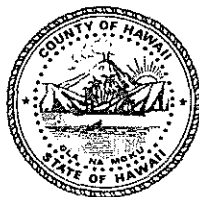


Harry Kim  
Mayor



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 24, 2002

Mr. James Leonard  
PBR HAWAII  
101 Aupuni Street  
Hilo, HI 96720-4276

Dear Mr. Leonard:

**Variance Permit No. 1276 WH (VAR 02-006)**  
**Applicant: W.B. MANINIOWALI, LLC**  
**Owner: W.B. MANINIOWALI, LLC**  
**Request: Variance from Chapter 23, Subdivisions,  
Article 6, Division 2, Improvements Required**  
**Tax Map Key: 7-2-004:018 (SUB 01-096)**

After reviewing your variance application, the Planning Director certifies the approval of your variance request to allow all phases of proposed "resort subdivision" of the subject TMK property and allow all subdivision improvements to be installed pursuant to Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-95.1, Improvements for resort subdivision.

The Planning Director has concluded that the variance from the minimum or standard subdivision street design and other related subdivision improvements of Chapter 23 Subdivisions to allow the proposed "resort subdivision" be approved based on the following findings:

#### **BACKGROUND AND FINDINGS**

There are special and unusual circumstances which exist and warrant consideration of the applicant's request and necessitate the subject variance request from the street design and road improvements being constructed:

017832 *MX*

APR 25 2002

Mr. James Leonard  
PBR HAWAII  
Page 2  
April 24, 2002

1. The property and development is located approximately four miles north of the Keahole Airport and makai of the Queen Kaahumanu Highway located within the district of North Kona, Island of Hawaii. The proposed development of the subject TMK property containing approximately 388 acres, is located at Maniniowali and Kukio 2<sup>nd</sup>, North Kona, Hawaii. The property is bounded by Queen Kaahumanu Highway, land owned by the State of Hawaii, and the resort areas of Kukio I and Kaupulehu. This affected area is contiguous to or near the Hualalai Golf Course and Hualalai Resort Development.
2. The subject area or TMK property(s) are zoned Project District (PD) and designated Urban ("U") by the State Land Use Commission (LUC).

According to the Zoning Code, "The PD development is intended to provide for a flexible and creative planning approach rather than specific land use designations, for quality developments. It will also allow for flexibility in location of specific uses and mixes of structural alternatives. The planning approach would establish a continuity in land uses and designs as well as open space, parks, and other project uses are intended to be in accord with each district boundaries in accordance with the individual project district."

3. Pursuant to subdivision records (SUB 01-096), tentative subdivision approval (TA) to allow the 100-lot subdivision was issued on October 19, 2001 subject to conditions.
4. The applicant submitted the subject variance application and attachments to the Planning Department on January 30, 2002.
5. **Agency Comments and Requirements WH (VAR 02-006).**

- a. The Department of Water Supply (DWS) memorandum, dated February 20, 2002, states in part:

"We have reviewed the subject application and have the following comments.

Please refer to our September 18, 2001, memorandum to you for our comments and requirements. We are enclosing a copy for you and the applicant's information.

Mr. James Leonard  
PBR HAWAII  
Page 3  
April 24, 2002

Should there be any questions, the applicant may contact our Water Resources and Planning Branch at 961-8070.”

The attached DWS memorandum dated September 18, 2001 states:

“We have reviewed the preliminary plat map for the proposed subdivision and have the following comments.

Please be informed that the existing water system in the area is privately owned and operated.

Therefore, pursuant to Section 23-84 of the Hawaii County Code regulating subdivisions, the following minimum requirements must be complied with for subdivision approval:

1. Provide a water system designed to deliver water at adequate pressure and volume under peak-flow conditions in accordance with the Water System Standards, State of Hawaii, and the Rules and Regulations of the Department of Water Supply. The water system shall include, but not be limited to, the installation of extensive improvements and additions, including source, storage, transmission, booster pumps, and distribution facilities.
2. Submit construction plans for our review and approval.
3. Pay a fee of four-tenths of 1 percent of the estimated cost for the construction of the water system, but not less than \$25.00 to cover the cost for plan review, testing, and inspection.

Should the applicant have any questions, they may contact our water Resources and Planning Branch.”

