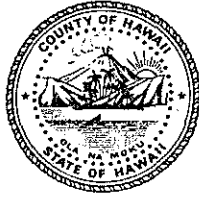


Harry Kim  
Mayor



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

December 12, 2001

Mr. Yasuhiro Hirayama  
c/o Mr. Brian T. Nishimura  
BRIAN T. NISHIMURA  
PLANNING CONSULTANT  
101 Aupuni Street, Suite 217  
Hilo, HI 96720

Dear Mr. Hirayama:

**Variance Permit No. 1240 WH (VAR 01-068)**  
**Applicant: YASUHIRO HIRAYAMA**  
**Owner: YASUHIRO HIRAYAMA**  
**Request: Variance from Chapter 23, Subdivisions,  
Water System and Road Improvements Required**  
**Tax Map Key: 7-9-003:007, Lot 2 (SUB 01-078)**

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 existing TMK property into five (5) lots, without meeting all water and road requirements under the Hawaii County Code, Chapter 23, Subdivisions, Article 3, Design Standards, Division 1, General Provision, Section 23-23, Compliance with State and County regulations required, Division 3, Lots, Division 4, Street Design, Section 23-50, Grades and curves, Article 6, Improvements, Division 1, Construction, Section 23-79, Construction plans; contents; review, Division 2, Improvements Required, Section 23-84, Water Supply, (1) (2), Section 23-87, Standard for nondedicable street; escrow maintenance fund, and, Section 23-88, Nondedicable street; private dead-end street.

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**BACKGROUND**

1. **Location.** The subject property is Lot 2, containing 28.578 acres, being Grant 2028 to Ehu, situated at Kuamoo, North Kona, Hawaii. Lot 2 (TMK: 7-9-3:007) was created by Subdivision No. 6308 (SUB 6308) on July 11, 1993 and is also subject to conditions of a previous variance (Variance No. 367). The subject property fronts on the "Old Government Road" (OGR), a 30-foot wide public right-of-way. In addition to access from the OGR, the subject property (Lot 2) utilizes Easement "1" (Access and Utility Purposes) located on the adjacent property TMK: 7-9-3:68 (Lot 1).
2. **Zoning.** The subject property is zoned Agricultural (A-5a) by the County and designated Agriculture ("A") by the State Land Use Commission (LUC). Property zoned A-5a means an agricultural district (A) with a minimum building site area of five acres (5a).
3. **Subdivision Request/PPM.** The subject property's current owner/applicant (Yasuhiro Hirayama) submitted a proposed 5-lot subdivision application (SUB 01-078) on June 28, 2001. This subdivision application includes a preliminary plat map (PPM), dated June 26, 2001, prepared by Wes Thomas Associates. The owner/applicant proposes to further subdivide the Lot 2 into five (5) lots. Further action on the proposed 5-lot subdivision was deferred pending resolve of agency requirements, specifically, the DWS memorandum dated July 18, 2001 and DPW memorandum date August 22, 2001, to allow the proposed 5-lot subdivision application.
4. **Variance Application(s).** Existing access to the subject TMK property is from the OGR and driveways via a road and utility easement (Easement "1") located within the "pole" of an abutting property (TMK: 7-9-003:068). The variance request is from the following road and water system requirements of the Subdivision Code:
  - Water Supply (Section 23-84). In lieu of a water system meeting DWS standards, the applicant proposes to install a private water system to serve each of the proposed lot with water from a 1" DWS master meter and consisting of 5,000-gallon steel tanks, pumps, and 2" polyethylene waterlines;

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- Non-dedicable private street (Section 23-87). In lieu of a 20'-wide oil-treated pavement agricultural road meeting DPW's standards (Standard Detail R-39), the applicant proposes to construct a 16'-wide asphalt paved road with sub-base to sub-grade utilizing the existing on-site gravel, the sub-grade to finish base course approximately 2 to 3 inches thick, and asphalt pavement thickness that meets the standard at 1½ to 2 inches thick.
- Grades and curves (section 23-50). The applicant proposes to follow the grade and curves of the existing road, which would not exceed the maximum grade of 20% allowed by DPW for asphalt paved roads (Standard Detail R-39), but which could exceed the vertical and horizontal curves set forth in section 23-50.

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

**5. Agency Comments and Requirements (VAR 01-068):**

- a. The State Department of Health (DOH) memorandum, dated October 1, 2001, states:  
  
"The Health Department found no environmental health concerns with regulatory implications in the submittals."
- b. The Department of Public Works (DPW) memorandum dated October 23, 2001, states in part:  
  
"Section 23-87-A pavement width variance from 20 feet to 16 feet would be appropriate for easement A-1 (Part 2) as it only serves 4 subdivision parcels. If granted, each parcel should be limited to one dwelling as a condition of approval. The remainder should have a 20 foot pavement width as the potential exists for serving other parcels.

