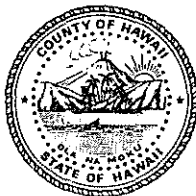


Harry Kim  
Mayor



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 2, 2002

E COMMERCE ENTERPRISES CORP.  
c/o R. M. TOWILL CORPORATION  
attn: Mr. Chester Koga, AICP  
420 Waiakamilo Road  
Honolulu, HI 96817-4941

Dear Mr. Koga:

**Variance Permit No. 1269 WH (VAR 01-069)**  
**Applicant:** AHMAD MOHAMMADI  
**Owner:** E COMMERCE ENTERPRISES CORP.  
**Request:** Variance from Chapter 23, Subdivisions,  
Water System Improvements  
**Tax Map Key:** 5-5-008:013 (SUB 00-148)

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 6-lot subdivision (five (5) building lots and one (1) roadway lot) of the subject TMK property, without meeting all water system requirements pursuant to the Hawaii County Code, Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply, (1) (2).

The Planning Director has concluded that the variance from the minimum subdivision water system requirements be approved based on the following findings:

#### BACKGROUND AND FINDINGS

1. **Location.** The subject property, containing 101 + acres, is an Abandoned Railroad Right-of-Way and portion of Grant 2695 to Uli, at Hikiaupea and Pahoa, North Kohala, Hawaii. The subject TMK property's access via Hawi Road is over a 50-foot wide Easement located on adjoining property(s).

016662

APR 05 2002

E COMMERCE ENTERPRISES CORP.  
c/o R. M. TOWILL CORPORATION  
attn: Mr. Chester Koga, AICP  
Page 2  
April 2, 2002

2. **Zoning.** The subject property is zoned Agricultural (A-20a) by the County and designated Agriculture ("A") by the State Land Use Commission (LUC). Property zoned A-20a means an agricultural district (A) with a minimum building site area of twenty acres (20a). The property or proposed subdivision is within an area designated Special Management Area (SMA).
3. **Subdivision Request/PPM.** The subject property's owner(s) (Ahmad Mohammadi, Et al.) submitted a proposed 7-lot subdivision application (SUB 00-148) on September 21, 2000. A second revised preliminary plat map (PPM), dated February 28, 2001, prepared by R. M. Towill Corporation to subdivide the TMK property into five (5) lots (Lots Nos. 1 to 5) and one (1) roadway lot (Lot No. 6) was submitted on or about March 28, 2001. Further action on the revised 6-lot subdivision request was deferred pending resolve of Department of Water Supply (DWS) comments for the revised 6-lot layout, specifically, the DWS memorandum dated May 3, 2001.
4. **Variance Application.** Access to the proposed lots identified on the revised PPM and the preliminary construction plans to develop the proposed five (5) buildable lots is from the Hawi Road via a series of 50'-wide easement(s) located on adjoining property-TMK: 5-5-008: parcel 022, TMK: 5-5-008: parcel 045, TMK: 5-5-008 parcel 048, and proposed roadway lot (Lot 6). The variance request is to allow an alternative private water system after the upgraded DWS meter within Hawi Road and allow the installation of a private water distribution system and privately owned water meters within the proposed roadway Lot 6 or lots without meeting all DWS comments to the revised PPM.
  - 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 the lots after an existing county water meter located within the "Hawi Road". The appropriate water facilities charges will be paid and the existing county 5/8" water meter will be replaced by a larger county water meter to be determined by the DWS. The alternative water lines and private potable water distribution system installation after the "larger" county meter and the individual water meters within Lot 6 (roadway lot) or proposed 5-buildable lots will be tested and measured by a certified engineer to insure that potable water pressure standards and flow standards for domestic water purposes are met;

E COMMERCE ENTERPRISES CORP.  
c/o R. M. TOWILL CORPORATION  
attn: Mr. Chester Koga, AICP  
Page 3  
April 2, 2002

- Non-dedicable private street. The applicant will be installing nearly 4500 feet of 20'-wide agricultural pavement meeting Department of Public Works (DPW) requirements pursuant to their memorandum dated May 3, 2001. The applicant proposes to construct a 20'-wide asphalt pavement road where slopes exceed 8% and a 20'-wide oil-treated pavement where slope is less than 8% in accordance with Standard Detail R-39. The overall length of the 20' wide pavement identified on the preliminary construction plans submitted with the variance begins at Hawi Road (Sta. 0+00) and ends at the terminus of the proposed cul-de-sac located at the end of proposed Lot 6 (Sta. 44+00 +/-).

