

Harry Kim
Mayor



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County of Hawaii

PLANNING DEPARTMENT

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August 11, 2003

Mr. Gregg Kashiwa, President
PROJECT PLANNERS HAWAII
76-6351 Pualani Street
Kailua-Kona, HI 96740

Dear Mr. Kashiwa:

VARIANCE PERMIT NO. 1381 WH (VAR 03-037)
Agent: GREGG KASHIWA
Applicant: GAMREX, INC.
Owner: GAMREX, INC.
**Request: Variance from Chapter 23, Subdivisions,
Access and Private Roadway Improvements to
Allow 8-Unit CPR Development of Lot 5-A**
Tax Map Key: 7-6-027:042, Lot 5-A (SUB 7661)

After reviewing your variance application, the Planning Director certifies the approval of your variance request with conditions. The variance request allows the applicant or developer to submit the 8-Unit Condominium Property Regime (CPR) final plat map of Lot 5-A created by SUB 7661. The applicant is requesting a variance from the Hawaii County Code, Chapter 23, Subdivisions, specifically, Article 3, Division 2, Section 23-53, Private Street, Article 6, Division 2, Section 23-88, Non-dedicable street; private dead-end street, and Ordinance No. 02 111.

BACKGROUND

1. **Location.** The subject TMK property(s), Lot 5-A, consisting of 132,812 square feet was approved on February 20, 2003 (SUB7661), is a portion of Royal Patent 4475, Land Commission Award 7713, Apana 43 to Victoria Kamamalu and being also Lots 1 and 5, Kona Vista Subdivision, Unit 1-C (File Plan 2218), and situated at Holualoa 1st and 2nd, North Kona, Hawaii.

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2. **Zoning.** The subject property is zoned Residential (RS-15) by the County and designated Urban ("U") by the State Land Use Commission (LUC). To date, County Building Permits to construct 8-Dwelling Units on Lot 5-A were approved by the agencies and issued by the County-DPW. The applicant is proposing to further develop Lot 5-A into a 8-Unit CPR-The Terrace at Kona Vistas. Pursuant to the Planning Department, a variance from the requirement to provide a dedicable roadway dedicable roadways within Lot 5-A and Ordinance No. 02 111 is required before the final CPR map is approved.
3. **CPR Map.** The applicant filed a request to allow an 8-unit CPR of Lot 5-A created by SUB 7661. The applicant submitted a final condominium map for the 8-unit CPR dated July 15, 2003. Further action of the CPR request and approval of the final CPR map is being deferred pending resolve of minimum roadway requirements of Chapter 23, Subdivisions and Ordinance No. 02 111, to allow the 8-unit CPR.
4. **Variance Application.** The variance request and application is from the roadway requirements stipulated by Hawaii County Code, Chapter 23, Subdivisions and recent amendments to Chapter 23.
 - Access to and within the subject TMK property (Lot 5-A) is via a 20 feet wide paved driveway. The applicant submitted copy(s) of building permits to construct 8-new dwellings on the property before Lot 5-A was created via SUB 7661. The paved driveway or roadway improvements to or servicing the dwellings was designed and installed during or in conjunction with the dwelling permits. The single driveway access and non-dedicable common driveway or paved roadway was approved, constructed, and inspected by the County-DPW prior to final subdivision approval (SUB 7661).
 - In lieu of providing dedicable right-of-way or roadway improvements within Lot 5-A, the applicant is requesting a variance to utilize the access via Pualani Street (Public R-O-W) and non-dedicable "AS-BUILT" paved 20 feet wide paved driveway (cul-de-sac) within Lot 5-A identified on the final CPR map dated July 15, 2003.

- Drainage improvements (Drywells), and other utilities (Water, Electricity, and other infrastructure) were previously installed prior to subdivision approval (SUB 7661) or in conjunction with building permits issued to permit construct of the 8 dwelling units. (Refer to copy(s) of DPW building permits submitted with the variance application). Access to the subject TMK property (8-dwelling units) is via public road (Pualani Street) and individual dwelling access to parking is via the non-dedicable 20-foot wide driveway and other infrastructure needs, i.e. wastewater, drainage, and flooding concerns have been addressed and met in conjunction with the building permits or were installed prior to granting final subdivision approval (SUB 7661) creating Lot 5-A and CPR map date July 15, 2003.

5. **Agency Comments and Requirements WH(VAR 03-037):**

- a. The Department of Public Works (DPW) memorandum dated July 14, 2003, states in part:

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

Grading for the private under Permit No 90415 received our final approval on November 1, 2002. The grading plans were reviewed for compliance to Chapter 10 only and included drainage improvements. The pavement serving the 8 units is approximately 20 feet wide.

There are outstanding erosion control issues, which were to be resolved under separate grubbing and grading permits related to the subject subdivision. No progress has been made on the proposed erosion control planting under permits 90575 and 90584.”

- b. The Department of Water Supply (DWS) memorandum dated July 25, 2003 states in part:

“We have reviewed the subject application and have no comments.”

- c. To date, no written comments from the Hawaii County Fire Department were received.

