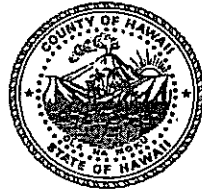


Harry Kim
Mayor



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

April 19, 2004

Mr. John Clifford Rhoads
P. O. Box 868
Pahoa, HI 96778

Dear Mr. Rhoads:

VARIANCE DENIAL- #1425 Subdivision Roadways (VAR 04-013)

Applicant: JOHN CLIFFORD RHOADS

Owner: JOHN CLIFFORD RHOADS

**Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required,**

Tax Map Key: 1-3-002:019, Lot 20 (SUB 03-0047)

After reviewing the subject variance application and information submitted, the Planning Director is denying your variance from the minimum roadway requirements or Article 6, Improvements, Division 2, Improvements Required, to permit a proposed 2-lot subdivision.

The denial of subject variance application from minimum roadway requirements to permit the subdivision or conditions stipulated by tentative approval dated January 4, 2004 is based on the following:

BACKGROUND

1. **Location.** The subject property, Lot 20 containing 25.92 acres, being all of Grant 5529, and situated at Kamaili, Puna, Hawaii.
2. **Zoning.** The subject property is zoned Agricultural (A-10a) by the County and designated Agriculture (A) by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** The applicant submitted a subdivision application

APR 20 2004. *MD 4349*

(SUB 03-0047) which includes a preliminary plat map (PPM) dated June 2, 2003 proposing to subdivide Lot 20 into 2-lots (LOT 20A and LOT 20B). The proposed 2-lot subdivision was granted tentative subdivision approval by letter dated January 4, 2004 subject to conditions.

4. **Variance Application.** The applicant submitted a second variance request from the requirements of Chapter 23, Subdivisions or variance from the roadway conditions stipulated by the Tentative Subdivision Approval letter dated January 4, 2004. The variance submittals were received on or about January 15, 2004 and January 28, 2004. The second variance application includes roadway cost estimates and includes a letter dated January 2, 2004 (sic) which states in part the following:

“Due to the porous terrain the surrounding area has adequate drainage for said location. There are no known areas of flood inundation. This area is rural and designated Ag. 10 Acreage lots (sic).

The Homestead Road is located approximately one mile down Kamaili-Opihikao Road (sic) On the right where there it begins a cinder road traveling approximately one mile down to the proposed 2-lot subdivision.

There is no existing power in this area. According to HELCO a power pole is approximately \$4,000. It is estimated that it would require approximately 50 power poles or a total amount of approximately \$200,000 for a line extension.

According to Yamada’s Paving, to apply just black top, it is estimated at a cost of \$150,000 (sic) For the approximate 1 mile of road. This total cost does not include excavating and widening of the road which would cost approximately \$750,000. This amount far exceeds the land value.

It is proposed that the Homestead Road be maintained as is.”

5. **Agency Comments and Requirements-(VAR 04-013):**

- a. The State Department of Health (DOH) memorandum is dated March 5, 2004 states:

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

Mr. John Clifford Rhoads
Page 3
April 19, 2004

- b. The Department of Public Works (DPW) memorandum, dated March 12, 2004 states:

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

The DPW still believes that to safeguard public welfare and safety, road improvements to satisfy 23-34 of the Hawaii County Code (HCC) should be provided. However, if the Planning Director finds that the applicant’s reasons provide valid grounds to justify HCC, Section 23-15, the DPW defers to that determination.”

- c. To date, no comments were received form the Hawaii County Fire Department.
- 6. **Notice to Surrounding Owners.** The applicant submitted a mailing certificate with affixed postage dated March 9, 2004. This mailing certificate appears to list the names and addresses of property owners of property within 300 feet of subject TMK property submitted with the variance application.
 - 7. **Comments from Surrounding Property Owners or Public.** No other agency comments or objections to the subject variance application were received. No objections from the surrounding property owners or public to the subject variance request or application were received.
 - a. A telephone inquiry regarding variance status was received on or about April 13, 2004.

Therefore, after considering the circumstances, variance background information submitted by the applicant-owner, and agency comments to the subject variance request, the Planning Director has determined that there are no special or unusual circumstances applying to the TMK property which deprives the subdivider-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.

ALTERNATIVES

Generally, new subdivisions should conform to the County General Plan, agency requirements, and other land requirements and standards of the Zoning Code and Subdivision Code. The

Mr. John Clifford Rhoads
Page 4
April 19, 2004

alignment of the "Road" fronting the property with existing public roadway network identified on the tax map plats are not clearly indicated and other agency records appear to indicate that property has no "public access".

At this time, the property fronts on a substandard public right-of-way and is dependent on privately owned easements located on adjoining property to access the public roadway system. Access to the proposed subdivision is via a narrow substandard paved and gravel roadway within privately owned easements on adjoining property(s) and within the "Road". The paved roadway width and state of the paved access to the property steadily declines into a narrow gravel/grassed roadway (Refer to photographs of the roadway's condition in VAR file). Passing of vehicles within the roadway are limited and access to the proposed subdivision by emergency vehicles is severely limited.

