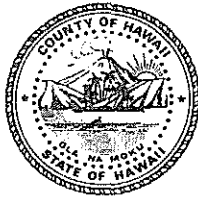


Harry Kim  
Mayor



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

November 14, 2002

Ms. Irene Kaneo  
P. O. Box 191  
Honokaa, HI 96727

Dear Ms. Kaneo:

**VARIANCE PERMIT NO. 1340 (VAR 02-036)**

**Applicant:** IRENE KANEO  
**Owner:** IRENE KANEO  
**Request:** Variance from Chapter 23, Subdivisions,  
Private Roadway Improvements-  
Tentative Subdivision Approval Conditions  
**Tax Map Key:** 4-5-004:091, Lot 1 (SUB 01-0104)

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 (Lot 1) into 2-lots, without installing a required 14 feet wide non-dedicable pavement within the rights-of-way fronting the property in accordance with the Department of Public Works (DPW) standards and requirements and respective conditions of tentative subdivision approval dated April 10, 2002. The applicant's have requested a variance from the subdivision roadway requirements pursuant to the Hawaii County Code, Chapter 23, Subdivisions, Article 6, Division 1, Construction, Section 23-79, Construction plans; content; review, Division 2, Improvements required, Section 23-87, Standard for non-dedicable street; escrow maintenance fund, and Section 23-88, Nondedicable street; private dead-end street, respectively.

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**BACKGROUND**

1. **Location.** The subject property, Lot 1 containing 23, 425 square feet, is a portion of Lot 26 and Lot 27, Grant 7668 to Agnes L. Payne, and situated at Kaa, Hamakua, Hawaii.
2. **Zoning.** The subject property is zoned Single-Family Residential (RS-10) by the County and designated Urban ("U") by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** The applicant's surveyor submitted a subdivision application (SUB01-0104) which includes a preliminary plat map (PPM), dated July 19, 2001, to subdivide "Lot 1" into 2-lots. The proposed subdivision was granted a variance (VAR 1270) from the water system requirements. The subdivision application's preliminary plat map (PPM), dated July 19, 2001 was granted tentative subdivision approval on April 10, 2001 subject to conditions. Subsequent to tentative subdivision approval, the applicant applied for a variance from the DPW requirements and roadway requirements.
4. **Variance Application.** The subject property (Lot 1) is a corner lot. The property has frontage on Lokelani Street and unnamed 12 feet wide +/- (?) right-of-way. The variance request is from the DPW requirements to provide improvements within the unnamed right-of-way pursuant to the DPW memorandum dated October 11, 2001 and tentative subdivision conditions dated April 10, 2002.

The applicant submitted the subject variance application, variance submittals, and filing fee on or about July 2002.

5. **Agency Comments And Requirements (VAR 02-036):**
  - a. The County of Hawaii Fire Department (HCFD) memorandum dated July 17, 2002. (Refer to memorandum in variance file).
  - b. The Department of Public Works (DPW) memorandum dated July 24, 2002, states in part:

"We have reviewed the subject application and offer the following comment:

1. The subdivision improvements as stated in our memo dated October 11, 2001, are the minimum improvements required by the subdivision code. DPW believes that, allowing subdivisions without at least providing the minimum improvements as required by the code, will compromise public safety and welfare.”
- c. The State Department of Health (DOH) memorandum, dated July 26, 2002, states:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."
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. Pursuant to a letter and submittals received on July 16, 2002 a notice of the variance application was mailed to surrounding property owners. The submittals included a certificate of mailing with affixed mail receipt(s) dated July 15, 2002.
5. **Comments from Surrounding Property Owners or Public.** No other agency comments were received. The following written objection to the subject variance application was received:
  - a. Objection letter dated July 30, 2002 from Susan Tanoue (TMK: (3) 4-5-004:096). The letter cited traffic and safety issues.

**Note:** On or about August 19, 2002, staff visited the property and took colored digital photographs of the existing driveways utilizing the Lokelani right-of-way and unnamed roadway right-of-way fronting the subdivision. Staff discussed DPW's request to improve the unnamed right-of-way with neighbors-Mr. and Mrs. Ronald Mochida (TMK: (3) 4-5-004:093). The proposed lot (Lot 1-B) fronts the unnamed right-of-way (road reserve) and proposes to utilize the roadway (driveway) within the unnamed right-of-way up to the intersection at Lokelani Street. Photographs of the intersection of the unnamed roadway with Lokelani Street and existing roadway (driveway) improvements within the unnamed right-of-way have been incorporated into the variance file.

