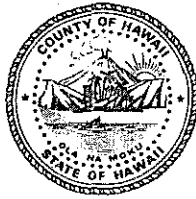


Harry Kim
Mayor



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

April 25, 2002

Mr. Thomas Rosenbaum
P. O. Box 571
Captain Cook, HI 96704

Dear Mr. Rosenbaum:

Variance Permit No. 1256 WH (VAR 01-065)
Applicant: THOMAS ROSENBAUM
Owners: THOMAS ROSENBAUM, ET AL.
**Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required**
Tax Map Key: 8-2-015:030, Lot 36-B-1 (SUB 01-001)

After reviewing your variance application and the information included with the variance application, the Planning Director certifies the approval of your variance request with conditions. The subject variance request is to allow a subdivision of the subject property into two (2) lots, without providing on-site subdivision roadway improvements pursuant to the Hawaii County Code, Chapter 23, Subdivisions, Article 3, Division 3, Section 23-41, Minimum right-of-way and pavement widths, (a), (b), Article 6, Division 2, Improvements Required, Section 23-87, Standard for non-dedicable street; escrow maintenance fund, and Section 23-88, Non-dedicable street; private dead-end street.

BACKGROUND

1. **Location.** The subject property, containing 21, 000 square feet, is Lot 36-B-1, being a portion of Royal Patent Grant 3607 and Grant 7533 and Land Commission Award No. 8452, Apana 9 to A. Keohokalole, and situated at Kealakekua, South Kona, Hawaii.
2. **Zoning.** The subject property is zoned Neighborhood Commercial (CN-7.5) by the County and designated Urban ("U") by the State Land Use Commission (LUC).

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- d. The owners agree to participate in any road maintenance agreement agreed to among the majority of easement holders for the applicable access easement(s) serving their lot.

Said maintenance shall include, without limitation, grass cutting (mowing), timely repair and/or filling of any and all pavement, and periodic maintenance of existing roadway shoulders within Easement "1" to ensure that existing drainage patterns are maintained and that soil runoff within and along Easement "1" within the 2-lot subdivision do not affect the surrounding property or immediate areas.

- e. In the event that there are any amendments or changes to the subdivision after the agreement is signed, the applicant shall be responsible for informing the County Planning Department of such amendments or changes so that the agreement can be amended concomitantly. Further, the written or recorded agreement shall be binding upon the owner(s), their successors or assigns and shall be incorporated as an exhibit and made part of each agreement of sale, deed, lease, or similar documents affecting the title or ownership of the existing property or approved subdivided lots.
8. The owners, their assigns or successors shall pay any outstanding real property taxes due and comply with all other applicable State and County rules and regulations pertaining to subdivisions, tentative subdivision approval conditions, approved subdivision construction plans, variance conditions, and land use.
 9. The minimum off-street parking spaces commensurate with the Chapter 25, Zoning Code requirements for the permitted uses on the proposed lots shall be provided on-site. The existing and future uses, building improvements, off-street parking requirements, and landscaping improvements on the proposed lots arising out of SUB 01-001 shall be subject to review under Plan Approval of the Zoning Code.
 10. Any outstanding and active building permits issued by the DPW shall be addressed and closed prior to final subdivision approval. The location of all permitted and future building improvements shall be subject to Final Plan Approval review and Final Plan Approval conditions.

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3. **Subdivision Request/PPM.** The applicant/owner(s) submitted a proposed 2-lot subdivision application (SUB 01-001) on January 3, 2001. This subdivision application includes a preliminary plat map (PPM), dated November 27, 2000, prepared by Wes Thomas Associates. The owner/applicant proposes to subdivide the Lot 36-B-1 into two (2) lots. Further action on the proposed 2-lot subdivision application was deferred pending resolve of the subdivision requirements and variance request.

4. **Variance Application(s).** Existing access to the subject TMK property is from the Hawaii Belt Road (Mamalahoa Highway-F.A.P. No. 8-H). Access to the proposed "makai" lot (36-B-1-B) is via an access and 15' feet wide access and utility easement (EASEMENT 1) to be located upon proposed lot (36-B-1-A). The variance request is from DPW agency comments and requirements to install commercial road and water system improvements in strict accordance with the Subdivision Code:

- Minimum right-of-way and pavement widths (Section 23-41). In lieu of a 60' wide commercial right-of-way meeting the Department of Public Works (DPW) standards (Standard Detail R-32), the applicant proposes to construct a 13' wide concrete driveway within a proposed 15' wide easement "EASEMENT 1" located on proposed Lot 36-B-1-A.

The applicant submitted the subject variance application, variance submittals, and filing fee on September 7, 2001.

5. **Agency Comments and Requirements (VAR 01-065):**

- a. The State Department of Health (DOH) memorandum, dated September 18, 2001, states:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."

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- b. The County of Hawaii Fire Department (HCFD) memorandum and comments are dated September 20, 2001 have been incorporated into the variance file for the record.

Note: The subject TMK property is located across or almost directly opposite from the 24-hour fire Captain Cook fire fighting facility situated on TMK: 8-2-001:125.

