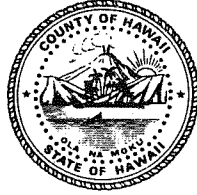


Harry Kim
Mayor



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 15, 2002

Mr. Terry T. Maruyama
82-5952 Napoopoo Road
Captain Cook, HI 96704

Dear Mr. Maruyama:

Variance Permit No. 1343 WH (VAR 01-058)

Applicant: TERRY T. MARUYAMA

Owner: TERRY T. MARUYAMA

**Request: Variance from Chapter 23, Subdivisions,
Private Roadway Access**

Tax Map Key: 8-3-016:048, Lot 48

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 second access to the subject TMK property via a private subdivision roadway (cul-de-sac). The applicant 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 48 containing 1.000 acre, is within the Kealekekua Bay Estates Subdivision, being portions of Kahauloa 1st and 2nd and Keei 1st, and situated at South Kona, Hawaii. Lot 48 was created and approved by Subdivision No. 6102 (SUB 6102) on January 21, 1992. It appears that access to Lot 48 (corner lot) was restricted to Kanele Street. Lot 48 also fronts Kahula Place and includes EASEMENT "P-27" a 10 feet wide no access and planting screen easement line on Lot 48 along Kahula Place according to the subdivision's approved final plat map.

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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).

2. **Variance Application.** The TMK property (Lot 48) is a corner property, which is restricted to access from Kanele Street. Access to Lot 48 was restricted according to the approved Kealekekua Bay Estates Subdivision. Driveway access to the property is subject to the approved subdivision final plat map and agency review. The variance request is to allow further lot (7th lot) access via Kahula Place, and allow an alternative (second) driveway to breach the planting screen easement "P-27" located on Lot 48, and permit a driveway connection between Lot 48 and the paved privately owned roadway within Kahula Place according to the variance plan submittals.
 - In lieu of constructing the lot's primary access via Kanele Street meeting Chapter 23, Subdivisions and other building and construction permits issued to Lot 48, the applicant is requesting an alternative and safer access to Lot 48 via Kahula Place.
 - The applicant's statements and background cites neighborhood safety and other unusual property characteristics. The Kealekekua Bay Estates Owner's Association has no objections to permitting the owner to create the alternative access and driveway through the planting screen easement (P-27) located on Lot 48.

The Kealekekua Bay Estates Owner's Association letter dated May 23, 2002 states in part:

"We believe this relocation will provide for safer access in and out of the property on the main street, provide greater safety for children that potentially reside at the property, and be more economical to the homeowner to construct a driveway in the new location."

5. **Agency Comments and Requirements WH (VAR 02-058):**

- a. The County of Hawaii Fire Department (HCFD) memorandum dated August 28, 2002 states in part:

“We have no comments or objections to offer at this time regarding the above-referenced variance application.”

- b. The State Department of Health (DOH) memorandum, dated August 27, 2002, states:

“We have no objections to the proposed variance application. However, minimum setback requirements for existing wastewater systems needs to be maintained.”

- c. The Department of Public Works (DPW) memorandum dated September 16, 2002, states in part the following:

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

Both Kanele Street and Kahula Place are private roads.

Kahula Place has a 16-foot wide pavement in a 20-foot wide right-of-way serving 6 parcels in conformance with the maximum allowed by Hawaii County Code Section 23-88.

According to application and the enclosed topographic map, a cut-bank, the property grade, and security issues make the driveway approach on Kanele Street less desirable than Kahula Place. The applicant is requesting access be allowed on Kahula Place for the subject parcel for a total of 7 parcels served. We suggest the Planning Director consider the record, as granting this would be contrary to the decision on a recent application.

That said, Kahula Place could support access for the additional parcel with the following recommendation:

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Provide a 2 foot wide paved shoulder on the north side of Kahula Place from Kanele Street to the proposed driveway approach.

Should there be any questions concerning this matter, please feel free to contact Kiran Emler of our Kona Engineering Division office at 327-3530.”

