is over an existing dirt road (formerly cane haul road) currently in occasional use by ranchers and others for access to pastoral, conservation and mountainous lands.
4. The proposed access is approximately 10,000 linear feet. Cost of improvements is to Ag standard road is prohibitive..."

ROAD VARIANCE-INTENT AND PURPOSE

The intent and purpose of requiring subdivision roadway improvements is to designate and assure there is a legal and physical access to and between the proposed lots and permitted uses on the proposed lots and that access to the property is provided in the event there is an emergency. The proposed 2-lots of the pending subdivision will result in lots exceeding the minimum twenty (20) acres lot size.

The road access from the existing lot is currently via an existing access and gravel/dirt driveway from the existing Mahukona-Niulii Road right-of-way and "roadway" situated on TMK: 5-2-005:011, Lot 49 containing 69.418 acres. A field inspection and observation of the property and surrounding

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property from the existing right-of-way and access location was conducted by the Planning Department on August 27, 1996. Visual observations were made near a gate and from numerous locations within the state owned right-of-way near Lot 49. The existing access location, gate and fences, and gravel driveway beyond the existing gate and within an existing "roadway" denoted on Lot 49 and previously approved subdivision maps in the Planning Department appear to follow existing natural grade. The Mahukona-Niulii Highway fronts TMK: 5-2-005:011, Lot 49. The existing access location to Lot 49 from the Mahukona-Niulii Highway or the existing intersection between the existing "roadway" identified on the state tax map key maps and on "Portion Lot 5-A" or "Lot 49", TMK: 5-2-005:011, Lot 49 is approximately 40 feet containing a 20 +/- foot wide asphalt (A.C.) pavement.

In addition to the fenced pastures observed, there are numerous clusters of exotic trees and scrub trees or bushes situated on portions of the subject property and surrounding properties formerly utilized for sugar cane production and within the state owned right-of-way.

The access to the property and surrounding properties were apparently cleared and graded to provide access for industrial and conventional vehicles during the harvesting of sugar cane formerly owned by the Kohala Sugar Company. Presently, the subject property and surrounding areas appear to be now utilized as pasture. Existing topography and natural landscape features define and line the exiting fences and pastures. Casual observations made of the gravel "roadways" situated in further upland or in the "mauka" areas appear to avoid severe natural terrain conditions. The existing "roadway" terrain, existing narrow gravel roadway improvements, and uneven road and driving limitations, i.e. sight distance. The applicant's representative has stated additional usage within the existing "roadway" and define access and utility easements will not be increased.

Observations by Planning Department's staff of the subject and surrounding and existing property/pastoral property use(s), casual location of older utility lines, and the absence of significant "urban" structures reveal little or no significant changes to the property and surrounding areas have changed since to demise of sugar in the 1970's. In addition, it appears no major public improvements to re-align the existing right-of-way; other than periodic resurfacing within the publicly owned right-of-way have occurred during the past 40 years. The existing public and private road system and transportations patterns to

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the subject property and surrounding areas were established many years before 1967; and to date, few changes and improvements have occurred within the State owned right-of-way and within the roadway to the subject property. The outlook for the immediate expenditure of available public road monies to improve the state owned right-of-way and pro-rata cost to improve the "network" of public roads and private former plantation "roadways" leading up to subject property and adjacent properties appear to be remote at this time. The existing property conditions, i.e. soil quality, previous and existing pasture or agricultural uses, and existing "roadway improvements" appear to have not changed or significantly improved since 1967 and the future outlook for more intense land and agricultural uses are not anticipated. As such, it is felt the proposed approval of the variance request affecting the pending subdivision would not result in a significant increase of traffic using the existing state owned right-of-way and privately owned "roadways". In addition, the existing gulch locations and original land patterns created by former sugar production pastures limit lot design and private roadway access options. Therefore, it would be unfair to require the applicants to pave or improve the existing "roadway" and proposed access and utility easements to the proposed 2-lot subdivision and would not significantly affect existing and future land uses on and within the proposed additional lot.

Therefore, based on the foregoing findings, representations made by the applicants, and staff observations during the recent field inspection, the applicant's request for the subject variance to areas in exception to Section 23-87(a) which relates to Condition No. 4 the tentative subdivision letter dated would still be consistent with the general purpose of the zoning district, the intent and purpose of 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 adjoining property, the neighborhood, and surrounding area's character.

DETERMINATION-VARIANCE CONDITIONS

Several objections to the subject variance were received from the surrounding property owners.

The subject variance application was deemed complete by the Planning Department and by subsequent discussion with, Mr. Thomas Yamamoto, PE, the decision date by the Planning Director on the subject variance would be extended to January 17, 1996.

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Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning and Subdivision Codes 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 to adjoining properties.

This variance from the on-site road requirements are approved subject to the following conditions:

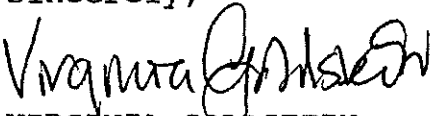
1. ROAD VARIANCE: The applicant/owner/subdivider, his assigns, or successors shall file a written agreement or approved written document with the Planning Department within one(1)year from the issuance of tentative subdivision approval and prior to receipt of final subdivision approval of SUB 91-171 containing the following deed language, being covenants, conditions, and restrictions which affect the entire property and/or the proposed lots arising from the approval of subdivision application (SUB 91-171) and shall be duly recorded at the Bureau of Conveyances of the State of Hawaii by the Planning Department at the cost and expense of the applicant/owner/subdivider.
 - a. No further subdivision of the subject property shall be permitted or those lots arising out of SUB 91-171 shall be permitted unless said roadway meets subdivision control code requirements without a variance. Access to the subject property shall be limited from the Homestead Road or Pohakealani Road.
 - b. No further change in the use of the subject property which may intensify the use of the subject access roadway.
2. The applicant/owner/subdivider, his assigns or successors shall comply with all other applicable State and County rules and regulations pertaining to subdivisions and land use.

Thank you for understanding and patience during our review.

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

Sincerely,


VIRGINIA GOLDSTEIN
Planning Director

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xc: SUB 91-171