- c. The Department of Public Works (DPW) memorandum dated October 1, 2001, states in part:

“We have reviewed the subject variance application forwarded by your memo dated September 12, 2001 and have the following comments.

We do not believe there are special and unusual circumstances with regard to the requirements of Section 23-41. These are the minimum street requirements imposed on all subdivisions under the Neighborhood Commercial zoning.

Sections 23-87 and 23-88 are not applicable to the subject subdivision.

Please refer questions to Kelly Gomes at ext. 8327.”

- c. No comments were received from the County Real Property Tax Office.
- 6. **Notice to Surrounding Owners.** Proof of mailing a first and second notice(s) to surrounding property owners were received by the Planning Department. It appears that a first notice and second notices were mailed on August 22, 2001 and September 22, 2001, respectively.
 - 6. **Comments from Surrounding Property Owners or Public.** No further comments or objections to the variance request were received from the agencies or surrounding property owners or public.

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SPECIAL AND UNUSUAL CIRCUMSTANCES

The following special and unusual circumstances apply to the subject project which exist either to a degree which deprive the applicant/owner 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:

1. Existing and Proposed Uses. The applicant intends to develop the proposed mauka lot fronting the highway (36-B-1-A) for commercial uses, and has invested substantial sums to improve an easement with a 13' wide concrete driveway access to a 4-plex apartment building being built on the proposed makai lot (36-B-1-B) (Final Plan Approval (FPA) dated November 16, 1999). The roadway would serve only the makai lot; the mauka lot accesses directly from Mamalahoa Highway. Vehicular traffic generated by the approved apartment (4-plex) building will not likely attract or require frequent or daily use by large commercial vehicles. This variance approval will be conditioned on a 4-unit residential use of the proposed Lot 36-B-1-B; any change in use to commercial uses permitted by the CN zoning would void this variance (see conditions at the end of this letter).
2. Topographical and Lot Size Constraints. Nearly 4000 square feet +/- of the proposed Lot 36-B-1-B gradually slopes towards the rear boundary line. This sloping area severely limits the buildable area. To require a commercial standard 60' wide right-of-way to the proposed rear lot would severely restrict development of the rear lot. Moreover, a 60' wide right-of-way would consume 60% of the 100' frontage of the makai lot along Mamalahoa Highway.
3. Adequacy of Roadway for Proposed Use. The proposed 13' wide concrete driveway width within the proposed 15' wide easement is comparable to the private road standards for a 2-lot residential subdivision (Hawaii County Code §23-88). A residential lot may have 2 units through an ohana permit. The concrete paving exceeds the asphalt paving requirement of the private road standards, but nevertheless is a requirement of this variance approval to provide the necessary traction to accommodate the grade. The 13' wide concrete driveway is adequate for two passing passenger vehicles; however, the shoulders shall be improved to allow pulling off to the side to accommodate commercial or emergency vehicle use. No curb, gutters, or sidewalks shall be required within Easement "1", but drainage improvements within the proposed lots and Easement "1" shall comply and meet the requirements of the Department of Public Works or affected agency. No off-street parking spaces will be allowed or permitted within Easement "1".

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4. Surrounding Uses. The subdivision or lots makai of the subject TMK are already developed and accessed by improved cul-de-sac roads. The proposed roadway that is the subject of this variance will not be extended to provide access to any other lots.

ALTERNATIVES

The decision alternatives include the following:

1. *Provide the minimum right-of-way width (60' wide) and commercial paved roadway (42'-wide pavement), pursuant to the DPW street requirements for the proposed 2-lot subdivision.* These roadway requirements would require the applicant (owner/subdivider) to create a 60' wide right-of-way and paved commercial roadways meeting DPW standards. Lot size limitations and costs associated to design and install the required 42'-wide paved road within a 60' wide right-of-way according to DPW requirements (Standard Detail R-32) would be excessive and severely curtail development of the property allowing only a 40' wide property frontage along the Belt Highway. These standards would be unfair when considering lot configuration and orientation along the Belt Highway was created nearly 40 years ago and weighed against the building permit(s) granted to develop the "4-plex apartment building" and other special and unusual circumstances discussed above and subject variance conditions.
2. *Reasonable subdivision improvements to accommodate existing use and meet minimal emergency vehicular and safety requirements. Improve proposed Easement "1" with a paved or concrete roadway standard for domestic vehicle and emergency access.* This is the selected alternative. The proposed alternative lot access and driveway improvements to and within the proposed subdivision will be consistent with similar commercial access and residential access to lots within the immediate area. Drainage concerns and improvements within the proposed easement and proposed subdivision development will be addressed by the subdivider and installed in accordance with the previous FPA and DPW building permits. Roadway improvements or the transition between the easement and the Hawaii Belt Road (public) right-of-way will be addressed and installed in accordance with DPW requirements.

