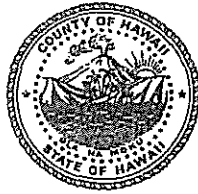


Harry Kim
Mayor



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

November 10, 2004

Michael Moore, Esq.
THE PAIKO ISLE
LIMITED PARTNERSHIP
c/o TSUKAZAKI YEH & MOORE
85 W. Lanikaula Street
Hilo, HI 96720

Dear Mr. Moore:

VARIANCE PERMIT NO. 1490 (VAR 04-072)

**Applicants: THE PAIKO ISLE
LIMITED PARTNERSHIP, ET AL.**

**Owners: THE PAIKO ISLE
LIMITED PARTNERSHIP, ET AL.**

Request: Variance from Chapter 23, Subdivisions

Tax Map Key: ~~7-4-007:098~~, (SUB 01-0125)

6-4-001:035

After reviewing your variance application, the Planning Director certifies approval of a variance to allow private 16 feet wide roadway pavement in lieu of required 20 feet wide road non-dedicable roadway and shoulder improvements to be constructed within proposed cul-de-sac road lot serving proposed subdivision (SUB 01-0125). The variance request is from Hawaii County Code, Chapter 23, Subdivisions, Article 6, Improvements, Division 2, Improvements Required, Section 23-87, Standard for non-dedicable street; escrow maintenance fund and certain roadway conditions stipulated by Revised Tentative Subdivision letter dated June 6, 2003.

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BACKGROUND

1. **Location.** The subject property, containing approximately 15.93 acres, being Lot 41 Grant 5469 to Peke Kawai, is situated at Puukapu Homesteads, 1st Series, South Kohala, Hawaii.
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 subdivider or applicant submitted a subdivision application (SUB 01-0125) and the application's preliminary plat map (PPM), is dated March 26, 2002. Tentative subdivision approval to the PPM (4-buildable lots and 1-roadway lot) was granted on June 6, 2003 subject to conditions.
4. **Variance Application.** The applicant submitted the subject variance application on or about August 26, 2004.
5. **Agency Comments and Requirements (VAR 04-072):**
 - a. The State Department of Health (DOH) memorandum, dated September 8, 2004, states:

“The Health Department found no environmental health concerns with regulatory implications in the submittals.
 - b. “The County of Hawaii Fire Department (HCFD) memorandum is dated September 12, 2004. (Refer to HCFD memorandum in variance file).
 - c. The Department of Public Works (DPW) memorandum, dated September 29, 2004, states in part:

“The request is for a variance to reduce the pavement width to 16 feet to reduce runoff and offset the centerline of pavement 5 feet to the east to protect the existing of (sic) tree stand from possible root damage.

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We recommend approval of this variance for mitigation to reduce runoff approaching Mamalahoa Hwy at this location with the 6 items listed below. Dry wells/sumps in this are known to require substantial maintenance. Lack of maintenance on this private road could exacerbate runoff flows onto Mamalahoa Hwy.

The petitioner shall address the following comments:

1. Provide a drainage report detailing the mitigation to reduce runoff.
2. Provide a minimum 20 Foot width pavement for the first 50 feet from the edge of Mamalahoa Highway shoulder with two drainage sumps; First sump on the end of the private driveway at the edge of the ROW, and the second sump at the hammerhead for runoff from extended driveways. The proposed inverted crown with 2 foot wide shoulders may be used on this 50 foot segment.
3. Provide 16 feet of pavement with a 5 foot or more offset to the east from centerline.
4. Provide a hammerhead turnaround at the upper end of roadway with a 40 foot dimension from centerline intersection of hammerhead legs to edge of pavement.
5. Consider a 2% to 3% cross slope of the entire road to divert the pavement runoff to the tree line. The cross slope would consider pavement runoff as negligible. Also consider providing a 2 foot grassy shoulder with 2 to 1 back-slope on the upper side and 6 foot grassy shoulder with 2 to 1 fore-slope on the lower side.”

If you have any questions, please call Ronald Thiel at our Kona office, 327-3530.”

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6. **Notice to Surrounding Owners.** The applicant submitted transmittal letter dated September 14, 2004 and notarized Affidavit of Mailing dated September 14, 2004. According to the applicant a notification letter was mailed to surrounding property owners on or about September 13, 2004.
7. **Comments from Surrounding Property Owners or Public.** No further comments to the subject variance application were received from the agencies. No comments or objections from surrounding property owners or public were received.

