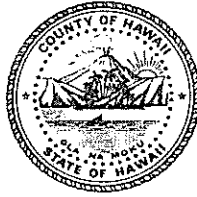


Harry Kim
Mayor



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

August 28, 2002

Mr. and Mrs. William Cowell
P. O. Box 783
Captain Cook, HI 96704

Dear Mr. and Mrs. Cowell:

Variance Permit No. 1304 WH (VAR 01-085)

Applicant: WILLIAM COWELL, ET AL.

Owner: WILLIAM COWELL, ET AL.

**Request: Variance from Chapter 23, Subdivisions,
Road Improvements Required**

Tax Map Key: 8-2-010:060 and 061 (SUB 94-059)

After reviewing your 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 two (2) lots, without meeting all roadway improvements stipulated and required by the Department of Public Works (DPW)-Engineering Division's memorandum dated April 29, 2001. The applicant's have requested a variance from requirements under the Hawaii County Code, Chapter 23, Subdivisions, Article 6, Division 1, Construction, Section 23-79, Construction plans; contents; review, Division 2, Improvements, Section 23-88, Nondedicable street; private dead-end street, and Section 23-93, Street Lights.

BACKGROUND

1. **Location.** The subject property, Lot 9-A containing 2.772 acres +/-, being a portion of Grant 4724 to Kamai Haili, is situated at Kalamakowali, South Kona, Hawaii. Lot 9-A was originally created and approved by Subdivision No. 6349 (SUB 6349) on October 26, 1993. Access to Lot 9-A is from the Mamalahoa Highway via Kalamalani Place. Lot 9-A also fronts on a Homestead Road Right-of-Way.

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Mr. and Mrs. William Cowell

Page 2

August 28, 2002

2. **Zoning.** The subject property is zoned Agricultural (A-1a) by the County and designated Agriculture ("A") by the State Land Use Commission (LUC). Property zoned A-1a means an agricultural district (A) with a minimum building site area of one acre (1a).
3. **Subdivision Request/PPM.** The applicants and current owners acquired the subject property and 2-lot subdivision (SUB 94-59) application submitted by Paris, Et al. in 1994. The subdivision application's preliminary plat map (PPM), dated March 8, 1994, prepared by Wes Thomas Associates, was issued tentative subdivision approval on May 12, 1994 subject to conditions. Subsequent to tentative subdivision approval, the DPW reevaluated the subdivision's roadway requirements and forwarded a memorandum and revised comments dated April 29, 1999. Further action subdivision action has been deferred pending resolve of the applicant's variance request from the revised DPW roadway requirements.
4. **Variance Application.** Access to the proposed subdivision is via Kalamalani Place and Homestead Road. The variance request is from the revised DPW requirements pursuant to their memorandum dated April 29, 1999 to provide paved roads and other subdivision improvements.
 - In lieu of a 20'-wide agricultural road meeting DPW's standards (Standard Detail R-39), the applicant proposes to utilize the existing paved driveway located within a series of easements on Lot 9-A and beginning from Kalamalani Place.
 - The applicant proposes to utilize the existing paved driveway and improve the pole and grass shoulders at the curves to insure adequate vehicle clearance and space to pass.
 - The applicant feels that a street light within the County right-of-way is not necessary near the affected intersection.

The applicant submitted the subject variance application, variance submittals, and filing fee on November 27, 2001. The application includes color photographs of the existing driveway and road and utility easements.

5. **Agency Comments and Requirements WH (VAR 01-085):**

- a. The State Department of Health (DOH) memorandum, dated December 13, 2001, states:

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

- b. The County of Hawaii Fire Department (HCFD) memorandum dated December 20, 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.

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."

Mr. and Mrs. William Cowell

Page 4

August 28, 2002

- c. The Department of Public Works (DPW) memorandum dated December 24, 2001, states in part the following:

“We have no objection to the proposed pavement width provided 8 foot wide paved turn-outs are constructed to allow passing of two vehicles at four locations, spaced approximately 150 feet apart.

The policy of our Traffic Division is to require a streetlight at the County road if the subdivision road serves 4 or more parcels.

See attached comments from our Building Division dated December 10, 2001.”

“The attached comments dated December 10, 2001 states in part the following:

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

The Electrical EK044430 permit for the subject dwelling was never finalized.”

6. **Notice to Surrounding Owners.** The applicant submitted a list of property owners within 300 feet of the subject property(s) and copy of a notice to the Planning Department (Hilo) on August 12, 2002. It appears that the notice was mailed on or about August 3, 2002.
7. **Comments from Surrounding Property Owners or Public.** No comments or objections to the subject variance application were received from surrounding property owners or public. No other agency comments were received.

