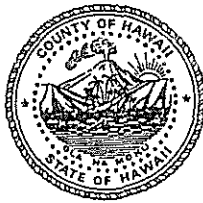


Harry Kim
Mayor



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

October 12, 2004

Mr. Steven H. Shropshire
ALOHA GREEN
499 Wainaku Avenue
Hilo, HI 96721

Dear Mr. Shropshire:

VARIANCE PERMIT NO. 1077 (VAR 04-056)

Applicant: STEVEN H. SHROPSHIRE

Owner: SHROPSHIRE GROUP LLC

**Request: Variance from Chapter 23, Subdivisions,
Dedicable Roadway Improvements**

Tax Map Key: 2-9-002:024, (SUB 04-0042)

After reviewing your variance application, the Planning Director certifies the approval of a variance to construct private non-dedicable roadway and shoulder improvements within a "Roadway Lot" within proposed 22-lot residential subdivision (SUB 04-0042) subject to conditions. The variance request is from Hawaii County Code, Chapter 23, Subdivisions, Article 6, Improvements, Division 2, Improvements Required, Section 23-86, Requirements for dedicable streets.

BACKGROUND

1. **Location.** The subject property, containing approximately 12.272 acres, is Lot 2 of Hakalau Nui, being a portion of R.P. 7541, L.C. Aw. 11216, Ap. 42 to M. Keauonohi, Hakalau, South Hilo, Hawaii.

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2. **Zoning.** The subject property is zoned Single-Family Residential (RS-7.5) by the County and designated Urban ("U") by the State Land Use Commission (LUC). Property zoned RS-7.5 means a RS district with minimum building site area of 7,500 square feet. The subject TMK property is within the Special Management Area (SMA).
3. **Subdivision Request/PPM.** The subdivider or applicant submitted a subdivision application (SUB 04-0042) on or about March 29, 2004. The subdivision application's preliminary plat map (PPM), is dated January 30, 2004. The proposed subdivision development is subject to SMA 443 conditions dated March 15, 2004. Direct access to the proposed subdivision from the Hawaii Belt Highway (State Highway 19) is prohibited.
4. **Variance Application.** The applicant submitted the subject variance application on or about May 24, 2004. In addition, a copy of subdivision map, drawn to scale, and roadway cross section drawing of the proposed alternative roadway were received on June 25, 2004.
5. **Agency Comments and Requirements WH (VAR 04-056):**
 - a. The County of Hawaii Fire Department (HCFD) memorandum is dated June 22, 2004. (Refer to HCFD memorandum in variance file).
 - b. The State Department of Health (DOH) memorandum, dated June 28, 2004, states:

"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 July 9, 2004, states in part:

"We have reviewed the subject variance application and the DPW still believes that the road improvements as stated in our subdivision's preliminary plat review memo dated July 9, 2004 should be provided."

(Refer to copy of DPW July 9, 2004 memorandum in variance file).

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6. **Notice to Surrounding Owners.** The applicant submitted copy of a notice and other information sent to a list surrounding owners within 300 feet of the subject TMK property (Refer to applicant's letter dated August 25, 2004 and time extension request). According to the applicant the required notice were mailed to surrounding property owners on or about August 25, 2004.
7. **Comments from Surrounding Property Owners or Public.** No further comments to the subject variance application were received from the agencies. No objections were received from surrounding property owners or public.

SPECIAL AND UNUSUAL CIRCUMSTANCES

After considering the applicant's project information and variance request, existing and surrounding development, agency comments and/or requirements to proposed subdivision and variance applications, the Planning Director has determined that there are special and unusual circumstances applying to the subject TMK property or proposed development which deprive the applicant or owners 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

The decision alternatives include the following:

1. *Provide dedicable access to the proposed development or install dedicable roadway and other infrastructure within the proposed roadway lot pursuant to the DPW.*
2. *Allow alternative access and permit private non-dedicable subdivision and roadway improvements to be constructed within proposed 50 feet wide roadway lot. Ownership and maintenance of this privately owned roadway lot and non-dedicable roadways, street lights, signage, etc. will be privately addressed by the users or an "Association" of users. (Refer to the applicant's variance background, alternative non-dedicable roadway cross section drawing, and detailed written explanation). This is the selected alternative. The proposed private non-dedicable roadways will not require extensive grading preparation and paved shoulder improvements. Drainage concerns or natural drainage within the property and road lots will meet DPW non-dedicable standards. The installation of a water supply meeting DWS requirements, any security gates, lighting standards, signage, etc., located within the privately owned right-of-way and/or privately owned road lot will be designed and installed by the subdivider. The alternative subdivision construction*

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plans to construct the non-dedicable subdivision access and roadway improvements within the privately owned roadway lot shall be reviewed and approved by affected agencies. Road maintenance within privately owned right-of-ways and common areas within the subdivision including the paved roadway/driveways, shoulders, etc., utilities within the subdivision, mowing of shoulders and islands, etc., will be privately addressed and maintenance and replacement costs shared among the proposed lot owners/users of the "ROADWAY LOT" or subdivision's Association.

