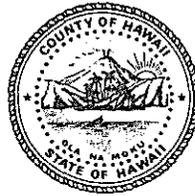


Stephen K. Yamashiro  
Mayor



Virginia Goldstein  
Director

Russell Kokubun  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252  
(808) 961-8288 • Fax (808) 961-8742

#### CERTIFIED MAIL

7099 3220 0000 4868 9782

June 26, 2000

Mr. Duncan W. Anderson  
P. O. Box 111  
Ookala, HI 96774

Dear Mr. Anderson:

**Variance Permit No.1130 (VAR 00-010)**  
**Applicant: DUNCAN W. ANDERSON, JR.**  
**Owners: DUNCAN W. ANDERSON, JR., ETAL.**  
**Request: Variance From Improvements Required**  
**Pursuant to Chapter 23, Subdivisions**  
**Tax Map Key: 4-1-004:010, Lot 24**

After reviewing your variance application and the information submitted, the Planning Director certifies the approval of your variance from Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-87, Standard for non-dedicable street; escrow maintenance fund with conditions, to allow the creation of a six (6) lot subdivision without meeting all the subdivision roadway improvements.

The Planning Director has concluded that the variance from the minimum subdivision roadway requirements with conditions be approved based on the following findings.

#### SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances that exist which would warrant consideration of and necessitate a variance from the minimum road requirements for the proposed six (6) lot subdivision:

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1. The subject property containing 34.0 acres consists is Lot 24, Grant 6747, Portion of Nuipea-Keala, Hamakua, Hawaii.
2. The subject property is zoned Agricultural (A-5a) by the County and is designated Agriculture "A" by the State Land Use Commission (LUC).
3. The owners previously submitted a subdivision application (SUB 82-091) which includes a preliminary plat map that was granted tentative approval on October 20, 1986, to subdivide the subject TMK property into six (6) lots. The preliminary plat map was granted tentative on October 20, 1986 subject to conditions. Further action on the proposed 6-lot subdivision application was deferred by the applicants pending resolve of a water and road variance application(s). For the record, a water variance (VAR 99-058: VARIANCE PERMIT NO. 1093) was granted by the Planning Director on February 4, 2000.
4. The Department of Finance-Real Property Tax memorandum states in part:

"Property receiving agricultural use value."

"Possible rollback taxes if subdivided to 5 Ac or less."

"Status of real property taxes: Current"
5. The State Department of Health (DOH) memorandum dated February 14, 2000 states:

"The Health Department found no environment health concerns with regulatory implication in the submittals."
6. The Department of Water Supply (DWS) memorandum dated February 17, 2000 states in part:

"We have reviewed the subject application and have no comments as the variance is for road issues."
7. The Department of Public Works (DPW) memorandum dated May 30, 2000 states in part:

We have reviewed the subject application and offer the following comments:

1. Off-site improvements.

The existing easement over TMK: 4-7-006:009 that provides access to the subject area from Kaala Road to Mountain is maintained by the County. Based on this we have no objections to the applicant's request.

2. Interior subdivision road improvements (9/24/96-DPW memo to Planning Dept (sic) condition no. 3, 2/18/97-amendment to tentative approval).

The improvements imposed on the interior subdivision road, are the minimum improvements required for subdivision roads serving areas zoned for three acres and over according to Section 23-87 of the HCC. For public welfare and safety, the DPW still believes that the required improvements should be provided."

8. The variance application include a detailed written explanation "APPLICANT'S STATEMENT" which states in part:

"The applicant requests an approval of his request for a variance from conditions 3 and 4 of the Planning Department's letter of tentative approval, dated 2/18/97, referring to offsite requirements and improvements, and onsite design and improvements, stated as requirements of the Subdivision Control Code, Article 6, Division 2, Chapter 23, Sections 23-50 and 23-87.

Section 23-50 however, is not applicable, as the main access road from the highway to the parcel is a government road maintained by the Department of Public Works.