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INTENT AND PURPOSE OF THE SUBDIVISION CODE

The intent and purpose of access requirements to a proposed subdivision is to ensure legal and physical access to the proposed lots that is clearly defined and accessible from a public road by domestic vehicles, police, fire, and other service vehicles under various weather conditions without constant maintenance. The applicant is requesting a variance proposing alternative access and driveway improvements to the proposed 2-lots in lieu of the minimum requirements stipulated by the DPW via their memorandums to the proposed 2-lot subdivision and the requirements of Chapter 23, Subdivisions, Section 23-41, Minimum right-of-way and pavement widths.

The surrounding areas are somewhat rural in character. The character of the nearby existing public road right-of-way and other access to the subject property and immediate and surrounding areas have not significantly changed over the last 50 years. Existing public access to the existing property and neighborhood is appropriate for the proposed use(s). By granting this variance, there should be no adverse impact to adjoining properties or other users of the nearby public road or existing access easements to the subject property. Road maintenance and water needs to the proposed lots will be privately addressed and shared among the users.

Therefore, based on the representations made by the applicant and evaluation of existing access and traffic patterns to and near the existing property, the Planning Director has concluded that all requirements stipulated by the DPW memorandums can be modified to allow the proposed 2-lot subdivision of this commercially zoned property.

DETERMINATION-VARIANCE CONDITIONS

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 subject variance application was acknowledged by letter dated September 12, 2001. Additional time to consider nearby and surrounding development was necessary and to consider other circumstances concerning the requirements to the proposed 2-lot subdivision was necessary. The applicant's agent agreed to extend the decision date to April 30, 2002, whereupon, on or before said decision date, the Planning Director shall render a decision on the subject variance.

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The variance requested to allow a proposed 2-lot subdivision without providing the minimum road improvements stipulated by the respective DPW memorandums to allow the proposed 2-lot subdivision shall be modified and subject to the following variance conditions:

1. The subdivider, owners, their assigns, or successors shall be responsible for complying with all stated conditions of this variance.
 2. The subdivider, owners, their assigns, or successors understand that the 2-lots arising out of SUB 01-001 will use and maintain the proposed access easement "1" and the proposed concrete driveway and roadway shoulders to and within the subject TMK property on their own without any expectation of governmental assistance to maintain existing access within Easements "1" or any other access improvements within the subject TMK property or proposed subdivision.
 3. The proposed roadway within Easements "1" shall be installed as described in this variance application (13' wide concrete pavement with improved shoulders) prior to final subdivision approval (or bonded).
 4. The applicant shall install road improvements between Easement "1" and the Hawaii Belt Road meeting DPW access and driveway requirements prior to final subdivision approval. The location and further access improvements to any lots created by SUB 01-001 shall comply with DPW-Engineering requirements.
 5. Applicant shall meet DPW drainage requirements (e.g., studies, plans, and improvements) and construct any improvements deemed necessary by the DPW prior to final subdivision approval and issuance of any Certificate of Occupancy.
5. Applicant shall be responsible for location and DWS meter(s) installation and any further private water system improvements constructed within Easement "1" prior to final subdivision approval. The applicant shall submit "determination on which lot each meter will be assigned" to DWS.

7. The applicant, 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 01-001. This agreement shall contain the following deed language, being covenants, conditions, and restrictions, which affect the entire property and/or proposed lots arising from the approval of the subject pending subdivision application and 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:
 - a. The applicant and/ or owners 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 utilizing the private roadway Easement "1" within the existing TMK property designated on the subdivision application's (SUB 01-001) final plat map.
 - b. Upon written demand of the County of Hawaii, the applicant and /or owners, their assigns, or successors shall agree to participate and pay their fair share percentage of any improvement district adopted for the purpose of roadway improvements to the Easement "1" or other roads serving the proposed lot(s) arising out of SUB 01-001. Should the improvement district require acquisition of rights-of-way within the lots arising out of SUB 01-001, such rights-of-way shall be dedicated to the County without cost and the value of the dedication credited to the fair share contribution of the lot owner. Should the Council adopt a Unified Impact Fees Ordinance setting forth criteria for the imposition of exactions or the assessment of impact fees, conditions included herein shall be credited towards the requirements of the Unified Impact Fees Ordinance.
 - c. The owners understand that the lots created by SUB 01-001 have been approved with this road improvements variance, and that they will use and maintain the privately owned access roads to and within their property, private water system lines, and drainage improvements on their own without any expectation of governmental assistance, including any road improvements within Easement "1" and the intersection between Easement "1" and the Hawaii Belt Road rights-of-way.

Mr. Thomas Rosenbaum

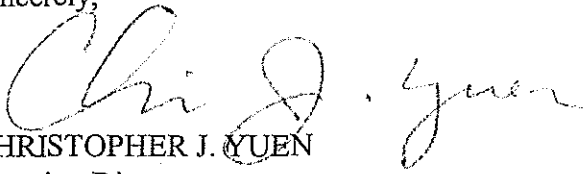
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Should any of the foregoing stated conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Thank you for your understanding and patience during our review.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

WRY/RRT:cps

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xc: DPW-Engineering Branch
DWS-Engineering Branch
SUB 01-001
PA File-TMK: 8-2-015:030
Planning Dept. - Kona