The applicant submitted the subject variance application, variance submittals, and filing fee on July 5, 2001 and subsequent information to address proof of access to utilize adjoining easements located on adjoining property and other SMA issues were addressed by the developer.

- There appears to be a 3-inch private agricultural water line located on an adjoining lot (Lot 21-C: TMK: 5-5-008:022). The owner of (TMK: 5-5-008:013) is able to use water from this 3" line for agricultural uses on the proposed 5 agricultural farm lots (00-0148) and for emergency fire fighting purposes within the immediate and surrounding neighborhood. This existing 3" agricultural waterline will not be permitted to be connected to the proposed or alternative private water lines or the private potable water distribution system to the proposed subdivision (00-0148) or be utilized as a source of potable water source for any lots arising out of the proposed 6-lot subdivision (00-0148).

5. **Agency Comments and Requirements (VAR 01-069):**

- a. The State Department of Health (DOH) memorandum, dated September 27, 2001, states:

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

E COMMERCE ENTERPRISES CORP.  
c/o R. M. TOWILL CORPORATION  
attn: Mr. Chester Koga, AICP  
Page 4  
April 2, 2002

- b. The Department of Public Works (DPW) memorandum dated October 23, 2001 states in part:

“Section 23-50-There are no nonconforming grades or curves shown on the plans. We have no objection to the L intersections provided they have appropriate approach grades and markings. Inside pavement radius should not exceed 25 feet. No variance is necessary from Section 23-50.

We see no need or apparent request for a variance from any section of the Subdivision Code, under our jurisdiction, in the application.

If you have any questions, please call Kiran Emler at our Kona office, 327-3530.”

The attached DPW-Building Division memorandum dated September 24, 2001 states in part:

“Our comments on the subject application are as follows:

We oppose the approval of the application for the reasons noted below.

Permits 005084 & M015097 for the subject property were never finalized.”

**Note:** The Department of Public Works (DPW) memorandum and comments dated May 1, 2001 to the revised 6-lot PPM states:

“We have reviewed the second revised preliminary plat dated February 28, 2001 and have the following comments.

1. §23-64. Identify all watercourses and drainage ways and designate areas within as (sic) “approximate areas of flood inundation.”
2. §23-99. Portions of the subdivision are located within Zone VE according to the current Flood Insurance Rate Map (FIRM).
  - a. §27-20. Identify the Zone VE boundaries and areas on the final plat map.

E COMMERCE ENTERPRISES CORP.  
c/o R. M. TOWILL CORPORATION  
attn: Mr. Chester Koga, AICP  
Page 5  
April 2, 2002

- b. Any improvements within the flood zone area will require a detailed flood study by a licensed civil engineer and compliance with the Federal Emergency Management Agency (FEMA) regulations.
- 3. §23-34. Access to subdivision from Hoes Road is via TMK: 5-5-008:061, a private road right-of-way.
    - a. Construct minimum 20-ft wide agricultural pavement conforming to Std Det R-39.
    - b. §23-63. Verify applicant's legal access over the private road.
  - 4. Recommend providing a horizontal curve radius at the bend of the access pole of flag Lot 5.
  - 5. §23-87. For Road Lot 6, construct minimum 20-ft wide agricultural pavement within a minimum 50-ft width right-of-way conforming to Std Det R-39. Where grades are 8% or greater, the roadway section shall be paved per Std Det R-34.
  - 6. §23-79. Submit construction plans and drainage report for review and comment.
    - a. §23-92. Additional storm runoff due to development shall be disposed within the subdivision and shall not be discharged onto adjacent properties or roadways. For planned drywells, satisfy DOH drywell requirements, including issuance of an underground injection control (UIC) permit to the subdivider.
    - b. §23-93. Install streetlights/signs/pavement markings as required by the Traffic Division.

Questions may be referred to Cres Rambayon at 961-8327.”