6. **Notice to Surrounding Owners.** The applicant submitted a list of surrounding property owners within three hundred feet (300') of the subject property. Pursuant to the applicant's letter received on June 19, 2003, the applicant mailed a notice to surrounding property owners on June 18, 2003.
7. **Comments from Surrounding Property Owners or Public.** No written 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 Residential/Development on Lot 5-A. 8-dwelling permit(s) were issued to construct 8-dwelling units on the subject TMK property prior to final subdivision approval (SUB 7661). Access to the property and 20-foot wide paved driveways were installed in conjunction with the dwelling permits becoming a continuous 20-foot paved roadway (cul-de-sac). Access to the 8-dwelling units via a publicly owned right-of-way were addressed and permitted prior to issuance of final subdivision approval (SUB 7661). In lieu of pursuing a traditional or further subdivision of Lot 5-A, the developer is requesting permission to register an 8-unit CPR of Lot 5-A via State Law. The applicant submitted the variance request and application pursuant to the request of the Planning Director.
2. Chapter 23 Subdivision Requirements-Ordinance No. 02 111. The request to allow a proposed 8-unit CPR to utilize the series of "AS-BUILT" paved non-dedicable 20-foot wide paved driveways or paved roadway (cul-de-sac) that were legally installed prior to the approval of SUB 7611 in lieu of dedicable roadways and variance from other provisions of Chapter 23, Subdivisions, including Ordinance No. 02 111, to allow a CPR is reasonable. The burden to require dedicable right-of-way or dedicable access to the individual dwellings within Lot 5-A, at this time, would be unreasonable. The privately owned non-dedicable roadway, drainage improvements, and other utility infrastructure within Lot 5-A were permitted and constructed before final subdivision approval to SUB 7611 was granted. The proposed 8-unit CPR dwelling units will be serviced by "AS-

BUILT” driveways or privately owned roadway (cul-de-sac) and will be accessible by conventional vehicles and emergency vehicles.

ALTERNATIVES

The decision alternatives include the following:

1. *Improve or expanding the right-of-way/20-foot wide non-dedicable paved driveway and construct additional shoulder improvements meeting dedicable roadway standards pursuant to the DPW or Subdivision Code.* The costs to redesign and expand the driveway or roadway to County dedicable standards pursuant to Chapter 23 are limited due to the “AS-BUILT” dwelling positions and contrary to the developer’s intent to develop the property as an 8-unit CPR.
2. *Non-dedicable roadway improvements for the proposed 8-unit CPR development and emergency vehicular and safety requirements.* Access via a public R-O-W and on-site access to the 8-dwellings access via the continuous 20-foot wide paved driveway, including water and utilities, and other infrastructure, were installed in conjunction with the building permits issued to construct the 8-dwelling units and complied or met all County and other agency requirements/inspections before the subdivision creating Lot 5-A was approved on February 20, 2003 (SUB 7661).

INTENT AND PURPOSE OF THE SUBDIVISION CODE

Access to the property is clearly defined and accessible from a public road by domestic vehicles, police, fire, and other service vehicles. The applicant is requesting a variance to utilize the existing paved 20-foot paved roadway and utilize other roadway improvements installed prior to approval of SUB 7661. The variance request is from the Chapter 23, Subdivisions and Ordinance No. 02 111. The variance will allow a proposed 8-unit CPR development to be accessed via the existing non-dedicable paved driveway(s) roadway (cul-de-sac) that were installed incrementally at the time of issuance of the 8-dwelling permits by the County. At the time, the driveway improvements installed in conjunction with the 8-dwelling permits were met.

The surrounding areas are residential in character. By granting this variance, there should be no adverse impact to adjoining properties or change to the neighborhood. Road maintenance or upkeep within the proposed 8-unit CPR will be privately addressed and maintained by the users or CPR association.

Therefore, after considering the circumstances and past County permits issued to permit development on the subject property, applicant's narrative and background report, evaluation of the "AS-BUILT" access and paved roadway improvements to the permitted dwelling units and proposed 8-unit CPR development, and other circumstances beyond the developer's control, the Planning Director finds that the variance request is reasonable and the final condominium map can be approved and sold.

DETERMINATION-VARIANCE CONDITIONS

Based on the foregoing findings, this applicant's variance request would be consistent with the general purpose of the zoning district and the intents and purposes of the Zoning Code, Subdivision Code-Ordinance No. 02 111, 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 variance requested will allow a proposed 8-unit CPR development 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 applicant, owners, their assigns, or successors understand that the 8-unit CPR of Lot 5-A created by SUB 7661 will use and maintain the existing property access from Pualani Street and on-site paved roadway without any expectation of governmental assistance to maintain the on-site access and driveway improvements.
3. ROAD VARIANCE: 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 date of this letter. This agreement shall contain the following deed language, being covenants, conditions, and restrictions, which affect Lot 5-A 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 privately owned on-site driveway or roadway improvements designated on the

subdivision application's (SUB 7661) final plat map or final CPR map dated July 15, 2003.

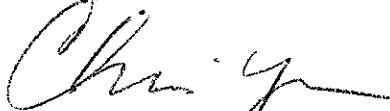
- b. The developer or owners understand will use and maintain the privately owned on-site driveways or privately owned access roadway to and within their property subject to State Statutes or CPR requirements pursuant to State Law.
 - c. The lot owners agree to participate in any road maintenance agreement pursuant to State Statutes or private deed restrictions affecting the Lot 5-A. Said maintenance shall include, without limitation, grass cutting (mowing), timely repair and/or filling of any and all rutted areas and "potholes" within the paved driveway(s) or roadway, and mowing of adjoining roadway shoulders within Lot 5-A.
 - d. In the event that there are any amendments or changes to the subdivision or proposed CPR development, 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 8-unit CPR.
4. The owners, their assigns or successors shall pay their fair share of real property taxes due and comply with all other applicable State and County rules and regulations pertaining to building construction and land use.
 5. Any outstanding grubbing, grading, and building permits issued to the subject TMK property shall be addressed and closed prior to any change in title or sale of the 8-dwelling unit(s). The location of all permitted and future building improvements are subject to the minimum building yards pursuant to the Hawaii County Zoning Code and any CPR requirements.

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

Mr. Gregg Kashiwa, President
PROJECT PLANNERS HAWAII
Page 8
August 11, 2003

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 7661