Mr. James Leonard  
PBR HAWAII  
Page 4  
April 24, 2002

- b. The State Department of Health (DOH) memorandum dated February 25, 2002 states:

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

- c. The Department of Public Works (DWS)-Engineering Division memorandum dated March 11, 2002 states:

“We reviewed the variance application and have the following comments:

- 1) All roadways within the proposed development shall follow the geometric design guidelines incorporated in the Hawaii Statewide Uniform Design Manual for Streets and Highways or A Policy on Geometric Design of Highways and Streets by AASHTO.
- 2) Pedestrian facilities under Section 23-95.1(b) shall be determined by the Planning Director. Consultation with DPW is encouraged if to be incorporated on the roadside.
- 3) The Planning Director should be aware that our Traffic and Safety Division does not review signs and markings for private nondedicable roads.

If you have any question, please call Kiran Emler at our Kona office, 327-3530. Fax 327-3530 (out of order) fax to 327-3563.”

6. The applicant submitted a letter dated March 12, 2002, attachments, and proof of mailing a notice of the variance application to owners of property within 300 feet of the project boundary or subject TMK property(s).
7. No oral or written objections to the variance application were received from the public or surrounding property owners.

Mr. James Leonard  
PBR HAWAII  
Page 5  
April 24, 2002

### **SPECIAL AND UNUSUAL CIRCUMSTANCES**

After considering existing zoning, permitted subdivision improvements on adjacent property(s), information submitted by the applicant, 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's detailed written explanation states in part: " The Maniniowali subdivision is planned as an adjunct to the existing Kukio subdivision. As such, the primary to access to Maniniowali is planned through the Kukio subdivision to the north, which is accessed from a fully channelized intersection at Queen Kaahumanu Highway. A secondary and minor access to the Maniniowali property is also planned at the southern portion of the property when the intersection access improvements to the Kekaha Kai State Park access are implemented on the State's Awake'e lands."

The property's zoning, location, and only ingress/egress access from the adjacent Kukio development, would permit the subdivision to be developed as a "resort subdivision", according to Zoning Code criteria. However, the decision to allow a "secondary access" to the proposed access road between the Queen Kaahumanu Highway to Kekaha Kai State Park located on the adjoining property along the Kau or southern boundary and other ordinance language and safety considerations creates a second ingress/egress to the subject TMK property thereby disqualifying the Maniniowali subdivision (all phases) to be classified a "resort subdivision" according to the county Subdivision Code definitions.

### **ALTERNATIVES**

There are no other reasonable alternatives in resolving the difficulty of the applicant. The development is within a designated resort area where the planned lots created by the proposed subdivision will be purchased for use as vacation or second homes or/and occupied by "part-time" residents. The applicant, on behalf of the owners, submitted the subject variance request to allow the subdivision to proceed with 2 ingress/egress locations to subject TMK and allow the proposed subdivision (all phases) to be developed as a "resort subdivision".

Mr. James Leonard  
PBR HAWAII  
Page 6  
April 24, 2002

To strictly meet the definition for a "Resort Subdivision" the applicant would need to maintain and have "only" one ingress/egress from the adjacent Kukio Resort Subdivision to the proposed subdivision (all phases) of the subject TMK property (Maniniowali Project). The zoning ordinance (Ord. No. 007) conditions require or mandate "another" access to the subdivision via the future access road to Kekaha Kai Park. If not for the ordinance language to allow further a second access, the Maniniowali project's sole access "only" would be dependent on the single access through the adjacent Kukio development. This only or sole ingress/egress to the proposed subdivision would strictly comport with the "resort subdivision" criteria or limitation to a single access location. However, in allowing a secondary access or second ingress/egress to promote efficient traffic movement and emergency access between Maniniowali and the adjacent future state park site, the introduction or imposition of a secondary access connection makes the Maniniowali project ineligible to be developed as a "resort subdivision" according to the Subdivision Code's definitions.

The only other alternative would be to plan and develop the proposed subdivision in accordance with the standard subdivision requirements set forth in Chapter 23, Subdivisions. These standards are different from the "resort subdivision" standards utilized to develop the adjacent Kukio project development, and, according to the applicant, "would be contrary to the Owner's objectives and reasonable planning for the area".

The applicant desires to maintain and coordinate traffic patterns and respecting existing topography while augmenting nearby approved private resort subdivision standards (golf course) and other infrastructure appropriate to the development. Public access and shoreline access requirements are being incorporated and provided in accordance with the ordinances and zoning. Optimal lot geometry and lot orientation, maintenance of private and public views planes within the area, appropriate open space(s) to harmonize with surrounding private recreational and resort uses, and appropriate interface between the approved subdivision roadways and existing resort infrastructure and other safety concerns have been considered by the applicant; and will be privately monitored and maintained. In addition, pedestrian pathways are included and extend from the cul-de-sacs to insure and promote alternative non-vehicular circulation or pedestrian accessibility within the subdivision and interface with surrounding developed areas.