### 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:

1. Existing Density/Proposed Residential Uses. The applicant intends to develop the subdivision (Lot 1-B) for a family member. No further subdivision of the resultant lots will be possible without rezoning.
2. Proposed Lot and Subdivision Road Improvements. In consideration of the existing access to the property and feelings of the neighbors utilizing the unnamed road reserve, the low vehicular usage from the proposed subdivision and adjoining lots is acceptable, and access to the proposed subdivision and the adjoining areas will be accessible by emergency vehicles. The variance conditions set forth at the end of this letter will require the subdivision plat map to include the future rights-of-way, radius, and at the intersection of Lokelani Street and the unnamed road reserve.

### ALTERNATIVES

The decision alternatives include the following:

1. *Improve the roadways within the existing roadways as required by DPW.* This alternative would require the applicant (owner/subdivider) to expand the width of the road reserve and install nondedicable pavement within the roadways required by the DPW. The applicant is requesting a variance to allow the existing paved and unpaved roadway improvements within the unnamed road reserve to be utilized for the proposed 2-lot subdivision (Lot 1-B) in lieu of providing a nondedicable paved roadway pursuant to the DPW memorandum dated October 11, 2001. The costs associated to design and construct the required DPW roadways within the existing unnamed road reserve would be substantial at this time and against some of the feelings of the neighbors utilizing the roadways.

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 adequate for the applicants (family) and acceptable by the current users. Any drainage concerns or improvements within the subdivision development will be addressed by the subdivider. Any necessary signage at the intersection between the unnamed roadway and Lokelani Street will be installed by the subdivider or installed pursuant to 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 surrounding areas are residential-rural 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. Public road access via Lokelani Street to the existing property and neighborhood is appropriate for current zoning of the area. The intention of the subdivision is for low intensity residential and family use. By granting this variance, it appears there should be no adverse impact to adjoining properties or other users of the nearby public road or unnamed road reserve fronting the subject property. Road maintenance to the unnamed paved and gravel roadway within the road reserve will be privately addressed and shared among the current users.

Therefore, based on the representations made by the applicant and evaluation of property's existing access, traffic patterns, and roadway conditions to and near the existing property, the Planning Director has concluded that some of the DPW requirements stipulated by their memorandum to the proposed 2-lot subdivision application can be modified.

#### **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 letter dated July 8, 2002. Additional time to consider agency comments, schedule a site inspection of the existing roadway, and consider similar applications was required. The applicant-owner agreed to extend the decision dated to November 15, 2002, 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 2-lot subdivision without providing the minimum road improvements stipulated by the DPW memorandum to allow the proposed 2-lot family 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 01-0104 will use and maintain the existing access, paved and gravel roadways, and grassed roadway shoulders to and within the subject TMK property on their own without any expectation of governmental assistance to maintain the unnamed roadway or any other access improvements within the subdivision.
3. The future road wide widening setback to be taken from Lokelani Street and 25-foot curve radius location shall be denoted on the subdivision plat maps. The applicant shall confer with the DPW and install signage at the intersection of the Lokelani Street and the private road reserve prior to final subdivision approval.
4. The applicant shall meet DPW drainage requirements prior to final subdivision approval.
5. 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 01-0104. 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 unnamed right-of-way designated on the subdivision application's (SUB 01-0104) 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 that unnamed roadway serving the proposed lot(s) arising out of SUB 01-0104 or/and Lokelani Road fronting and along the proposed subdivision. Should the improvement district require acquisition of rights-of-way within the lots arising out of SUB 01-0104, 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 01-0104 shall have no more than one dwelling. No permit to allow an ohana dwelling or building permit issued to construct an "ohana" dwelling shall be granted to the subject property, subject to provisions of the Zoning Code or State Law, which may change from time to time.
  - d. The owners understand that the lots created by SUB 01-0104 have been approved with this road variance, and that they will use and maintain any 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 unnamed roadway up to the intersection between the unnamed roadway and Lokelani Road right-of-way.
  - e. The owners agree to participate in any road maintenance agreement agreed to among the majority of the users of the unnamed roadway.
6. 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.

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7. 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.

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

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xc: DPW-Engineering Branch  
DWS-Engineering Branch  
SUB 01-0104  
Planning Dept.-Kona  
Ms. Susan Tanoue