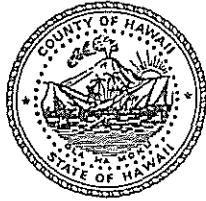


Harry Kim
Mayor



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

July 6, 2004

Mr. Gary Hanson
73-1193 Ahikawa Street
Kailua-Kona, HI 96740

Dear Mr. Hanson:

VARIANCE PERMIT NO.1462WH (VAR 04-017)

Applicants: GARY HANSON, ET AL.

Owners: GARY HANSON, ET AL.

**Request: Variance from Chapter 23, Subdivisions,
Road Improvements Required**

Tax Map Key: 7-3-008:065, (SUB 03-0036)

After reviewing your variance application, the Planning Director certifies the approval of your variance request with conditions. The subject variance request is to allow subdivision of the respective TMK property(s) into 3-buildable lots and proposed roadway lots without conforming to minimum roadway standards of the Department of Public Works (DPW) and width standards of the Hawaii County Subdivision Code. The applicant/owner is requesting a variance to permit a proposed 5-lot subdivision (SUB 03-0036) and allow roadway improvements within minimum 40 feet right-of-way in lieu of the minimum 50 feet wide right-of-way stipulated by the Department of Public Works (DPW) memorandum dated October 22, 2003.

BACKGROUND

1. **Location.** The subject property, Lot 2A containing 9.946 acres, being portion of Land Patent 8214, Land Commission Award 7715, Apana 11 to Lota Kamehameha, and situated at Kaloko, North Kona, Hawaii.

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2. **Zoning.** The subject property is zoned Agricultural (A-3a) by the County and designated Agriculture ("A") by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** The applicant-owners submitted subdivision applications (SUB 03-0036) and revised preliminary plat map (PPM) dated May 14, 2003. Further action on revised PPM and subdivision application was deferred.
4. **Variance Application.** The applicant-owner submitted a variance application on January 30, 2004. The variance request is from the minimum roadway requirements to the revised PPM stipulated by Department of Public Works-DPW memorandum dated October 22, 2003.

The applicant submitted the subject variance application, variance submittals, and filing fee on or about January 30, 2004. The variance application includes color photographs of the alternative access to the proposed subdivision.

- In lieu providing paved access improvements within the "Mauka" Old Government Road fronting the TMK property or agricultural pavement improvements, the subdivider proposes to use an alternative access to the proposed subdivision and create a series of privately owned and paved roadway lots connected to a paved roadway within a 40-foot wide road reserve connected to the Old Mamalahoa Highway.
- In lieu of providing a 50 feet wide right-of-way and enlarging the privately owned 40-foot wide road reserve to 50 feet and constructing 20-foot wide agricultural pavement within minimum 50 feet wide rights-of-way meeting DPW standards (Standard Detail R-39 and R-34), the applicant is proposing to provide a paved driveway and minimum 16-foot wide paved roadway with 2-foot shoulders within proposed road lots and adjoining 40-foot wide road reserve (Parcel 31). Water from the Department of Water Supply (DWS) for the proposed 3-buildable lots is available via a 4-inch line waterline within the adjoining road reserve.

5. **Agency Comments and Requirements (VAR 04-017):**

- a. The County of Hawaii Fire Department (HCFD) memorandum dated March 1, 2004. (Refer to memorandum in variance file).
- b. The Department of Public Works (DPW) memorandum dated March 22,

2004, states in part:

“We have reviewed the subject application and we have no strong objection to the request. However, the applicant has not stated how the request meets the required “Grounds for variances” under Hawaii County Code Section 23-15. Otherwise our comments are as follows:

1. The pavement width of the existing mauka-makai portion of the access road should be widened to 18 feet minimum, based on AASHTO Guidelines for Geometric Design of Very Low Volume Roads (minor access without on-street parking).
 2. A common access easement in favor of all 3 proposed subdivision lots should encumber the entire turnaround.
 3. All development generated runoff shall be disposed on-site and shall not be directed toward any adjacent properties. A drainage study shall be prepared, and the recommended drainage system shall be constructed meeting with the approval of DPW.
 4. All earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control, of the Hawaii County Code.”
- c. The State Department of Health (DOH) memorandum, dated March 16, 2004, states:

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

6. **Notice to Surrounding Owners.** The applicant submitted a copy of a notice dated March 1, 2004 sent to surrounding property owners within 300 feet of the subject property(s). Pursuant to the submittals and postal receipt received on March 8, 2004, it appears that the notice was mailed to surrounding property owners on March 2, 2004.
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

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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 access and proposed alternative roadway improvements. (Please refer to applicant's reasons and background report).
2. Proposed Lot and Subdivision Road Improvements. The public roadway fronting the subject TMK property is substandard and nonpublic rights-of-ways providing alternative access to the subject TMK property and adjoining areas are sufficient to meet the needs of the surrounding land patterns. The variance conditions set forth at the end of this letter will require limited improvements and require the lots to abide by other private conditions and covenants.

