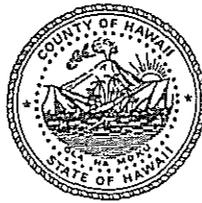


Harry Kim  
Mayor



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 8, 2004

HILO ONE INC.  
c/o Mr. Roland Higashi  
500 Kalaniana'ole Avenue  
Hilo, HI 96720

Dear Mr. Higashi:

**VARIANCE PERMIT NO. 1460 (VAR 04-021)**

**Applicant: HILO ONE INC.**  
**Owner: HILO ONE INC.**  
**Request: Variance from Chapter 23, Subdivisions**  
**Tax Map Key: 2-7-003:027, Lot 20 (SUB 99-0134)**

After reviewing your variance application, the Planning Director certifies the approval of your variance request with conditions. The subject variance permits 8 proposed lots in lieu of 6 lots to access proposed non-dedicable cul-de-sac roadway within pending subdivision application (SUB 99-0134). The variance is from Chapter 23, Subdivisions, Section 23-88, Non-dedicable street; private dead-end street.

**BACKGROUND**

1. **Location.** The subject property consists of approximately 23.070 acres being a portion of Royal Patent 8335, Land Commission Award 7715, Apana 16 to L. Kamehameha, and situated at Paukaa, South Hilo, Hawaii.
2. **Zoning.** The subject property is zoned Single-Family Residential (RS-15) by the County and designated Urban ("U") by the State Land Use Commission (LUC). Property zoned RS-15 means a minimum building site area one-half acre.

*Hawai'i County is an equal opportunity provider and employer.*

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3. **Subdivision Request/PPM.** The applicant submitted a 10-lot subdivision (SUB 99-0134-9-lots/1-private roadway lot). The subdivision application's revised preliminary plat map (PPM) is dated October 15, 1999. Further action on the PPM was deferred according to letter dated December 1, 1999.
4. **Variance Application.** The applicant submitted the variance application and submittals on February 10, 2004.
5. **Agency Comments and Requirements (VAR 04-021):**
  - a. The County of Hawaii Fire Department (CHFD) memorandum dated March 1, 2004, was received. (Refer to DOH memorandum in variance file).
  - b. The State Department of Health (DOH) memorandum dated March 22, 2003 states in part:

“The use of individual wastewater systems is allowed. The type and number of individual wastewater systems to be used will be determined by the wastewater rules in effect at the time of building permit application.”
  - c. The Department of Public Works (DPW) memorandum dated June 22, 2004, states in part the following:

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

    1. The applicant shall record a deed covenant stating that the subdivision road is privately owned and not maintained by the County (similar to Section 23-70 of the Hawaii County Code). This should be made as a condition for final subdivision approval.
    2. The final plat map shall show a 10-ft wide “no vehicular access” planting screen easement along the frontage of Lots 1 and 8 on Old Mamalahoa Highway.”
6. **Notice to Surrounding Owners.** The applicant's representative submitted an together with a copy of a notice mailed to property owners within 300 feet of the

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subject property(s), list of surrounding property owners, and proof of mailing said notice to surrounding property owners. It appears that the notice was mailed on or about March 4, 2004. In addition, a supplemental affidavit and attachments were submitted on April 28, 2004 for the variance record.

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:

Proposed Residential Uses. The applicant is requesting a variance to allow 8-lots in lieu of maximum 6-lots to access proposed 20 feet wide non-dedicable paved road within privately owned 32 feet wide cul-de-sac lot. The proposed cul-de-sac design will exceed the minimum right-of-way width and pavement width requirements stipulated by Chapter 23, Subdivisions, Section 23-88, Non-dedicable street; private dead-end street.

#### ALTERNATIVES

The decision alternatives include the following:

1. *Improve or construct dedicable roadway standards or constructing non-dedicable pavement within minimum private dead end road right-of-way pursuant to Chapter 23, Subdivisions.*
2. *Consider alternative subdivision access via a wider non-dedicable pavement roadway within wider privately owned dead-end street or cul-de-sac right-of-way. Examine the alternative proposed improvements to insure that emergency vehicular and safety requirements are met. The proposed privately owned cul-de-sac right-of-way width and non-dedicable pavement design will exceed the non-dedicable street or private dead-end street standards for 6 lots stipulated by Chapter 23, Subdivisions. The proposed expansion of the right-of-way and pavement design coupled with other DPW comments*

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to require "no vehicular access" easements on lots (Proposed Lots: "1" and "8") with frontage along the old Mamalahoa Highway supports the applicant's request to allow 2 additional lots or permit 8 lots in lieu of the maximum 6 lots to access a proposed non-dedicable dead end street.

