

Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

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

March 13, 2002

Mr. John D. Weeks
78-6877 Mamalahoa Highway
Holualoa, HI 96725

Dear Mr. Weeks:

Variance Application WH (VAR 00-059)
Variance No. 1257

Applicant: JOHN D. WEEKS, ACTING AS OWNER'S AGENT

Owner: SAMUEL HAANIO, SR.

Subdivision Application No. 98-138

~~Variance from Minimum Right-of-Way and Pavement Widths and Standard for~~
Non-dedicable Street Requirements of the Subdivision Code

Tax Map Key: 7-9-003: 002, Kawanui 1st, North Kona, Hawaii

After reviewing your application and the submittals received on its behalf, the Planning Director certifies the approval of your variance request to allow a 2-lot subdivision without meeting the minimum right-of-way and pavement widths and standard for non-dedicable street requirements as required by Chapter 23 (Subdivision Code), Article 3 (Design Standards), Division 4 (Street Design), Section 23-41 (Minimum right-of-way and pavement widths) and Chapter 23 (Subdivision Code), Article 3 (Design Standards), Division 3 (Lots), Section 23-34 (Access to Lot from Street).

Please accept our sincere apologies for this tardy confirmation of the approval granted to allow the requested variance. Your patience is appreciated.

The subject property is situated on the east (mauka) side of the Mamalahoa Highway being portions of Grant 987 to Paloi at Kawanui 1st, North Kona, Hawaii TMK: 7-9-003: 002.

The Planning Director has concluded that the variance request from the Subdivision Code minimum right-of-way and pavement widths and standard non-dedicable street requirements should be approved based on the following:

EXHIBIT "B"

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances that exist which would warrant or necessitate a waiver from the minimum requirements for the proposed two (2) lot subdivision.

1. On October 20, 1998, the owner submitted a subdivision application (SUB 1998-138) with a preliminary plat map dated October 20, 1998, proposing to subdivide the 33.5-acre parcel of land identified as Tax Map Key: 7-9-03: 2 into 2 lots each of which will be 11.79 acres in size. Action on the proposed two (2) lot subdivision application was deferred pending consideration of a water variance application and this roadway variance application.
2. By letter dated May 27, 1999, Variance No. 1077 was approved by the Planning Director, allowing the creation of the proposed 2-lot subdivision without a water system meeting the minimum water requirements of the Subdivision Control Code.
3. On July 21, 2000, the Planning Department acknowledged receipt of the applicant's variance application to allow for relief from the minimum right-of-way and pavement width requirements and the standards for non-dedicable street requirements of the Subdivision Code. The applicant states that *"...there are special and unusual circumstances applying to the subject property which deprives the applicant/owners of substantial property rights that would otherwise be available, or to a degree which interferes with the best use or manner of development of this property."*
4. By memorandum dated August 30, 2000, the Department of Public Works, Engineering Division stated the following:
 - "1. Verify applicant's legal access over the private property (TMK: 7-9-03: 031).
 - "2. The applicant should be required to construct turnout improvements to allow two cars to pass at 3 critical points (directional changes, mid-point of long tangent) within easements on Lot 2 in favor of Lot 1 and parcels 30, 31 and 60. This will be a reasonable safety improvement considering the increase in traffic for one additional parcel on this road.
 - "3. Submit construction plans for approval by affected agencies."

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5. By letter dated December 7, 2000, the Planning Director informed the applicant of the comments provided by the Department of Public Works and asked that the applicant respond to these comments before a final decision is made regarding the variance application.
6. On September 5, 2001, the Planning Director received a letter from the owner's agent in response to the comments provided by the Department of Public Works. The owner's agent stated that existing driveways along the road alignment are used as "pull over" sites by all owners of parcels along this roadway as well as Department of Water Supply vehicles servicing the Kawanui Tank Site. The agent noted that no improvements to the road were made to accommodate the increase in County vehicle traffic due to the new water tank site. The agent also finds that the subdivision is to divide the land between the applicant and his brother and will not result in making existing conditions along the roadway any more dangerous to present landowners.
7. The Planning Department conducted a site inspection of the subject property and the access roadway and found the pavement width in the immediate vicinity of the subject property to vary between 7 and 7.5 feet. From the subject property looking makai along the access roadway and then looking back mauka to the subject property from the nearest turn, visibility to see on-coming cars is good and will provide for reasonable opportunity to pull over due to existing driveways located conveniently at each turn as well as a couple of other driveways along the remainder of the access road alignment. The narrow pavement width forces drivers to progress at very slow speeds.
8. The Department has not received any objections from the public or adjacent landowners.

Therefore, considering the foregoing issues, the Planning Director has determined that there are special and unusual circumstances applying to the subject property which exist either to a degree which deprives the applicant 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 reasonable alternatives in resolving the right-of-way and pavement widths and the right-of-way improvement requirements of the Subdivision Code. To require the applicant to meet the existing County requirements would result in the need to acquire additional right-of-

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way from landowners along the approximately 1,000-foot length of roadway leading from the subject property to the Mamalahoa Highway. The applicant would then have to improve pavement within the entire length of roadway to non-dedicable standards. According to the applicant, this roadway has been servicing the residents of this subdivision for over 50 years. To place the burden of improving a substantial length of existing roadway squarely upon the shoulders of the applicant seeking to create only one additional lot would be unreasonable. It would deprive the owner of substantial property rights that would otherwise be available and obviously interferes with the best use or manner of development of that property for the stated agricultural and related purposes. There are no other reasonable alternatives that would resolve the difficulty.