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:

Mr. and Mrs. William Cowell

Page 5

August 28, 2002

1. Existing and Proposed Agricultural Uses. The applicant intended to develop the subdivision for a family member (son). Subdivision is necessary to finance the improvements on a proposed lot (Lot 9-A-1). The proposed 2-lot subdivision could not support the costs to provide road and street light improvements meeting County standards. Even if not meeting County standards, the level of improvements within the "pole" are superior to other similar access improvements to similar small subdivisions in the vicinity. No further subdivision of the resultant lots will be possible without rezoning.
2. Proposed Lot and Subdivision Road Improvements. The existing asphalt paved road actually meets the pavement width standard for a 2-lot A-1a subdivision. Given the existing roadway design to accommodate the steep grades of the site and the low vehicular usage from the subdivision and adjoining 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 signage at the intersection with Kalamalani Place and drainage issues will be privately addressed before Final Subdivision approval.

ALTERNATIVES

The decision alternatives include the following:

1. *Improve the roadways within the existing easements with an agricultural roadway standard as required by DPW.* This alternative would require the applicant (owner/subdivider) to improve the existing easements to agricultural standards required by the DPW. The costs associated to design and construct the required DPW paved road and shoulder improvements within the existing and proposed access easement or Homestead Road right-of-way 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 for the proposed 2-lot subdivision will be superior to unpaved roads and adequate for family and still superior compared to other roadways within the immediate area. Drainage concerns or improvements within the existing easements and within proposed subdivision development will be addressed by the subdivider. Any necessary signage at the intersection between the easement and Kalamalani Place will be installed by the subdivider or installed pursuant to any DPW requirements.

Mr. and Mrs. William Cowell
Page 6
August 28, 2002

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 applicant is requesting a variance to allow the existing paved driveway improvements to be utilized for the proposed 2-lots in lieu of the minimum paved road requirements stipulated by the DPW pursuant to their memorandums to the proposed 2-lot subdivision application and other requirements of Chapter 23, Subdivisions.

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 and family use. 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 to the existing easements 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 can be modified to allow the proposed 2-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 December 4, 2001. Additional time to consider agency comments and other procedural requirements to notify adjoining property owners was required. The applicant-owner agreed to extend the decision dated to August 31, 2002, whereupon, on or before said decision date, the Planning Director shall render a decision on the subject variance.

Mr. and Mrs. William Cowell

Page 7

August 28, 2002

The variance requested to allow a proposed 2-lot subdivision without providing the minimum road improvements stipulated by the 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 94-059 will use and maintain the existing access easements, paved roadways, and grassed roadway shoulders to and within the subject TMK property on their own without any expectation of governmental assistance to maintain the access easements or any other access improvements within the subdivision.
- 3) The access roads within existing Road and Utility Easements were previously paved and shall be maintained or enlarged pursuant to the subject variance application.
- 4) 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 94-059. 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 easements outside and within the existing TMK property designated on the subdivision application's (SUB 94-059) 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 Road and Utility Easements serving the proposed lot(s) arising out of SUB 94-059 or/and the Homestead Road fronting and along the proposed subdivision. Should the improvement district require acquisition of rights-of-way within the lots arising out of SUB 94-059, 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 94-059 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 94-059 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 94-059 have been approved with this road 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 Road and Utility Easements and the intersection between the subdivision and the Kalamalani Place right-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 mowing of existing roadway shoulders within Access and Utility Easement(s) “A”, “B”, “C”, and “D” to ensure that existing drainage patterns are maintained and that soil runoff within and along said Easements within the 2-lot subdivision do not affect the surrounding property or immediate areas.

Mr. and Mrs. William Cowell

Page 9

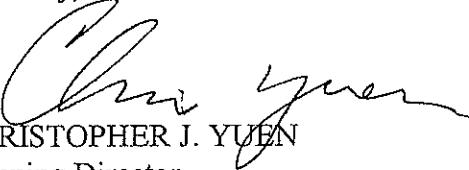
August 28, 2002

- 5) 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.
- 6) 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.
- 7) Any outstanding (Electrical EK04430) construction or building permits issued by the DPW shall be addressed and closed prior to any further change or transfer of title of the resultant lots. The location of all permitted and future building improvements are subject to minimum building yards pursuant to the Hawaii County Zoning Code.

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:cps

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xc: DPW-Engineering Branch
DWS-Engineering Branch
SUB 94-059