**VARIANCE REQUEST FROM SECTIONS 23-87(a) CONCERNING ONSITE ROAD IMPROVEMENTS.**

Special and unusual circumstances;

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

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The alignment of the subdivision lots and road was based on the natural contour of the land, and the former utility farm road in existence on the property for the previous 75 years. There are no slopes over 8% grade, and there are no major construction excavations necessary.

On the advise, and under the supervision of Hawaii State Civil Engineer, Anthony "Joe" Vincent (now deceased), we graded the roadway, and applied over 6" of basecourse (sic) type gravel. This was in accordance with agricultural pavement requirements of the time (early 1980's). In addition, we cemented two portions of the road where seasonal runoff crosses. We did not discharge or divert any drainage or runoff onto adjacent properties.

The cost of further construction plans and reports, by other civil engineers is unnecessary (sic) and unreasonable. We feel that the present roadway is adequate for the intended use. The owners proposed to leave the roadway, within a 50-foot right of way, in its present condition.

Considering the foregoing issues, it is our belief, that there are special and unusual circumstances applying to the subject property, which exist to a degree that would deprive the owners of substantial property rights, should the variance be denied.

#### Alternatives;

There are no reasonable alternatives in resolving the difficulty of the owners/petitioners.

Requiring the owners to submit plans and reports, and further improve the road, would, be unnecessary (sic), and place an undue financial burden on them, because the road is more than adequate for it's intended use, in it's present condition.

#### Intent and purpose;

The intent and purpose of requiring minimum roadway improvements is to assure that adequate road access is available to serve the proposed subdivision. We feel that the road, in its present condition serves this purpose.

The proposed subdivision is 34 acres and zoned A-5a. Divided into six lots, it is in conformance with the zoning code.

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Based on these facts, it is our opinion that this variance request would be consistent with the general purpose of the zoning district; Chapter 25, The Zoning Code; Chapter 23; Subdivision Control Code; and The County General Plan.

We do not believe that the present roadway condition is materially detrimental to the public's welfare. We believe that it does not cause substantial adverse impact to the area's character, or to the adjoining properties. In fact, the roadway is consistent with the general character of the area and the adjoining properties.

Given these statements, the applicant asks that you approve these variance requests. Thank you for your consideration."

Note: Attached to the above statements are copies consisting of the referenced August 6, 1981 letter to the DPW, Chief Engineer from State of Hawaii Department of General Services (DAGS) and other earlier correspondence pertaining the pending subdivision.

9. The proof of mailing of notices to the surrounding property owners was received on February 24, 2000. No oral or written objections to the variance application were received.

Therefore, considering the above facts and further information submitted by the applicants, agency comments, and recent site inspection of the subject property, the Planning Director has determined that there are special or unusual circumstances applying to the subject property which exist either to a degree which deprive the owners of substantial property rights that would otherwise be available or to a degree which obviously interferes with the best use or manner of development of the subject property.

#### ALTERNATIVES

There are no other reasonable alternatives in resolving the difficulty of the applicant. The first alternative requires the applicants to provide and improve the existing driveways within the subject property in accordance with DPW standards. The pro rata cost to provide the road improvements stipulated by tentative subdivision approval is economically cost prohibitive. The outlook for the immediate expenditure of available road monies to improve the existing "Kaala Road to Mountain" or "Kaala Road" existing network of nearby Homestead Roads leading up to the existing property from the State's Belt Highway is remote at this time. It is felt the current zoning of the property and surrounding land uses have not had an adverse affect on the exiting "Kaala Road" right-of-way. It is felt that the proposed 6-lot subdivision of the existing property

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will not contribute or result in a significant increase in traffic using "Kaala Road" or the Homestead Road system. Therefore it would be unfair and unreasonable to impose paved road improvements which exceed the roadway standards and other right-of-way conditions within the "Kaala Road".

