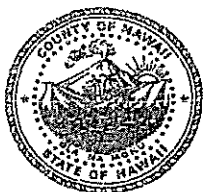


Harry Kim  
Mayor



Christopher J. Yuen  
Director

Roy R. Takemoto  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043  
(808) 961-8288 • Fax (808) 961-8742

February 11, 2004

Mr. Gregory R. Mooers, President  
MOOERS ENTERPRISES, LLC  
P. O. Box 1101  
Kamuela, HI 96743

Dear Mr. Mooers:

#### **VARIANCE PERMIT NO. 1406 WH (VAR 03-061)**

**Applicant:** MOOERS ENTERPRISES  
**Owner:** ONE KEA HUI, LLC  
**Request:** Variance from Chapter 25, Zoning  
**Tax Map Key:** 6-9-003:015, Lot 76

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1406 will permit a proposed 2-lot subdivision creating lots with a minimum 57 + to 59 + feet average width in lieu of the minimum 70 feet average width requirement pursuant to the Zoning Code. The variance request is from the minimum yard requirements of the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-6, Minimum building site average width.

#### **BACKGROUND AND FINDINGS**

1. **Location.** : The subject property, Lot 76 containing 23,269 square feet, Puako Beach Lots (H.T.S. Plat 414-B), being the whole of L. P. Grant S-13,752 to Manuel Cardozo Rapozo, Jr. and Adelida Ramos Rapoza, and situated at Lalamilo, Waimea, South Kohala, Hawaii.

The property was zoned Single-Family Residential (RS-10) by the County pursuant to REZ 1022 (REZ 03-006) and ORD. NO. 03 120. The property is designated Urban "U" by the State of Hawaii-Land Use Commission (LUC) and within the Special Management Area (SMA).

The applicant submitted a 2-lot subdivision application (SUB 03-0122) on

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September 16, 2003 to the Planning Department. Pursuant to October 29, 2003 letter in subdivision file (SUB 03-0122), further action on the 2-lot subdivision application is being deferred pending receipt of agency comments and resolve of the minimum building site average width requirements.

2. **Variance Application-Site Plan**. The applicant submitted the variance application, attachments, and filing fee to the Planning Department on or about September 28, 2003. The variance application's site plan or survey map dated September 15, 2003 was prepared by Wes Thomas Associates and is drawn to scale.

**Note:** The property is vacant and does not identify any cesspool location(s) or Independent Wastewater System (IWS). The location of any perimeter wall/planter and landscaping within the County right-of-way shall be addressed and resolved by the applicant/current owner(s).

The applicant, on behalf of the owner, is requesting a variance to allow 2-lots to be created with a 57 + feet + and 59 + feet building site average width in lieu of the minimum 70 feet building site average width requirement.

The applicant's variance background states in part:

"This parcel was rezoned to RS-10, REZ 03-006, approved August 20, 2003. This action was taken to create a subdivision of two RS-10 oceanfront lots. The goal of the developer is to create these lots for use by their immediate family. The Blasdells have two sons who at some point will each inherit one of these lots.

The square footage for the subject property allows the subdivision into two lots, however the configuration of the parcel is such that if the property is subdivided so that each parcel has ocean frontage, the average minimum width is less than the code requirement.

With the previous resort zoning the owners could have created up to 18 multiple-family units on the subject property. After discussions with the Planning Director and reviewing the proposed changes to the General Plan LUPAG map, the owners agreed with the Director that a much lower density is appropriate for this parcel. It was agreed that two ocean front lots would be requested for single-family

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development by proceeding with a change of zone application and subsequent subdivision and variance applications.”

“The goal of previous change of zone and this subdivision is to divide the property based on the zoning designations to create two ocean front lots and develop each of them with a single-family residence.

Surrounding properties are developed or planned to be developed with single-family residences. All other residential lots in the Puako Subdivision on the makai side of Puako Beach Drive have ocean frontage. The proposed use and lot configuration is consistent with the neighboring properties.”

3. **Agency Comments and Requirements-WH (VAR 03-061):**

- a. The Department of Public Works (DPW) response dated October 20, 2003, states in part:

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

**BUILDING**

1. Building shall conform to all requirements of code and statutes pertaining to building construction, (see attached memorandum from our Building Division, dated October 16, 2003.)