Chapter 23, Article 3, Section 23-40 states that the location, width, and grade of a street shall conform to the County general plan and shall be considered in its relation to existing and planned streets, to topographical conditions, to public convenience and safety, and to the proposed use of land to be served by the street. Where the location is not shown in the County general plan, the arrangement of a street in a subdivision shall either: (a) Provide for the continuation or appropriate projection of existing principal streets in surrounding areas; or (b) Conform to a plan for the neighborhood which has been approved or adopted by the director to meet a particular situation where topographical or other conditions make continuance or conformance to existing streets impractical.

The Land Use Pattern Allocation Guide (LUPAG) Map designates the area of the subject property as Orchards. Orchards is an agricultural designation for those lands which though rocky in character and content support productive macadamia nuts, papaya, citrus and other similar agricultural products. The LUPAG Map component of the General Plan is a representation of the document's goals, policies, standards and courses of action to guide the coordinated growth and development of the County. It reflects a graphic depiction of the physical relationships among the various land uses. The LUPAG Map establishes the basic urban and non-urban land use pattern for areas within the County. The requested variance is consistent with the general purpose of the district, the intent and purpose of this chapter, and the County general plan and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or to adjoining properties. In this particular instance, based on the circumstances, conformance to existing subdivision code roadway requirements are impractical.

The request therefore warrants and necessitates a waiver from the minimum requirements for the proposed two (2) lot subdivision with 12 lots accessing off of 20-foot wide asphalt paving with 6 foot wide inverted grass swales within a 32 foot wide right-of way. This request is considered in relation to existing and planned streets, to topographical conditions, to public convenience and safety and the proposed use of land to be served by the existing roadway. The eventual owners

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of the lots would be able to continue any agricultural use of the property given the size of the parcels.

INTENT AND PURPOSE

The subject property consisting of 22.5 acres is located within the County's Agricultural -5 acre (A-5a) zoned district. Under this zoning designation, the minimum building site area is 5 acres. The applicant is proposing two (2) lot subdivision consisting of two parcels each being 11.79-acres in size.

The intent and purpose of requiring minimum rights-of-way with minimum pavement widths is to effectively and safely accommodate traffic generated by a proposed subdivision as well as traffic already being accommodated by the roadway. These requirements are related to existing and planned streets, to topographical conditions, to public convenience and safety issues, and to the proposed use of land to be served by the street. As stated by the applicant, the existing roadway has serviced the residents of this area for more than 50 years. The topography of the immediate area along the roadway provides for adequate site distance to safely accommodate the passing of two vehicles along this one-lane roadway. Existing driveways at turns and along its length provide for adequate opportunities to allow vehicles to pass. With only one additional lot to be created by the proposed subdivision, the Department does not anticipate that the increased levels of traffic to be generated will create a significant adverse impact to existing traffic conditions along this substandard roadway.

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 this variance will not be materially detrimental to the public's welfare and will not cause substantial adverse impact to the areas' character and to adjoining properties.

This variance request is approved, subject to the following conditions:

1. The applicant, his assigns or successors, shall be responsible for complying with stated conditions of approval.
2. The applicant, owner, their assigns, or successors shall record with the Bureau of Conveyances a written agreement incorporating this variance and these conditions of approval within one (1) year from the issuance of tentative subdivision approval and prior to receipt of final subdivision approval for SUB 1998-138.

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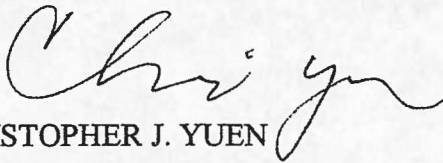
3. The applicant and/or lot owner(s) shall indemnify and defend the State of Hawaii or County of Hawaii from any and all liability arising out of vehicular access to and from the subject property using the private road.
4. Upon written demand of the County of Hawaii, the applicant and/or owners, their assigns, or successor shall agree to participate and pay their fair share percentage as set forth in an agreement among owners with rights to the private road or through an improvement district adopted for the purpose of roadway improvements serving the proposed lot(s) arising out of SUB 1998-138.
5. No ohana dwelling or additional farm dwellings shall be permitted on any lots created by SUB 1998-138 for the reason that this variance is granted based on minimal increase in the number of users of the road.
6. The owners understand that access to the proposed 2-lots created by SUB 1998-138 have been approved with this roadway variance, and that they will use and maintain the permitted access to their property on their own without any expectation of governmental assistance.
7. The owners agree to participate in any road maintenance agreement agreed to among the majority of easement holders for the private road serving their lot. Said maintenance shall include, without limitation, grass cutting (mowing), timely repair and/or backfilling of any and all rutted areas and "potholes", and periodic grading and regrassing of existing roadway shoulders within the roadway easement to ensure that existing drainage patterns are maintained and that soil runoff is minimized.
4. All other applicable State and County rules and regulations shall be complied with.

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

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Should you have any questions, please feel free to contact Daryn Arai of this department at 327-3510.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

DSA:pak

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c: West Hawaii Office
Subdivision No. 98-138