ALTERNATIVES

The decision alternatives include the following:

1. *Widen and/or improve the public rights-of-way to dedicable standards or privately owned right-of-way pursuant to earlier tentative subdivision approval or the DPW memorandums.* The applicant-subdivider was required to widen or improve (pave) the "Old Government Road", "North Kona Belt Road", and non-dedicable mauka-makai access right-of-way according to earlier DPW memorandums in the subdivision file (SUB 03-0036) or subject variance file. The costs associated to design and install dedicable roadway improvements within the publicly owned rights-of-way or widening the paved road within the adjoining privately owned mauka-makai access roadway lot (Parcel 31) to 18 feet pursuant to AASHTO standards would be substantial and unfair when weighed against the nature of the subdivision and other special and unusual circumstance cited by the applicant.
2. *Reasonable subdivision improvements to insure that access and road or driveway access to proposed lots are provided; and, that access to proposed lots are accessible by standard and emergency vehicles.* This is the selected alternative. The proposed alternative is to utilize and extend the paved road within the privately owned mauka-makai access roadway and expand and extend other infrastructure within a series of privately owned and maintained roadway lots to the subdivision and adjoining areas.

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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. In lieu of improving the Old (Mauka) Government Road or installing minimum roadway and/or providing agricultural standard pavement stipulated by the DPW memorandums dated June 20, 2003 and October 22, 2003, respectively, the applicant is requesting a variance to permit alternative subdivision access and construct paved roadway improvements or driveways within 2-parallel private roadway lots connected to an existing paved roadway within the 40-foot wide road reserve adjoining the subject TMK property.

The adjoining area is rural or agricultural in character. The character of older public roads and other paved road access to the subject property and immediate and surrounding areas have not significantly changed over the last 60 years. The alternative access to the property and neighborhood is appropriate for the proposed subdivision and surrounding area. By granting this variance, there should be no adverse impact to adjoining properties or Old Mamalahoa Highway. Road maintenance within the privately owned road lots and road reserve will be privately addressed and shared among the owners and users.

Therefore, based on the representations made by the applicant and evaluation of the alternative access and traffic patterns to and around the subject TMK property, the Planning Director has concluded that the requirements stipulated by the DPW memorandums to the subdivision and variance application can be modified to allow the proposed subdivision.

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 February 23, 2004. Additional time to consider the DPW comments and other subdivisions within surrounding area was necessary. The applicant agreed to extend the decision dated to July 6, 2004 to allow the Planning Director time to complete the variance background and render a decision on the variance request.

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The variance requested to allow proposed subdivision and permit construction of alternative paved roadway, drainage improvements within proposed roadway lots and reserve road lot (Parcel 31) 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 subdivider, owners, their assigns, or successors understand that the 3-buildable lots arising out of SUB 03-0036 will use and maintain the both road lots, paved roadways, and grassed roadway shoulders on their own without any expectation of governmental assistance to maintain the alternative subdivision access or other paved roadway improvements within the privately owned roadway lots and 40-foot wide road reserve. Additional signage at private and public intersections may be required and minimum drainage requirements for the subdivision shall be addressed and met.
3. Submit alternative subdivision construction plans for alternative paved driveway, roadway, drainage, and other subdivision improvements to the DPW, DWS, and other agencies for review and comply with other conditions of revised tentative subdivision approval. The alternative access, paved roadways, and other subdivision improvements shall be constructed in accordance with approved subdivision construction plans prior to issuance of Final Subdivision approval
4. 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 revised tentative subdivision approval and prior to receipt of final subdivision approval of SUB 03-0036. The proposed lots shall form an Homeowner or Road Association or include appropriate deed language, being covenants, conditions, and restrictions, which affect the entire property and/or proposed lots arising from the approval of the 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 proposed private road lots and private road reserve designated on the subdivision application's final plat map.

Upon written demand of the County of Hawaii, the applicant and /or

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- b. 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 serving the proposed lot(s) arising out of SUB 03-0036 or/and the Old Government Road fronting the subject TMK property. Should the improvement district require acquisition of rights-of-way fronting the lots arising out of SUB 03-0036, 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 respective lot owner(s). 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. No ohana dwelling or second dwelling unit shall be permitted on any lot created by SUB 03-0036.
 - d. The owners understand that the lots created by SUB 03-0036 have been approved with this road variance, and that they will use and maintain the privately owned road lots and access roadways to and within their property, water system, and drainage improvements on their own without any expectation of governmental assistance, including any road improvements within both privately owned road lots.
 - e. The owners agree to participate in any road maintenance agreement or membership of the "Association".
3. 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.
5. 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.

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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 03-0036