An equivalent road pavement design may be approved without a Code variance when submitted by a geotechnical engineer. We oppose any lesser standard.

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Section 23-5-The vertical alignment has not been presented in the application, therefore, there is no demonstration that a variance is necessary from grade requirements. We have been allowing up to 20 percent grades on private cul de sac (sic) roads, except at intersections and turnarounds. Vertical alignment should be appropriate for the design speed, according to the Statewide Uniform Design Manual or other approved standard. We oppose any lesser standard.

Regarding horizontal alignment, we have no objection to the L intersections provided they have appropriate approach grades and markings. We would not consider this non-conforming, provided the intersections are designed by an engineer and meet with our approval. Inside pavement radius should not exceed 25 feet.”

- c. The County of Hawaii Fire Department (HCFD) memorandum dated October 15, 2001 states in part:

Water supply shall be in accordance with UFC Section 10.301:

“(c) **Water Supply.** An approved water supply capable of supplying required fire flow for fire protection shall be provided to all premises upon which buildings or portions of buildings are hereafter constructed, in accordance with the respective county water requirements. There shall be provided, when required by the chief, on site fire hydrants and mains capable of supplying the required fire flow.

“Water supply may consist of reservoirs, pressure tanks, elevated tanks, water mains or other fixed systems capable of providing the required fire flow.

“The location, number and type of fire hydrants connected to a water supply capable of delivering the required fire flow shall be protected as set forth by the respective county fire department apparatus by roadways meeting the requirements of Section 10.207.”

- d. No comments were received from the County Real Property Tax Office.

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6. **Notice to Surrounding Owners.** Proof of mailing and copy(s) of a notice dated September 20, 2001 and September 24, 2001 sent to the surrounding property owners were received on September 21, and September 24, 2001, respectively.
7. **Comments from Surrounding Property Owners or Public.** The following correspondence (chronologically) from the adjacent property owner(s) and the public were received by the Planning Department (Hilo):
  - a. Copy(s) of a letter from Chris Peterson, Esq. dated October 4, 2001 and attached copy of "STIPULATED ORDER ON MOTION TO HALT COMMISSIONER'S SALE" dated April 25, 1988 were received by the Hilo and Kona Offices of the Planning Department on October 9, and October 11, 2001 respectively.
  - b. Telephone call from Bernard Mochizuki, representing a nearby church "Daifukuji Soto Mission" located on TMK: 7-9-003:006, requesting that the subdivider comply with Subdivision and County requirements.
  - e. Letter from Kona Coffee Villas AOA dated October 12, 2001 objecting to the applicant's "variance requests".
  - f. Letter from Michael J. Matsukawa dated November 1, 2001 and attached chart (chronology-land history) concerning the subdivision, access issues and other information concerning the status of the "court-approved stipulated agreement".

#### **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:

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1. Existing and Proposed Agricultural Uses. The applicant intended to develop the entire site for agricultural use, and invested substantial sums to prepare and plant coffee. Subdivision is necessary to finance the completion of the agricultural plans. However, the proposed 5-lot agricultural subdivision could not support the costs to provide road and water improvements meeting County standards. Even if not meeting County standards, the level of improvements proposed in the variance request are superior to lots in the vicinity that are served by water catchments and unpaved roads. No further subdivision of the resultant 5-lots will be possible without rezoning.
2. Existing and Proposed Water System. According to the DWS (letter dated July 18, 2001), the proposed 5-lots are at an elevation that is outside the County's water service area. The subject TMK property (Lot 2) currently is assigned a 5/8" inch DWS water meter located within the Old Mamalahoa Highway Right-of-Way approximately 170 feet from the property's front property line along the Old Government Road. The DWS will allow the 5/8" inch meter to be replaced by a 1" inch meter. The applicant's proposed private water system adequately meets the needs of the proposed 5 lots, whereas the minimum County standards would actually have the capacity to serve substantially more than the 5 lots.
3. Proposed Lot and Subdivision Road Improvements. The proposed 16' wide asphalt paved road actually meets the pavement width standard for a 6-lot A-1a subdivision. The agricultural road standard (which applies to A-3a and over) allows oil-treated pavement, but a minimum pavement width of 20'. The proposed variance from the pavement width trades off a 20' width of higher quality and more durable surface. Given the relatively steep grades of the site and the low vehicular usage from 5 lots, the trade-off is acceptable, and will be accessible by emergency vehicles. The variance conditions set forth at the end of this letter will require standard improvements for street lights and signage at the intersection with the Old Government Road, a drainage system approved by DPW to handle the increased runoff generated by the paved surface, and covenants disclosing to and requiring lot owners to privately maintain the private roads and drainage system within Easement "1" and "A-1" (as well as the private water distribution system after the master DWS water meter and within the subdivided lots).