E COMMERCE ENTERPRISES CORP.  
c/o R. M. TOWILL CORPORATION  
attn: Mr. Chester Koga, AICP  
Page 6  
April 2, 2002

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

“Fire apparatus access roads shall be in accordance with UFC Section 10.207:

**Fire Apparatus Access Roads**

**Sec. 10.207. (a) General.** Fire apparatus access roads shall be provided and maintained in accordance with the provisions of this section.

**(b) Where Required.** Fire apparatus access roads shall be required for every building hereafter constructed when any portion of an exterior wall of the first story is located more than 150 feet from fire department vehicle access as measured by an unobstructed route around the exterior of the building.

**EXCEPTIONS:** 1. When buildings are completely protected with an approved automatic fire sprinkler system, the provisions of this section may be modified.

2. When access roadways cannot be installed due to topography, waterways, nonnegotiable grades or other similar conditions, the chief may require additional fire protection as specified in Section 10.301 (b).

3. When there are not more than two Group R, Division 3 or Group M Occupancies, the requirements of this section may be modified, provided, in the opinion of the chief, fire-fighting or rescue operations would not be impaired.

More than one fire apparatus road may be required when it is determined by the chief that access by a single road may be impaired by vehicle congestion, condition of terrain, climatic conditions or other factors that could limit access.

For high-piled combustible storage, see Section 81.109.

E COMMERCE ENTERPRISES CORP.  
c/o R. M. TOWILL CORPORATION  
attn: Mr. Chester Koga, AICP  
Page 7  
April 2, 2002

(c) **Width.** The unobstructed width of a fire apparatus access road shall meet the requirements of the appropriate county jurisdiction.

(d) **Vertical Clearance.** Fire apparatus access roads shall have an unobstructed vertical clearance of not less than 13 feet 6 inches.

**EXCEPTIONS:** Upon approval (sic) vertical clearance may be reduced, provided such reduction does not impair access by fire apparatus and approved signs are installed and maintained indicating the established vertical clearance.

(e) **Permissible Modifications.** Vertical clearances or widths be required by this section may be increased when, in the opinion of the chief, vertical clearances or widths are not adequate to provide fire apparatus access.

(f) **Surface.** Fire apparatus access roads shall be designated and Maintained to support the imposed loads of fire apparatus and shall be provided with a **surface** so as to provide all-weather driving capabilities. (20 tons)

(g) **Turning Radius.** The turning radius of a fire apparatus access road shall be as approved by the chief. (45 feet)

(h) **Turnarounds.** All dead-end fire apparatus access roads in excess of 150 feet in length shall be provided with approved provisions for the turning around of fire apparatus.

(i) **Bridges.** When a bridge is required to be used as access under this section, it shall be constructed and maintained in accordance with the applicable sections of the Building Code and using designed live loading sufficient to carry the imposed loads of fire apparatus.

(j) **Grade.** The gradient for a fire apparatus access road shall not exceed the maximum approved by the chief. (15%)

E COMMERCE ENTERPRISES CORP.  
c/o R. M. TOWILL CORPORATION  
attn: Mr. Chester Koga, AICP  
Page 8  
April 2, 2002

(k) **Obstruction.** The required width of any fire apparatus access road shall not be obstructed in any manner, including parking of vehicles. Minimum required widths and clearances established under this section shall be maintained at all times.

(l) **Signs.** When required by the fire chief, approved signs or other approved notices shall be provided and maintained for fire apparatus access roads to identify such roads and prohibit the obstruction thereof or both.

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 water requirements. All hydrants shall be accessible to the requirements of Section 10.207.”

- d. County Real Property Tax Office memorandum dated September 20, 2001 states in part the following:

“Comments from the Appraisal Section:  
Remarks: There are no rollback tax consequences.”

“Comment from the collection section:  
Current Real Property taxes are paid through 13/31/01.”



E COMMERCE ENTERPRISES CORP.  
c/o R. M. TOWILL CORPORATION  
attn: Mr. Chester Koga, AICP  
Page 9  
April 2, 2002

6. **Notice to Surrounding Owners.** Proof of mailing was received on March 6, 2002. It appears that the notice of variance was to the surrounding property owners on or about September 21, 2001.
7. **Comments from Surrounding Property Owners or Public.** The following correspondence (chronologically) from the adjacent property owner(s) and objection letter were received by the Planning Department (Hilo):
  - a. Ka'makani 'O Kohala Ohana, Inc. dba: KAKO'O. Letter and comments dated October 16, 2001.
  - b. Chalon International of Hawaii, Inc. Objection letter and comments dated October 17, 2001.