As such, the imposition of providing all off-site and on-site roadway improvements pursuant to tentative subdivision approval would be putting excessive demands upon the applicants when a more reasonable alternative is available.

#### 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 and proposed 6 lots are provided in the event there is a fire or emergency.

The existing property fronts on an existing public right-of-way "Kaala Road to Mountain" as determined by a State letter dated August 6, 1981. This existing road is approximately 3.2 miles from the Hawaii Belt Highway System (State).

The existing public roadway system fronting the property and surrounding transportation patterns were established and developed many years before the Zoning and Subdivision Codes were adopted in 1967. The information and statements provided by the applicant with the variance application reveal little or no significant public access improvements have occurred within the "Kaala Road" and the existing private driveways located on the property during the last 20 years.

The subject property's existing agricultural or pastoral uses and surrounding land uses have not significantly changes since 1967 when the Zoning and Subdivision Codes were first adopted by County. The alignment of the existing public road and private roadway within the existing property appear to be affected by natural topography and existing vegetation. Public access to the existing property as well as access within the property is better suited for 4-wheel drive vehicles and off-road farming or ranching equipment. The condition of the roadways leading up the proposed subdivision and private gravel driveways within the property may limit the use by some vehicles with low road to chassis clearances. However, public access to the existing property and proposed 6 lots using conventional vehicles is possible. It is felt that the existing and surrounding land use patterns and zoning of the existing property are not anticipated to change within the next 20 years.

Therefore, based on recent agency comments and understanding of the representations made by

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the applicants and evaluation of existing access and traffic patterns to and near the existing property, the Planning Director has concluded that the DPW comments and recommended road subdivision standards and requirements within the proposed road and utility easements shown and denoted on the preliminary subdivision plat map are not warranted or required at this time to develop this subdivision.

Private subdivision provisions to insure that perpetual access to the proposed lots and other related private driveway improvement and future maintenance costs will be privately addressed and coordinated between the current owners, assigns, or their successor.

#### DETERMINATION-VARIANCE CONDITIONS

The subject variance application was deemed complete by the Planning Department on January 31, 2000. No oral or written objections to the subject variances were received from the surrounding property owners or the public. Additional time by the DPW to review the variance request and road variance requirements was required.

Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district and the intents and purposes of the Zoning Code, Subdivision Code and the County General Plan. Furthermore, the variance requested 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 requested to allow a proposed subdivision without water system meeting DWS standards is approved subject to the following conditions:

1. The owners, their assigns, or successors shall be responsible for complying with all conditions of Variance Permit No.1130.
2. The owners, their 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 82-091. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions which affect the proposed lots arising from the approval of pending subdivision application 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 owners:

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- a. No further subdivision of the subject property or those lots arising out of SUB 82-091 shall be permitted unless said roadway meets the requirements of the Department of Public Works (DPW) and Chapter 23, Subdivisions are met. No ohana dwelling units shall be permitted on any proposed lots created by SUB 82-091.
- b. The owners, their assigns, or successors shall indemnify and defend the State of Hawaii and County of Hawaii from any and all liability arising out of vehicular access to and from the subject property utilizing the "Kaala Road to Mountain" fronting the subject property or the proposed private access driveways within all proposed road and utility easements arising out of SUB 82-091.

The owners, their assigns, or successors shall agree and accept the fact that the County will not bear the responsibility of providing any road repairs or other emergency road maintenance repairs to any existing private access driveways or any private driveways within any access and utility easements created by SUB 82-091.

- c. The applicant shall address and submit a revised final plat map identifying any watercourses or areas within the property as "approximate areas of flood inundation".
3. The owners, their assigns or successors shall comply with all other applicable State and County rules and regulations pertaining to subdivisions and land use.

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

Thank you for your understanding and patience during our review.

Sincerely,

  
VIRGINIA GOLDSTEIN  
Planning Director

WRY/VKG/RK:dk

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cc: Department of Water Supply  
SUB 82-091