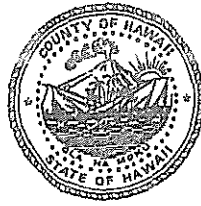


Harry Kim  
Mayor



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

August 12, 2005

Mr. David Wilkinson  
P. O. Box 370  
Holualoa, HI 96725

Dear Mr. Wilkinson:

**VARIANCE PERMIT NO. WH (VAR 04-090)**

**Applicants: DAVID G. WILKINSON, ET AL.**

**Owners: DAVID G. WILKINSON, ET AL.**

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

**Tax Map Key: 7-6-002:034, (SUB 02-0126)**

After reviewing your variance application, the Planning Director certifies the approval of your variance request subject to conditions. The variance allows construction of 20 feet wide non-dedicable roadway pavement improvements within existing privately owned right-of-way in lieu of required dedicable roadway and shoulder improvements required for proposed subdivision (SUB 02-0126). 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.

### **BACKGROUND**

1. **Location.** The subject property, Lot 2-A containing 4.000 acres, being portions of R.P.6716, L.C. Aw. 4887 to Thomas Sam and R.P. 7819, L.C. Aw. 8559-B, Ap. 8 to W.C. Lunalilo, and situated at Puapuaa 1<sup>st</sup> and Puapuaa 2<sup>nd</sup>, North Kona, Hawaii.

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**Zoning.** The subject property is zoned Agricultural (A-1a) by the County and designated Agriculture ("A") by the State Land Use Commission (LUC).

3. **Subdivision Request/PPM.** The applicant or owner submitted a subdivision application (SUB 02-0126). The subdivision application's revised preliminary plat map (PPM) was prepared by Wes Thomas Associates and is dated September 22, 2004.
4. **Variance Application.** Access to the proposed 4-lot subdivision is via LOT 11 (ROADWAY) to the Mamalahoa Highway. The applicant submitted the subject variance application and other required submittals on or about March 14, 2005.

5. **Agency Comments and Requirements-WH (VAR 04-090):**

- a. The State Department of Health (DOH) memorandum dated December 17, 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 dated December 21, 2004, states in part:

"This proposal is for a private road built to agricultural road standards. It should be noted that emergency apparatus that weigh between 18 to 23 tons will be using the roadway for emergencies. Our concern centers on liability issues that may arise should the road be damaged during our response."

- c. The Department of Public Works (DPW) memorandum dated December 27, 2004 states:

"We reviewed the subject application and our comments are as follows:

We have no objections to the variance request for a 20' wide agricultural standard pavement provided the following requirements are met:

1. Any gate installation shall be located a minimum of 60 feet from the property line at Mamalahoa Highway.

Mr. David Wilkinson  
Page 3  
August 12, 2005

2. All development generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties.
3. The applicant shall be informed that if they include drywells in the subject development, an Underground Injection Control (UIC) permit may be required from the Department of Health, State of Hawaii.
4. A drainage study shall be prepared by a licensed civil engineer, and the recommended drainage system shall be constructed meeting with the approval of DPW. In particular, existing drainage conditions shall be properly addressed to prevent an adverse impact to Mamalahoa Highway and adjacent properties during and after construction of required improvements.
5. The applicant shall comply with chapter 11-55, Water Pollution Control, Hawaii Administrative Rules, Department of Health, which requires an NPDES permit for certain construction activity.
6. The subdivision road traveled-way pavement section shall be constructed in accordance with Hawaii County Code Section 23-87 or equivalent as proposed by the applicant. Swale stabilization shall be provided as appropriate in accordance with the Storm Drainage Standards or equivalent. The required roadway improvements shall be constructed to a minimum of 10 feet beyond the driveway approach to Lot 2-A-4, with a pavement width transition, meeting with the approval of DPW. Install street lights, signs and markings meeting with the approval of the DPW, Traffic Division.
7. The subdivision road shall not be eligible for dedication to the County.