The owner is requesting approval of the subdivision without making any roadway improvements within the right-of-way and states the cost of providing the roadway stipulated by the DPW will exceed the value of the subdivision. The applicant contends that the existing access to the proposed subdivision and rights-of-way fronting the proposed subdivision are adequate. The applicant-owner's variance request would permit a proposed 2-lot subdivision without installing or constructing any roadway improvements within the access to the subdivision or "Road" fronting the proposed subdivision. The applicant states:

"It is proposed that the Homestead Road be maintained as is."

INTENT AND PURPOSE

The intent and purpose of requiring minimum standards for roadways is to ensure legal and proper physical access to a subdivision is clearly defined and accessible from a public road.

Current access to the subject TMK property is limited and it appears that there is no public access to the "Road" fronting the proposed subdivision. In addition, access to the proposed subdivision and surrounding areas must be evaluated, weighed, and considered before any subdivision is allowed.

The applicant-owner was granted a variance from the subdivision's minimum water supply requirements and is seeking a second variance from the minimum roadway requirements to develop the proposed 2-lot subdivision. If the second variance is granted, essentially, the applicant-owner would be permitted to develop a proposed 2-lot subdivision **without** providing the minimum water **and** roadway improvements stipulated by Chapter 23, Subdivisions.

Mr. John Clifford Rhoads

Page 5

April 19, 2004

VARIANCE DECISION

Approval of the subject variance from roadways would not conform to the following goals, policies and standards of the Hawaii County General Plan which state in part:

Provide a system of thoroughfares and streets for the safe, efficient and comfortable movement of people and goods between and within the various section of the County.

The county shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

While the proposed 2-lot subdivision is consistent with the property's Agricultural (A-10a) zoning or minimum 10 acre lot size requirements and would be consistent with agricultural character of the surrounding area, it is the manner of developing the proposed subdivision, without providing public access and/or constructing the minimal paved roadway improvements, that conflict with elements of the Hawaii County General Plan. Public access to and from a subdivision must be clearly defined and reasonable access to any proposed new subdivision must be accessible by standard vehicles and emergency vehicles. Access to a subdivision by standard and emergency vehicles must be provided or installed before any subdivision is permitted.

Furthermore, the precedent by allowing this subdivision without the minimum subdivision improvements could become a precedent for other similar subdivisions of adjoining property or development within the surrounding area.

The variance request from the minimum roadway requirements or second variance application to allow the proposed 2-lot subdivision application (SUB 03-0047) or variance from roadway conditions stipulated by Planning Department's tentative subdivision approval letter dated January 4, 2004 is **denied**.

In accordance with a recent charter amendment and Ordinance No. 99-111, you may appeal the director's decision and request the following:

Any person aggrieved by the decision of the director in the administration or application of this chapter, may, within thirty days after the director's decision, appeal the decision to the board of appeals.

Pursuant to Board of Appeal (BOA) Rule, PART 8. APPEALS, 8-15 General Standards for Appeals (Non-Zoning):

Mr. John Clifford Rhoads
Page 6
April 19, 2004

“A decision appealed from may be reversed or modified or remanded only if the Board finds that the decision is:

- (1) In violation of the Code or other applicable law; or
- (2) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (3) Arbitrary, or capricious, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.”

In view of the above, enclosed is form-**GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR.**

Should you have any questions on the variance decision or the appeal procedure, please feel free to contact our Hilo office at telephone (808) 961-8288.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

WRY:pak
P:\WP60\WRY\FORMLETT\VARSUBROADWAYTMK13002019.RHOADS

xc: SUB 03-0047
Planning Dept. - Kona

COUNTY OF HAWAII
BOARD OF APPEALS

GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR

(Type or legibly print the requested information)

APPELLANT: _____

APPELLANT'S SIGNATURE: _____ DATE: _____

ADDRESS: _____

TELEPHONE: (Bus.) _____ (Home) _____

APPELLANT'S INTEREST IN THE PROPERTY: _____

APPELLANT'S NATURE OF APPEAL AND REQUEST: _____

LAND OWNER: _____

TAX MAP KEY: (land in question) _____ AREA OF PROPERTY: _____

STATE LAND USE DESIGNATION: _____ COUNTY ZONING: _____

STREET ADDRESS OF PROPERTY: _____

APPELLANT'S REPRESENTATIVE: _____

REPRESENTATIVE'S SIGNATURE: _____ DATE: _____

REPRESENTATIVE'S ADDRESS: _____

TITLE: _____ TELEPHONE: (Bus.) _____

THIS PETITION MUST BE ACCOMPANIED BY A FILING FEE OF TWO HUNDRED FIFTY DOLLARS (\$250) PAYABLE TO THE COUNTY DIRECTOR OF FINANCE AND:

1. The Original and ten (10) copies of this completed petition with the following:
 - a. A description of the property involved in the appeal in sufficient detail for the public to precisely locate the property.
 - b. A statement explaining the nature of the appeal and the relief requested.
 - c. A statement explaining:
 - (i) How the decision appealed from violates the law; or
 - (ii) How the decision appealed from is clearly erroneous; or
 - (iii) How the decision appealed from was arbitrary or capricious, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.
 - d. A clear and concise statement of any other relevant facts.
2. Proof of Service by the Appellant on the Planning Director for an appeal from the Planning Director's decision relating to the Zoning Code.
3. A list of the names, address and tax map keys of all owners of property within boundaries established by Section 8-11(d) of the Board of Appeals Rules of Practice and Procedure.