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 subdivision and proposed lots are clearly defined and accessible by domestic vehicles, police, fire, and other service vehicles under various weather conditions without constant maintenance. The applicant is requesting a variance to allow private access and roadway improvements in lieu of dedicable roadway improvements within the "ROADWAY LOT" stipulated by the DPW memorandums to the subdivision and variance applications. Direct access to proposed lots with frontage along the Mamalahoa Highway right-o-way is permitted subject to DPW requirements.

The public access (Mamalahoa Highway) fronting the TMK property is appropriate for current zoning of the area and intentions by the subdivider. Some of the proposed lots will access directly from the Mamalahoa Highway. Therefore, based on the representations made by the applicant or subdivider and evaluation of existing public and privately owned rights-of-way fronting proposed subdivision, the Planning Director has concluded that the respective DPW memorandum and comments dated July 9, 2004 in the subdivision and variance application files can be modified to allow non-dedicable access and roadway improvements within the proposed "ROADWAY LOT" of the 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 June 10, 2004. Additional time to consider agency comments, consider comments received, and submit proof of notification

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by the applicant was necessary. The applicant requested an extension to render a decision on the subject variance to September 24, 2004.

The variance requested to allow a proposed subdivision without providing the dedicable roadway improvements stipulated by the DPW memorandums is hereby granted 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 subdivider, owners, their assigns, or successors understand that the proposed lots arising out of SUB 04-0042 or subdivision phases will use and maintain the subdivision access, non-dedicable paved roadways, grassed roadway shoulders, lighting fixtures, signage, etc. within the subject TMK property or privately owned right-of-way ("ROADWAY LOT") or common areas on their own without any expectation of governmental assistance to maintain the access and non dedicable roadway improvements within the subdivision.
3. The applicants or owners shall submit water system plans and revised subdivision construction plans for the alternative roadway or non-dedicable roadway improvements and specifications for approval by the affected agencies. The location of any private entry or security gate within the "ROADWAY LOT" shall meet with the requirements of the DPW or in accordance with approved subdivision plans. The applicant or subdivider shall construct the approved subdivision improvements (or bond) such alternative subdivision construction improvements pursuant to variance/tentative subdivision approval or final subdivision approval.
4. The applicants, 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 04-0042. This agreement shall contain the following deed language, being covenants, conditions, and restrictions, which affect the entire property and/or proposed lots arising from the approval of the subject 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:

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- 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 private roadway rights-of-way or common areas within the existing TMK property designated on the subdivision application's (SUB 04-0042) 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 serving the proposed lot(s) arising out of SUB 04-0042 or/and adjoining public roads or rights-of-way.

Should the improvement district require acquisition of the "ROADWAY LOT" or any privately owned rights-of-way arising out of SUB 04-0042, 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 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. Each lot created by SUB 04-0042 shall have no more than one dwelling. **No ohana dwelling or second dwelling shall be permitted on any lot created by SUB 04-0042.** The subject property or any of the proposed lots arising out of the proposed subdivision or subsequent subdivision phases may not be made subject to a condominium property regime.
- d. The owners understand that the lots created by SUB 04-0042 have been approved with this road variance, and that they will use and maintain the privately owned access road to and within their property, water system, and drainage improvements on their own without any expectation of governmental assistance, including any road improvements within all privately owned rights-of-way and/or common areas.
- e. The lot owner(s) or users of proposed "ROADWAY LOT" agrees to participate in any road and/or maintenance agreement.

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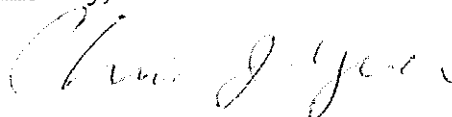
Said maintenance shall include, without limitation, timely repair of the private roadway and/or filling of any and all rutted areas and "potholes", mowing of the grassed roadway shoulders/islands within the privately owned roadway lot or common areas to ensure that existing drainage patterns are maintained and any soil runoff within and along parts of privately road lots and common areas do not affect the proposed lots, surrounding property or immediate areas.

- 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.
5. The owners, their assigns or successors shall pay any outstanding real property taxes due and comply with the requirement of the State Historic Preservation Office and other applicable State and County rules, SMA conditions, and regulations pertaining to subdivisions, tentative subdivision approval conditions, approved subdivision construction plans, variance conditions, and land use.

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 04-0042
Planning Department - Kona