#### **SPECIAL AND UNUSUAL CIRCUMSTANCES**

In considering the background information, existing site improvements, and agency comments the Planning Director has determined that there are special and unusual circumstances applying to the subject property 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.

#### **ALTERNATIVES**

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 intends to develop the entire site for agricultural use, and has incurred costs to prepare subdivision construction plan drawings to develop the proposed subdivision. In lieu of providing a county deducible water system in accordance with all DWS requirements and memorandum for domestic and potable needs to the 5-buildable lots, a private water distribution system is being installed within the roadway lot (Lot 6) and a nearby 3-inch water source located on adjoining property is available and will be utilized for agricultural and emergency fire fighting purposes. Even if not meeting all DWS requirements, the alternative private water system improvements being proposed, are superior to existing service to surrounding lots and other property in the immediate vicinity of the subject property.

E COMMERCE ENTERPRISES CORP.  
c/o R. M. TOWILL CORPORATION  
attn: Mr. Chester Koga, AICP  
Page 10  
April 2, 2002

According to the recent DWS comments to the variance request (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 currently is assigned a 5/8" inch DWS water meter located within the Hawi Road Right-of-Way is approximately 3100 feet from the proposed roadway lot (Lot 6). The DWS will allow the existing 5/8" inch meter to be upgraded to a larger meter. The applicant's proposed private water system and alternative distribution system after the planned upgrade of the existing County water meter will be able to meet the needs of the proposed 5-buildable lots.

#### **INTENT AND PURPOSE-WATER VARIANCE**

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, agricultural needs, and fire protection. The applicant, on behalf of the owner, is requesting a variance to replace the existing county water meter within Hawi Road right-of-way and construct a private water distribution system within existing access easements and roadway lot (Lot 6) in lieu of all the DWS requirements to the proposed subdivision's PPM dated February 28, 2001.

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 75 + years. Existing access to the existing property and neighborhood is appropriate for current zoning of the property, surrounding areas, and intentions by the subdivider to maintain low intensity agricultural use(s). The property was formally utilized to grow sugar cane. The property is eligible to receive additional water for the proposed 6-lot subdivision via an upgrade of the existing DWS water service to the subject TMK property and via a planned private water distribution system. The privately owned water meters within proposed roadway lot (Lot 6) or proposed 5-buildable lots will be tested by a private certified engineer and required to meet adequate pressure and flow requirements prior to final subdivision approval. In addition, it appears that the subject TMK property or proposed 6-lot subdivision is eligible to receive and utilize agricultural water from a 3" privately owned water line located on an adjoining lot (Lot 21-C) for agricultural and emergency fire fighting purposes.

Therefore, based on the representations made by the applicant and availability of county water to support the alternative private water system for domestic purposes and adjacent water availability for agricultural and fire protection measures, the Planning Director has concluded that all requirements stipulated by the DWS memorandums can be modified to allow the proposed 6-lot subdivision.

E COMMERCE ENTERPRISES CORP.  
c/o R. M. TOWILL CORPORATION  
attn: Mr. Chester Koga, AICP  
Page 11  
April 2, 2002

### VARIANCE DECISION- CONDITIONS

The subject variance application was acknowledged by certified letter dated September 18, 2001. Additional time to consider comments received from nearby and surrounding owners and evaluate access and infrastructure to the proposed 6-lot subdivision was necessary. The applicant's agent agreed to extend the decision date to April 5, 2002, whereupon, on or before said decision date, the Planning Director shall render a decision on the subject variance.

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 request is hereby approved subject to the following conditions:

1. The owner(s), their assigns, or successors shall be responsible for complying with all stated conditions of approval.
2. The variance requested to allow the proposed 6-lot subdivision (five (5)- agricultural lots and one (1) roadway lot) without providing the minimum water system or "necessary water system improvements" stipulated by the DWS memorandum dated May 3, 2001, Item No.1, a, b, and c. The subdivider or owners must pay the appropriate DWS facilities charges prior to final subdivision approval, upgrade the existing water meter and necessary off-site improvements within the Hawi Road right-of-way, install backflow preventer, and comply with any other DWS requirements before final subdivision approval is granted to SUB 00-0148.