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## **ALTERNATIVES**

The decision alternatives include the following:

1. *Improve the roadways within the existing and proposed easements with an agricultural roadway standard as required by DPW and provide a dedicable water system meeting DWS Standards.* This alternative would require the applicant (owner/subdivider) to improve existing Easement "1" and proposed Easement A-1 to agricultural standards required by the DPW and install a dedicable water system meeting the requirements of the DWS. The costs associated to design and construct the required DPW paved road and shoulder improvements within the existing and proposed access easements and conventional dedicable water system would be substantial and unfair when weighed against the proposed agricultural uses and other special and unusual circumstances discussed above.
2. *Reasonable subdivision improvements to meet minimal emergency vehicular and safety requirements.* This is the selected alternative. The proposed alternative and private road and water system improvements to the proposed subdivision will be superior to unpaved roads and water catchments serving similar lots, elsewhere and within the immediate area. Drainage concerns and improvements within the existing and proposed easements and within proposed subdivision development will be addressed by the subdivider and installed. Intersection, signage, and additional street lighting improvements at the OGR intersection and Easement "1" will be addressed and installed in accordance with DPW requirements.

## **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 and farm vehicles, police, fire, and other service vehicles under various weather conditions without constant maintenance. The intent and purpose of requiring a water system for and within the proposed subdivision is to assure that adequate water is available for human consumption and fire protection. The applicant is requesting a variance to proposing alternative access and water system improvements to the proposed 5-lots in lieu of the minimum requirements stipulated by the agency comments via memorandums to the proposed 5-lot subdivision and the requirements of Chapter 23, Subdivisions.

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The surrounding areas are rural-agricultural 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 current zoning of the area and the intentions by the subdivider to maintain low intensity agricultural use(s), e.g. orchard crops. The property is eligible to receive additional water for the proposed 5-lot subdivision via an upgrade of the existing DWS water service to the subject TMK property and via a planned private water distribution system. 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 and DWS memorandums can be modified to allow the proposed 5-lot subdivision.

#### **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 certified letter dated August 7, 2001. Additional time to consider comments received from nearby and surrounding owners was necessary and to consider other circumstances concerning the requirements to the proposed 5-lot subdivision was necessary. The applicant's agent agreed to extend the decision date to December 14, 2001, whereupon, on or before said decision date, the Planning Director shall render a decision on the subject variance.

The variance requested to allow a proposed 5-lot subdivision without providing the minimum road and water system improvements stipulated by the respective DPW and DWS memorandums to allow the proposed 5-lot subdivision shall be modified and subject to the following variance conditions:



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- 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 5-lots arising out of SUB 01-078 will use and maintain the existing access easement and the proposed paved roadways 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" and "A-1" or any other access improvements within the subject TMK property or proposed subdivision.
- 3) The proposed roadway within Easements "1" and "A-1" shall be paved as described in this variance application (16' wide, sub-base to sub-grade using existing on-site gravel, sub-grade to finish base course approximately 2 to 3 inches, asphalt pavement 1½ to 2 inches) prior to final subdivision approval (or bonded). Grades shall not exceed a maximum of 20%.
- 4) The applicant shall provide construction plans for DPW approval of the intersection improvements of Easement "1" and the Old Government Road (e.g., street lights, signage), and construct (or bond) such improvements prior to final subdivision approval.
- 5) Applicant shall meet DPW drainage requirements (e.g., studies, plans, and improvements) and construct (or bond) such improvements prior to final subdivision approval.
- 6) Applicant shall construct (or bond) the private water system as described in the variance application prior to final subdivision approval.
- 7) The applicant shall provide evidence of access easement rights via Easement "1" prior to final subdivision approval. Applicant shall use its best efforts to resolve any easement disputes and incorporate any applicable resolutions on the final plat map.
- 8) 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 01-078. 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:

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- 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 easements outside and within the existing TMK property designated on the subdivision application's (SUB 01-078) 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 01-078. Should the improvement district require acquisition of rights-of-way within the lots arising out of SUB 01-078, 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) Each lot created by SUB 01-078 shall have no more than one dwelling. No ohana dwelling or " additional farm dwelling" or second farm dwellings shall be permitted on any lot created by SUB 01-078 for the reason that this variance is granted based on minimal increase in the number of users.
- d) The owners understand that the lots created by SUB 01-078 have been approved with this road and water improvements variance, and that they will use and maintain the privately owned access roads to and within their property, water system, and drainage improvements on their own without any expectation of governmental assistance, including any road improvements within Easement "1" and "Easement A-1, Part 1 and Part 2" and the intersection between Easement "1" and the Old Government Road rights-of-way.
- e) 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 rutted areas and "potholes", and periodic grading and regrassing of existing roadway shoulders within Easements "1" and Easement "A-1, PART 1 and PART 2" to ensure that existing drainage patterns are maintained and that soil runoff within and along Easement "1" and the proposed Easement "A-1" within the 5-lot subdivision do not affect the surrounding property or immediate areas.