**ROADWAYS**

1. The Applicant shall remove any encroachments or obstructions within the County right-of-way.”

- b. The State Department of Health (DOH) memorandum dated November 13, 2003, states:

“The subdivision consists of less than 50 lots/dwelling units. The use of individual wastewater systems is allowed. The type and number of individual wastewater systems to be used on each lot will be determined

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by the wastewater rules in effect at the time of building permit application(s).”

4. **Notice to Surrounding Property Owners.** Proof of mailing a first and second notice was submitted to the Planning Department. For the record, it appears that the first and second notices were mailed on October 20, 2003 and October 27, 2003, respectively, according to submittals received.
5. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No verbal or written objections from surrounding property owners or public were received.

#### **SPECIAL AND UNUSUAL CIRCUMSTANCES**

Ordinance No. 03 120, Condition “E.” states:

“Should the minimum building site average width for the proposed subdivision not be met, the applicant shall file a variance application with the Planning Department.”

The applicant, on behalf of the owner, filed the variance application from the minimum building site average width (SUB 03-0122). In addition, the applicant’s filing of the variance request and application satisfies Ordinance No. 03 120, Condition No. “E.”.

#### **ALTERNATIVES**

Alternatives available to the applicant to address and correct the existing building encroachments include the following actions:

1. Revising the proposed 2-lot subdivision layout to 1-ocean lot and 1-flaglot. However, this design or layout would result in one lot with ocean frontage and one lot fronting the street.

The applicant’s background states in part:

“We believe that the most viable alternative to utilize this property to create two ocean front lots under its present zoning designation is to subdivide the property from mauka to makai utilizing the variance procedure.

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Thus the imposition of the minimum building site average width standard for the proposed subdivision would be creating excessive demands on the petitioner when a more reasonable alternative is available.”

2. Consolidation with portions of the adjoining property(s) and resubdivision of the resultant lot to modify property lines and adjustment of proposed lot size.

### **INTENT AND PURPOSE**

The intent and purpose of requiring minimum average building site width is to insure that an adequate “building site” or building envelope is created for building or dwelling the built and that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines.

The granting of the applicant’s request and variance will not depreciate or detract from the residential character of the surrounding neighborhood or general land pattern surrounding the subject property. No verbal or written objections from the adjoining property owner(s) or surrounding property owners contacted were received. Therefore, it is felt, that the variance application is reasonable and will not detract from the character of the immediate neighborhood or the subdivision.

The location of any improvements encroaching into the public right-of-way shall be resolved by the applicant/current owner (Refer to Variance Permit Conditions).

The subject variance application was acknowledged by letter dated October 9, 2003. Additional time to consider agency comments was deemed necessary. The applicant agreed to extend the date on which the Planning Director shall render a decision on the subject variance to no later than February 13, 2004.

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 request 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.

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**PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS**

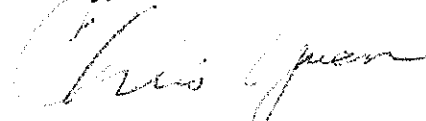
This variance request is approved subject to the following conditions:

1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns 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/owners, 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 proposed 2-lot subdivision identified on preliminary survey map submitted with the variance application dated September 15, 2003 will not meet the minimum average lot width requirement pursuant to the Chapter 25, the Zoning Code. The approval of this variance allows the creation of proposed "LOT 76-A" and "LOT 76-B" identified on the variance application's site plan map to be subdivided with a minimum 57 + feet to 59 + feet average width. The applicant/owner shall comply with remaining conditions stipulated by Ordinance No. 03 120 and conditions stipulated by SUB 03-0122.
4. Any encroachments into the public right-of-way shall be addressed and resolved by the applicant/current owner and DPW-Kona prior to any change in ownership or transfer of title of the property.
5. No permit shall be granted to allow an ohana dwelling or building permit issued to allow construction of an "ohana" dwelling shall be granted to the subject TMK property (LOT 76) or 2-lots created by SUB 03-0122, subject to provisions of the Zoning Code or State Law which may change from time to time.
6. Future building improvements and permitted uses on the subject tax map key property are subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

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

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

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xc: Real Property Tax - Kona  
Planning Department - Kona  
SUB 03-0122