In view of previous subdivision approval(s) and past commitments to allow orderly resort subdivision development within this area, to limit or disallow the proposed subdivision to be developed as a "resort subdivision" would restrict creative utilization of previously approved road infrastructure and mandate standard subdivision roadway and pedestrian improvements would be unreasonable at this time, and, possibly create a disharmonious interface between both developments and affect the character of this unique area.

Mr. James Leonard  
PBR HAWAII  
Page 7  
April 24, 2002

### **INTENT AND PURPOSE**

The intent and purposes of imposing good road design and installing necessary roadway improvements within a proposed subdivision are to insure that safe ingress and egress to the property or the proposed lots/permitted use(s) within the subdivision are made accessible by pedestrian and standard vehicles, and, that ingress or egress within that subdivision is not impeded during a time of emergency.

The analysis of surrounding development, past approved subdivision construction plans, and previously approved subdivision plat maps were considered and comport with the information submitted by the applicant. The analysis of the consultant's statements and owner(s) needs and other agency concerns will be further addressed in any revised subdivision construction plans to provide individual lot access. Approved subdivision construction improvements for a "resort subdivision" shall be installed in accordance to approved subdivision construction plans and specifications and any additional access improvements or modifications to existing approved plans shall meet all agency requirements and are required to be installed and inspected by the agencies before final subdivision approval is granted.

The permitted "resort subdivision" road design and other roadway maintenance and insurance provisions will be privately addressed by the owner(s) and/or maintained by the future lot owner(s).

### **DETERMINATION-VARIANCE CONDITIONS**

The subject variance application was acknowledged by letter dated February 13, 2002. Pursuant to a recent telephone conversation and meeting with the applicant's assistant (Ms. Sue L. Keohokapu) the date on which the Planning Director shall render a decision on the subject variance was extended to April 26, 2002.

Based on the foregoing findings and other unusual circumstances, 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.

Mr. James Leonard  
PBR HAWAII  
Page 8  
April 24, 2002

The variance requested to allow all phases of a proposed subdivision of the referenced TMK property to be developed and improvements installed pursuant to Hawaii County Code, Chapter 23, Subdivisions, Division 2, Improvements Required, Section 23-95.1, Improvements for resort subdivision is approved subject to the following conditions:

1. The applicant, owner(s), their assigns, or successors shall be responsible for complying with all stated conditions of approval.
2. The approval of this variance is only from the Subdivision Code. The applicant/owner(s), their assigns, or successors shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property damage, personal injury, or death arising out of any act or omission of the applicants/consultants/owner(s), their successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.
3. The approval of this variance allows and permits all phases of the proposed subdivision of the referenced TMK property to be developed and improvements installed pursuant to Hawaii County Code, Chapter 23, Subdivisions, Division 2, Improvements Required, Section 23-95.1, Improvement for resort subdivision.
4. The tentative approval letter and tentative subdivision conditions dated October 19, 2001 shall be amended to allow the design and installation of "resort subdivision" improvements pursuant to Hawaii County Code, Chapter 23, Subdivisions, Division 2, Improvements Required, Section 23-95.1, Improvements. The applicant shall install and complete the subdivision improvements required for SUB 01-096 in accordance with approved subdivision construction plans.
5. In the event that there are any amendments or changes to a proposed or existing subdivision bond for the subdivision improvements, the applicant shall be responsible for informing the County Planning Department of such amendments or changes so that the surety documents or agreement can be amended concomitantly.



Mr. James Leonard  
PBR HAWAII  
Page 9  
April 24, 2002

6. No permit to allow an ohana dwelling or building permit issued to construct an "ohana" dwelling shall be granted to the subject property or any lots created by SUB 01-096, subject to provision of the Zoning Code or State Law, which may change from time to time.
7. The owners, their assigns or successors shall pay any real property taxes due and comply with all Special Management Area (SMA) Permit conditions, amended tentative and/or other subdivision conditions to allow SUB 01-096, and other applicable State and County rules and regulations pertaining to subdivisions and land use.

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  
P:\WP60\WRY\FORMLETT\VARAPPSUBTMK72004018.PBR

xc: DPW-Engineering  
DWS-Engineering Branch  
SUB 01-096