Should there be any questions concerning this matter, please feel free to call Kiran Emler at our Kona Engineering office, 327-3530.”

6. **Notice to Surrounding Owners.** The applicant’s agent forwarded a transmittal letter dated August 3, 2005 and proof of mailing. According to the submittals, it appears that a copy of a notice was mailed to surrounding property owners of the subject TMK property on or about December 21, 2004 according to applicant and USPO receipt(s).

Mr. David Wilkinson

Page 4

August 12, 2005

7. **Comments from Surrounding Property Owners or Public.** No further comments to the subject variance application were received from the agencies. The following objection letters and/or comments were received:
- a. Objection letter dated January 4, 2005 received from Mistugi, Inaba, Et al.
  - b. Email (comments) dated January 11, 2005 received from George Yasuda.

Note: The objections or comments regarding drainage or flood issues affecting the subject TMK property or adjoining property will be addressed by the subdivider prior to final subdivision approval (Reference to Soil and Water Conservation District (SWCD) letter dated January 30, 2003 in SUB 02-0126 file. The drainage or flooding issues cited by the SWCD letter will be considered during the review of the subdivision construction plans. Any land alteration within the proposed subdivision or roadway lot-Lot 11 will require the developer or future owner(s) to secure any necessary permits from the affected agencies or the DPW prior any grading or grubbing of the subject TMK property or lots created by the proposed subdivision.

#### **SPECIAL AND UNUSUAL CIRCUMSTANCES**

In considering the applicant's background information and agency comments and requirements, the Planning Director has determined that there are special and unusual circumstances applying to the subject property or development which deprive the applicants/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. *Install dedicable roadway improvements within the proposed subdivision pursuant to DPW comments to the subdivision.* (Refer to the applicant's variance background and detailed written explanation).
2. *Allow the applicant to improve existing paved roadway within the private right-of-way- (LOT 11) fronting proposed subdivision.* Prior to submitting the variance application, the applicant discussed the following alternative roadway improvements with the DPW-Kona Engineering Office. In essence, this variance will allow the subdivider to widen or improve approximately 700 feet of the 16-foot wide non-dedicable paved roadway

Mr. David Wilkinson

Page 5

August 12, 2005

fronting proposed subdivision to 20-feet (2-inches of asphalt on exiting sub-base under existing 16-foot wide pavement as determined by the applicant's engineer and/or upon 6 inches of base course approved by the DPW), with no paved shoulders. Access to the individual or subdivided lots will be via individual driveways to the 20-foot wide non-dedicable paved roadway within Lot 11. The roadway connection or intersection between the Lot 11 and Mamalahoa Highway will be designed to accommodate 2-way traffic and non-dedicable roadways and other drainage and traffic improvements, e.g. signage, striping, etc. will be constructed or installed at the intersection of the Mamalahoa Highway and Lot 11 in accordance with subdivision construction plans approved by the affected agencies. Any necessary or additional drainage or roadway improvements; including signage and striping, within the Mamalahoa Highway right-of-way will be installed by the subdivider or developer pursuant to approved subdivision construction plans.

The subdivision's access and proposed paved 20-foot wide non-dedicable roadway segment together with any other subdivision improvements within Lot 11 will be owned and maintained privately. Road maintenance within Lot 11 will be privately addressed and shared among the users. (Refer to variance conditions).

#### **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. The applicant is requesting a variance to allow the private access and roadway improvements in lieu of dedicable roadway improvements stipulated by the DPW memorandum dated January 10, 2003 in the subdivision file or requirements of Chapter 23, Subdivisions.

The surrounding land patterns and lot sizes are agricultural. The property has public access to the Mamalahoa Highway roadway and subdivider's request to install or widen the existing nondedicable 16-foot wide paved roadway to 20-feet within Lot 11 in lieu of the paved dedicable roadway improvements stipulated by the DPW memorandum are appropriate for current zoning or character of the area and intent by the subdivider. Therefore, after considering the subdivider's intent and variance background information, the Planning Director has concluded that the variance to expand and improve the existing non-dedicable access and roadway improvements fronting the proposed subdivision is reasonable.