The on-site private water meters shall be individually tested and measured by a certified engineer to ensure that that potable water pressure and flow within the private water distribution system meets or exceed public standards. A report of the test showing that private meters are capable of delivering water at adequate pressure and volume shall be submitted to the Planning Department or DWS prior to final subdivision approval.

E COMMERCE ENTERPRISES CORP.  
c/o R. M. TOWILL CORPORATION  
attn: Mr. Chester Koga, AICP  
Page 12  
April 2, 2002

The existing privately owned 3" water line located on adjoining property (Lot 21-C) shall be independent of the planned privately owned potable water system constructed within the privately owned access and utility easements to the property and roadway lot (Lot 6). Water from the 3" water line may be utilized for agricultural and fire fighting purposes only and shall not be utilized or tapped for potable water requirements needs or permitted uses on the proposed 6-lots arising out of SUB 00-0148.

3. Prior to final subdivision approval, the owner(s), 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 00-0148. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions, which affect the proposed lot or 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:
  - a. The owner(s) agree and accept the fact that the SUB 00-0148 is being developed without a public water system capable of being dedicated to the DWS, County of Hawaii, pursuant to a Variance issued by the County. 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 Fee Ordinance.
  - b. Property may not be made subject to a condominium property regime.
  - c. The owner(s) agree and accept the fact that the County will not, at any time, bear the responsibility of supplying public water to proposed lot(s) created by SUB 00-0148.
  - d. Any dwelling constructed on the proposed lots shall be connected to the private water meter and distribution system. The owners agree to participate in any water maintenance agreement agreed among the majority of owners and maintain the private water distribution system without any governmental assistance to maintain the private water lines and private water meters.

E COMMERCE ENTERPRISES CORP.

c/o R. M. TOWILL CORPORATION

attn: Mr. Chester Koga, AICP

Page 13

April 2, 2002

- e. In the event that the DWS or the County notifies the owner(s) of the lot(s) created by SUB 00-0148 that the County Water System has been upgraded or an improvement district initiated to enable service to the lot or lots created by SUB 00-0148, the owner(s) of the affected lots created by SUB 00-0148 shall participate in such improvement district or shall pay their pro-rata share of the upgrade and installation of laterals, as determined by the Department of Water Supply and this variance shall become null and void upon written consent from the affected agencies.
  - f. The subject property was created by subdivision of a larger parcel pursuant to a variance from the water supply requirement in Section 23-84 of the Hawaii County Code. The subdivider or grantee, the assigns or successors acknowledges that there are no special or unusual circumstances existing on the property, and therefore, there are no grounds for the subdivider or grantee, the assigns or successors to request a further variance from the water supply requirements.
4. The subdivision's (SUB00-0148) final plat map shall meet all other requirements of the Hawaii County Zoning Code and Subdivision Code not covered by this variance.

Any outstanding and active building permits issued by the DPW shall be addressed and closed prior to final subdivision approval or transferred to the affected lot created by the subdivision. The location of all permitted and existing building improvements shall meet minimum building within the proposed lots.

4. The subdivider, owner(s), their assigns or successors shall pay any outstanding real property taxes and comply with all other applicable State statutes and County ordinances pertaining to building improvements and land use.

E COMMERCE ENTERPRISES CORP.

c/o R. M. TOWILL CORPORATION

attn: Mr. Chester Koga, AICP

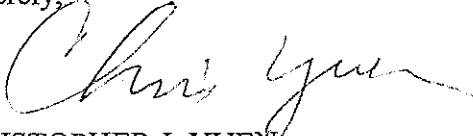
Page 14

April 2, 2002

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/CJY:cps

\\coho2\public\WP60\WRY\FORMLETT\VARAPPSUBTMK55008013.MOHAMMADI

xc: DPW-Engineering Branch  
DWS-Engineering Branch  
SUB 00-0148  
Planning Dept. - Kona  
KAKO'O-Attn. Mr. Mark Grandoni  
CHALON INTERNATIONAL  
of Hawaii, Inc.-Attn. Mr. Michael S. Gomes