### **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 vehicles, police, fire, and other service vehicles under various weather conditions without constant maintenance.

The surrounding areas are zoned residential and agricultural in character. The public roadways fronting the proposed subdivision have not significantly changed since 1967. Existing vehicular access to the TMK property and additional improvements to the public roadway(s) fronting the subject TMK property will be addressed or constructed pursuant to Ordinance No. 96-121. By granting this variance, there should be no adverse impact to adjoining properties or publicly owned rights-of-way. Road maintenance cost and upkeep of the privately owned paved dead end roadway, mowing of grassed shoulders, drainage improvements, signage, etc., within the privately owned cul-de-sac road lot will be borne and paid by the owner(s) or users.

Therefore, after considering the representations and background presented by the applicant (agent), evaluation of access available to the proposed subdivision and evaluation of the proposed wider dead end right-of-way (cul-de-sac) and wider non-dedicable roadway, the Planning Director finds that the variance request is reasonable.

### **DETERMINATION-VARIANCE CONDITIONS**

The variance request and application was acknowledged by letter dated February 23, 2004. Additional time to study previous variance approvals and incorporate DPW comments was necessary. The applicant's agent granted an extension of time to July 15, 2004 to complete the variance background and render a variance decision.

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 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

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area's character and to adjoining properties. The variance request 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, owner(s), their assigns, or successors understand that the 8-lots arising out of SUB 99-0134 will use and maintain the privately owned right-of-way (cul-de-sac) without any expectation of governmental assistance to maintain the private roadway improvements and other infrastructure within the proposed cul-de-sac or roadway lot. The proposed subdivision's final plat map shall denote "10-Foot Wide No Vehicular Access Planting Screen" line on proposed Lot(s) "1" and "8" to be taken from the front property line along the Old Mamalahoa Highway.
3. ROAD VARIANCE: The subdivider/applicant, owner(s), 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 tentative subdivision approval and prior to receipt of final subdivision approval of SUB 99-0134. This agreement shall contain the following deed language, being covenants, conditions, and restrictions, which affect the entire property and/or proposed 8-lots arising from the approval of the subdivision application (SUB 99-0134) 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 private road cul-de-sac roadway lot designated on the subdivision application's (SUB 99-0134) final plat map.
  - b. Upon written demand of the County of Hawaii, the applicant and /or 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 to rights-of-way serving the proposed lot(s) arising out of SUB 99-0134. Should the improvement district require acquisition of any rights-of-way outside the subdivision or within the lots arising out of SUB 99-0134, such rights-of-way shall be dedicated to the County without cost and the value of the dedication credited to the fair

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share contribution of the lot owner. 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. The owner(s) of the roadway lot created by SUB 99-0134 understand that that access to the roadway within the cul-de-sac was approved with this road variance, and that the owner(s) will use and maintain the privately owned on-site driveways and privately owned access roadway to and within their property, water system, and drainage improvements on their own without any expectation of governmental assistance.
  - d. The lot owners agree to participate in any original road maintenance agreement affecting the previous parcels or proposed lots arising out of the subdivision. Said maintenance shall include, without limitation, grass cutting (mowing), timely repair and/or filling of any and all rutted areas and "potholes", and mowing of existing roadway shoulders within the road lot created by SUB 99-0134.
  - e. Any lots created by SUB 99-0134 may not be made subject to a condominium property regime. No ohana dwelling or second dwelling unit shall be permitted on any lot created by SUB 99-0134.
  - f. 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.
4. 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.

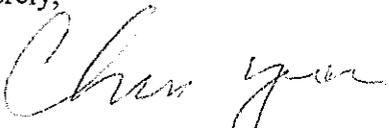
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5. Any outstanding and active building permits issued by the DPW shall be addressed and closed prior to final subdivision approval. The location of all permitted and existing building improvements are subject to the minimum building yards pursuant to the Hawaii County Zoning Code.

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  
SUB 99-0134