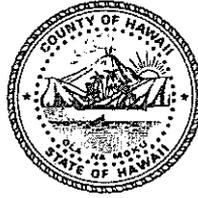


Harry Kim
Mayor



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 16, 2001

Ms Melody A. Wohlfeil
P. O. Box 227
Hakalau, HI 96710

Dear Ms. Wohlfeil:

VARIANCE PERMIT NO. 1194 (VAR 01-18)

Applicant: Melody A. Wohlfeil

Owner: Melody A. Wohlfeil

Request: Variance from Chapter 23, Subdivisions Article 6,

Division 2, Improvements Required, Section 23-88, Nondedicable Street

Tax Map Key: 2-9-002:038, (SUB 99-075)

After reviewing your variance application and the information submitted, the Planning Director certifies the approval of your variance to allow the creation of a two (2) lot subdivision without meeting the minimum roadway system improvements as required by Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-87, Standards of non-dedicable street.

The Planning Director has concluded that the variance from the minimum subdivision roadway requirements be approved with conditions based on the following findings.

1. The subject property containing 28,740 square feet, is portion of L.C. Award 11216, Apana 42, Hakalau, South Hilo, Hawaii.

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2. The subject property is zoned Single Family Residential (RS-7.5) by the County and is designated Urban "U" by the State Land Use Commission (LUC). A maximum of 3 lots could be created.

There are two (2) single family dwellings on the property. Building Permits for both dwellings were issued in 1937 and 1983. Access to both dwellings is from an unpaved private road off the Old Mamalahoa Highway.

3. The unpaved private road was created by Subdivision No. 7205 on March 8, 2000 when the Planning Director granted Final Approval of this application to consolidate and re-subdivide 11 lots into 11 lots. The right-of-way of this private roadway is 50 feet in width.
4. The owners of the subject property originally submitted a subdivision application (SUB 2000-0075) on June 8, 1999 to subdivide the property into (2) lots. The Planning Director by his letter dated May 30, 2000, granted Tentative Approval of this proposed subdivision subject to constructing a 42-ft wide dedicable pavement with concrete curbs, gutters and sidewalks within a 60-ft wide right-of-way conforming to Standard Detail R-32. The applicant filed the subject variance application on March 1, 2001.
5. The Department of Public Works (DPW) memorandum, dated March 19, 2001, states in part:

"We have reviewed the subject application and our comments are as follows:

1. The applicant has stated that C. Brewer is installing a paved roadway, and that the grading work is in progress. DPW is not aware of this and has not received any construction plans for a grading permit. C. Brewer should be informed that any earthwork and grading that they are doing shall conform to Chapter 10, Erosion and Sediment Control, of the Hawaii County Code.

If any paving is being done, all development generated runoff shall be disposed on-site and shall not be directed toward the adjacent properties.

2. Roadway easements shall be designed with the proper curve radii and tangents. Jogs or kinks are not allowed.

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3. Our subdivision code and policies of the DPW require this type of roadway easement to be improved, as we have specified, based on the present zoning and the number of lots that this proposed roadway services.”
6. The Fire Department memorandum dated March 23, 2001 states:

" 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.

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

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

"EXCEPTION: Upon approval 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 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 designed 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%)

“(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.”

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7. Variance Permit No. 1124 was issued by the Planning Director on May 22, 2000 to allow the creation of two (2) lot subdivision without a water system meeting the requirements of the Department of Water Supply.
8. The proof of mailing of notices to the surrounding property owners was received on March 16, 2001.

ALTERNATIVES

The only alternative requires the applicant to provide the existing private roadway with a 42' wide pavement within a 60' wide right-of-way with curbs, gutters, and sidewalks up to its intersection with Old Mamalahoa Highway in accordance with the Department of Public Works Standard Details.

SPECIAL AND UNUSUAL CIRCUMSTANCES

In considering the above facts, information submitted by the applicants, and agency comments, the Planning Director has determined that there are special or unusual circumstances applying to the subject property which exist either to a degree which deprive the owners 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.

The applicant proposes to create 2 new lots from the existing lot, which is 28,740 square feet in area. The Zoning Code allows a maximum of 3 new lots to be created in accordance with the requirements of the Subdivision Code. The proposed subdivision is for estate planning purposes for the applicant's family.

The intent and purpose of requiring access and roadway improvements during the subdivision review process is to assure that the resultant lots will have legal and physical access to and between the resulting lots and government provided services including fire or emergency response.

Two single family residences are already situated on this property. Both residences are already served by an existing private roadway (50' wide). The applicant does not own additional property adjoining the private roadway to allow the creation of a 60' wide right-of-way.

The proposed subdivision will not add additional traffic resulting from the construction of additional dwellings on the proposed lots.

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There are no other reasonable alternatives in resolving the difficulty of the applicant. As such, the imposition of construction of a new road meeting the requirements of the Department of Public Works Standard Details would be putting excessive demands upon the applicants when a more reasonable alternative of granting this variance is available.

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.

DETERMINATION-VARIANCE CONDITIONS

The variance requested to allow a proposed two (2) lot subdivision of the subject property without a roadway system meeting DPW standards is approved subject to the following conditions:

1. The owners, their assigns, or successors shall be responsible for complying with all conditions of Variance Permit No. 1194.
2. The 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 2000-0075. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions, which affect the proposed 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. No further subdivision of the subject property or those lots arising out of SUB 2000-0075 shall be permitted unless said roadway meets the requirements of the Department of Public Works (DPW) and Chapter 23, Subdivisions. No ohana dwelling units shall be permitted on any proposed lots created by SUB 2000-0075.

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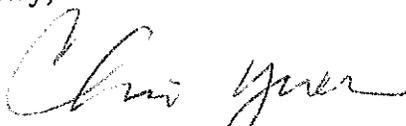
- b. The owners, their assigns, or successors shall indemnify and defend the State of Hawaii and County of Hawaii from any and all liability arising out of vehicular access to and from the subject property using the proposed road and utility easement to created in SUB 2000-0075.

The owners, their assigns, or successors shall agree that the County will not bear the responsibility of providing any road repairs or other emergency road maintenance repairs to any existing private access driveway or any private driveway within any access and utility easement created by SUB 2000-0075.

- c. 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 thusly. 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.

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

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

RKN:cps

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xc: Department of Public Works
Fire Department
SUB 2000-0075