#### **DETERMINATION-VARIANCE CONDITIONS**

Based on the foregoing findings, this variance request would be consistent with the general

Mr. David Wilkinson

Page 6

August 12, 2005

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 December 13, 2004. Additional time to consider DPW comments and allow the applicant additional time to submit proof of mailing a variance notice to surrounding property owners was necessary. The applicant agreed to extension of time to August 15, 2005 to render a decision on the subject variance.

The variance requested to allow a proposed subdivision 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 VAR 1440 and conditions of VAR 04-090.
2. The subdivider, owners, their assigns, or successors understand that the 4-buildable lots arising out of SUB 02-0126 will use and maintain the proposed 20-foot wide paved roadway, grassed roadway shoulders/landscaping, and any required drainage improvements within LOT 11 on their own without any expectation of governmental assistance to maintain the privately owned roadway or any other access and driveway improvements within the subdivision.

Access to the proposed subdivision should be designed to accommodate 2-way traffic and emergency vehicles. The proposed minimum 20 feet wide paved non-dedicable paved roadway and other required subdivision improvements shall be installed within existing private roadway lot-LOT 11 fronting the subdivision pursuant to this variance and subdivision construction plans approved by the affected agencies.

3. A drainage study shall be prepared and submitted to the DPW for review and approval. Any required drainage system, including grading, and/or grubbing within the subdivision shall be constructed and/or approved by the DPW. The subdivision construction plans to install alternative non-dedicable and any necessary dedicable roadway improvements, any necessary culvert and drainage improvements, and other appurtenances, e.g. necessary utilities-streetlights, signage, etc. shall be designed by a licensed engineer and submitted to the affected agencies for review and approval. The subdivision construction plans for the dedicable subdivision improvements and nondedicable subdivision improvements and specifications shall be submitted to the affected agencies for approval.

Mr. David Wilkinson

Page 7

August 12, 2005

4. The applicant, owners or subdivider shall construct the subdivision improvements (or bond) such improvements pursuant to tentative subdivision approval or final subdivision approval.
5. 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 02-0126. 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 within LOT 11 designated on the subdivision application's (SUB 02-0126) 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 the proposed lot(s) arising out of SUB 02-0126 or other adjoining public roads. Should the improvement district require acquisition of rights-of-way within the lots arising out of SUB 02-0126, 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. The proposed 4-lots will be limited to one dwelling. No ohana dwelling permit or ohana dwelling shall be permitted on any lot created by SUB 02-0126. The subject property or any of the proposed 4-buildable lots created by the proposed subdivision may not be made subject to a condominium property regime.
  - d. The owners understand that the lots created by SUB 02-0126 have been approved with this road variance, and that they will use and maintain the

Mr. David Wilkinson

Page 8

August 12, 2005

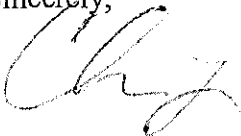
privately owned access, paved roadway, and drainage improvements on their own without any expectation of governmental assistance, including any road improvements within LOT 11.

- e. The owners agree to participate in any road maintenance agreement to maintain Lot 11. Said maintenance shall include, without limitation, grass cutting (mowing), timely repair of the paved roadway and/or filling of any and all rutted areas and "potholes", mowing of the grassed roadway shoulders within LOT 11 fronting the subdivision and ensure that existing drainage patterns are maintained and any soil runoff within proposed subdivision does not affect the adjoining or 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.
6. 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, grading, 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

WRY: je

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Mr. David Wilkinson

Page 9

August 12, 2005

xc: DPW-Engineering Branch  
DWS-Engineering Branch  
SUB 02-0126  
Planning Dept.-Kona