6. **Notice to Surrounding Owners.** The applicant submitted a list of property owners within 300 feet of the subject property(s). Proof of mailing a notice was received by the Planning Department on or about September 27, 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:

1. **Existing and Proposed Agricultural Uses.** The applicant intended to develop a second access to the property. The property's unusual topography would require severe grading and grubbing to develop the access and driveway required via Kanele Street pursuant to SUB 6102.
2. **Proposed Subdivision Road and Lot Improvements.** Given the existing private roadway design to develop the original subdivision and other circumstances, i.e. the natural grade of the site (Lot 48), low vehicular traffic utilizing the private roadways, etc., the additional or alternative access is acceptable and will provide safer and better accessibility to the property by the owners and in time of an emergency. The variance conditions set forth at the end of this letter will require the second driveway access and transition between the subject lot and paved roadway to comply with a DPW driveway permit. Road maintenance of the roadway fronting the property is monitored and maintained by a private association.

ALTERNATIVES

The decision alternatives include the following:

1. *Improve the lot access to the existing private roadway according to the approved subdivision requirements and the DPW.* This alternative would require the applicant (owner/subdivider) to improve the permitted access. The costs associated to design and construct the required DPW paved road and shoulder improvements within the existing privately owned right-of-way would be substantial and the design would not be user friendly, less sight-distance, etc., due to the high rock banks at this location, etc.
2. *Reasonable subdivision improvements or driveway improvements to meet minimal property access and emergency vehicular and safety requirements. Alternative lot access to Lot 48 via Kahula Place shall be subject to DPW review and approval.* This is the selected alternative. The request for the driveway location will be better and safer access due the property's unusual topography. The second access via the private cul-de-sac or existing roadway will be safer and provide better sight distance for regular and emergency vehicles.

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 rural and agricultural in character. The character and use of the public road fronting the subdivision and private rights-of-way within the neighborhood have changed during the last 10 years. Current access to the property (Lot 48) and neighborhood is appropriate for current zoning of the area and due to subdivision requirements. However, due the (Lot 48) property's unusual natural topography, alternative access should be considered. By granting this variance, there should be no adverse impact to adjoining properties or other users of both private subdivision roadways. Road maintenance of the private roadways within the subdivision will be addressed and maintained by a private association or users.

Therefore, based on the representations made by the applicant and evaluation of the access and traffic patterns to and near the existing property, the Planning Director has concluded that a second or additional driveway access via the private roadway (Kahula Place) may be allowed subject to further DPW review or variance conditions.

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 and submittals were acknowledged pursuant to letter dated August 20, 2002. Additional time to consider agency comments and allow staff to consider the site's topography and other private subdivision roadway improvements was necessary. 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 second access to the property via Kahula Place meeting County driveway requirements or meeting the access improvements stipulated by the DPW memorandum is approved 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 owner shall confer with DPW and secure a driveway permit for the second access to the subject property. In view of the comments and requirements stipulated by the DPW memorandum dated September 16, 2002, the second permitted access and driveway improvements to the subject TMK property (Lot 48) via Kahula Place shall be located and constructed in accordance with the approved DPW driveway permit. The access and driveway improvements shall be installed and completed prior to closing the outstanding building permit and construction permits to construct the dwelling improvements issued to the subject TMK property.
3. The applicant shall submit ten (10) copies of a revised survey map of Lot 48 showing the rights-of-way fronting the property, permitted access location via Kahula Place, and revised easements on Lot 48, prepared by a surveyor, for approval by the Hawaii County Planning Department within one (1) year from the date of this letter.

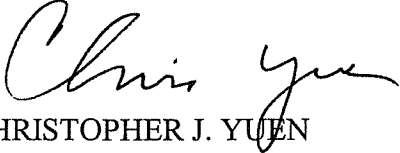
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4. The applicant and/ or owners shall indemnify and defend the State of Hawaii or County of Hawaii from any and all liability arising out of vehicular access to and from the subject property utilizing the private roadways.

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 (Kona)
SUB 6102
Planning Dept.-Kona