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 access to the proposed development or install minimum roadway improvements and other infrastructure within the proposed roadway lot pursuant to the DPW roadway comments and Tentative Subdivision letter/conditions dated June 6, 2003.*
2. *Allow alternative private non-dedicable roadway improvements and turn around to be constructed within proposed 50 feet wide "ROAD LOT".*

Ownership and maintenance of the privately owned roadway and drainage improvements within non-dedicable road lot, including street lights, signage, etc. will be privately constructed and installed by the subdivider. The maintenance of the non-dedicable roadway improvements within the privately owned roadway lot will be addressed and maintained by the roadway lot's owner(s) or "Association"

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of lot owner/users. This is the selected alternative-Refer to the applicant's variance background and detailed written explanation. In lieu of dedicable cul-de-sac roadway improvements, the developer proposed to install a 16 feet wide pavement and 6 feet wide grassed shoulders and swales along proposed 16 feet wide pavement within proposed 50 feet wide cul-de-sac roadway lot. These proposed private non-dedicable roadways will not require extensive grading preparation and paved shoulder improvements. Proposed natural drainage and drywells or drainage sumps within the subdivision or road lot will meet DPW drainage concerns and non-dedicable road standards. The installation of a water supply system meeting DWS requirements, 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 plans to construct the non-dedicable subdivision access, turnaround, and roadway improvements within the proposed roadway lot shall be reviewed and approved by DPW, DWS, and other 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 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 "ROAD LOT" stipulated by the DPW memorandum to the subdivision and tentative subdivision approval letter. Direct access to proposed lots with frontage along the Mamalahoa Highway right-of-way will not be permitted.

The proposed access to the TMK property is appropriate for current zoning of the area and intentions by the subdivider. Therefore, based on the representations made by the applicant or subdivider and evaluation of the current traffic patterns, the applicant's proposed alternative

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access and private non-dedicable roadway improvements to and within the subdivision, the Planning Director has concluded that the respective DPW memorandum and tentative subdivision approval letter dated June 3, 2003 can be modified to allow non-dedicable access and roadway improvements within the proposed roadway lot.

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 August 31, 2004. Additional time to consider DPW comments and complete the variance background was necessary. The applicants agreed to extend the decision dated to November 15, 2004, whereupon, on or before said decision date, the Planning Director shall render a decision on the subject variance.

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 01-0125 will use and maintain the privately owned subdivision access, non-dedicable paved roadways, grassed roadway shoulders, lighting fixtures, signage, etc. within the subject TMK property or proposed privately owned right-of-way roadway on their own without any expectation of governmental assistance to maintain the access and non dedicable roadway improvements within the subdivision.

The alternative subdivision plans shall be approved by the concerned agencies and address the following comments stipulated by the DPW memorandum dated September 29, 2004:

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- “1. Provide a drainage report detailing the mitigation to reduce runoff.
2. Provide a minimum 20 Foot width pavement for the first 50 feet from the edge of Mamalahoa Highway shoulder with two drainage sumps; First sump on the end of the private driveway at the edge of the ROW, and the second sump at the hammerhead for runoff from extended driveways. The proposed inverted crown with 2 foot wide shoulders may be used on this 50 foot segment.
3. Provide 16 feet of pavement with a 5 foot or more offset to the east from centerline.
4. Provide a hammerhead turnaround at the upper end of roadway with a 40 foot dimension from centerline intersection of hammerhead legs to edge of pavement.
5. Consider a 2% to 3% cross slope of the entire road to divert the pavement runoff to the tree line. The cross slope would consider pavement runoff as negligible. Also consider providing a 2 foot grassy shoulder with 2 to 1 back-slope on the upper side and 6 foot grassy shoulder with 2 to 1 fore-slope on the lower side.”

In addition to the foregoing, the applicant shall install water system improvement in accordance with DWS requirements. The alternative roadway and water system improvements within the “ROAD LOT” shall meet with the requirements of the DPW, DWS, and concerned agencies. The applicant or subdivider shall construct the approved alternative subdivision improvements (or bond) such alternative subdivision construction improvements pursuant to variance/tentative subdivision approval or final subdivision approval.

3. 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 01-0125.

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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:

- 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 01-0125) 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 01-0125 or/and adjoining public roads or rights-of-way.

Should the improvement district require acquisition of the "ROAD LOT" or any privately owned rights-of-way arising out of SUB 01-0125, 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 01-0125 shall have no more than one dwelling. No ohana dwelling or second dwelling shall be permitted on any lot created by SUB 01-0125. 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.

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- d. The owners understand that the lots created by SUB 01-0125 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 "ROAD LOT" agrees to participate in any road and/or maintenance agreement.

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, 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

WRY:cd

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xc: DPW-Engineering Branch
DWS-Engineering Branch
SUB 03-0125
Planning Dept.-Kona