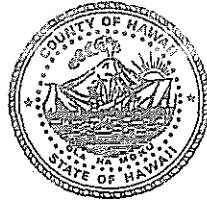


Harry Kim
Mayor



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 18, 2005

Mr. Roger Harris
ROGER HARRIS PLANNING
P. O. Box 803
Kamuela, HI 96743

Dear Mr. Harris:

VARIANCE PERMIT NO. WH (VAR 04-100)

Applicants: GRAZZI LLC/ROGER HARRIS PLANNING

Owners: GRAZZI LLC, ET AL.

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

Tax Map Key: 5-4-007:010, Por., (SUB 04-0127)

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 improvements within proposed road lot in lieu of required dedicable roadway and shoulder improvements required for proposed subdivision (SUB 04-0127). 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, containing approximately 5.176 acres, being a portion of Land Commission Award 8741, is situated at Puehuehu, North Kohala, Hawaii.

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Zoning. The subject property is zoned 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 of fifteen thousand (15,000) square feet.

3. **Subdivision Request/PPM.** The applicant or owner submitted a subdivision application (SUB 04-0127). The subdivision application's preliminary plat map (PPM) was prepared by Witcher Engineering LLP and is dated July 16, 2004.
4. **Variance Application.** Access to the proposed 12-lot subdivision (11-buildable lots) will be via a proposed-Road Lot to the Hawi-Niulii Road. The applicant, on behalf of the subdivider or owner submitted the subject variance application and other required submittals on or about December 15, 2004.
5. **Agency Comments and Requirements-WH (VAR 04-100):**

- a. The County of Hawaii Fire Department (HCFD) memorandum dated January 10, 2005, states:

"We have no comments to offer at this time in reference to the above-mentioned variance application."

- b. The Department of Public Works (DPW) memorandum dated January 25, 2005 states:

"We reviewed the subject application and have the following comments:

ROADWAYS

1. Grassed drainage swales are not recommended where the road grade exceeds eight percent of drainage swale velocities exceed 5 ft/sec. Proposed road grades should be shown on the plans or declared in the application.
2. The proposed culdesac (sic), if approved as requested, will not be eligible for dedication to the County and shall remain in private ownership.
3. We defer to the Planning Director regarding the need to provide a roadway connection to the adjoining parcel for future extension.

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4. All roadways within the proposed development shall follow the guidelines incorporated in the Hawaii Statewide Design Manual for Streets and Highways.
5. The Hawaii Belt Highway, fronting the subject property, is under the jurisdiction of the Hawaii Department of Transportation (HDOT). Comments and requirements concerning this road should be obtained from the HDOT.

DRAINAGE

1. The existing drainage easement should be shown on all plat and site plan submittals.
2. 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.
3. A drainage study shall be prepared, and the recommended drainage system shall be constructed meeting with the approval of DPW.
4. All development generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties.

EARTHWORK

1. All earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control, of the Hawaii County Code. An erosion control plan shall accompany an application for a grading permit showing both the temporary and permanent control features (sic). Establishment of permanent erosion control features is required for final construction approval.”

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

- c. The State Department of Health (DOH) memorandum, dated February 2, 2005, states:

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

6. **Notice to Surrounding Owners.** The owner's agent forwarded a transmittal letter dated January 18, 2005, "sample" copy of notice, and mailing receipts. According to the submittals, it appears that a copy of a notice dated January 12, 2005 was mailed to surrounding property owners of the subject TMK property on or about January 18, 2005 according to copy(s) of the USPO receipt(s).
7. **Comments from Surrounding Property Owners or Public.** No further comments to the subject variance application were received from the agencies and surrounding property owner(s) or public.

SPECIAL AND UNUSUAL CIRCUMSTANCES

In considering the applicant's background information, existing site conditions, 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 proposed roadway lot ("A") pursuant to DPW comments to the subdivision. (Refer to the applicant's variance background and detailed written explanation).*
2. *Allow alternative paved roadway improvements or non-dedicable roadway improvements to be constructed within proposed roadway lot ("A"). This is the selected alternative. In essence, this is a variance to allow proposed 11-buildable lots to be accessed via a privately owned paved 20-foot wide subdivision roadway within a privately owned road lot that will be maintained and owned privately by owners of the 11-buildable lots. These alternative non-dedicable roadways will be constructed by the subdivider or developer and installed in accordance with approved construction plans reviewed by the affected agencies. Any necessary signage at the intersection between the road lot and Hawi-Niulii Road will be installed by the subdivider or installed pursuant to any agency requirements.*

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Road maintenance to the proposed non-dedicable roadways within the subdivision will be privately addressed and shared among the proposed lot owners. (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 October 5, 2004 in the subdivision file or requirements of Chapter 23, Subdivisions.

The surrounding land patterns and lot sizes are residential and agricultural. The property has public access to the Hawi-Niulii roadway and subdivider's request to install nondedicable 20-foot wide paved roadway and grassed shoulders within the roadway lot "A" in lieu of the paved dedicable roadway improvements stipulated by the DPW memorandum are appropriate for current zoning of the area and intent by the subdivider to allow the installation of landscaping within the roadway lot to screen the proposed subdivision from the adjoining commercial use. Therefore, after considering the circumstances, DOT requirements and DPW comments, and intent to install private nondedicable roadway improvements for the subdivision at this time, the Planning Director has concluded that the DPW roadway comments or roadway requirements stated by the DPW memorandum to the subdivision can be modified to permit access to the proposed 11-buildable lots or 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 January 3, 2005. Additional time to consider DPW comments received and consider other variance applications was necessary. The applicants agreed to extend the decision, whereupon, on or before said decision date, the Planning Director shall render a decision on the subject variance.

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The variance requested to allow a proposed 12-lot subdivision (11-buildable lots; roadway lot) 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 11-buildable lots arising out of SUB 04-0127 will use and maintain the proposed 20-foot wide paved road, grassed roadway shoulders/landscaping, and any required drainage improvements within "ROAD LOT A" on their own without any expectation of governmental assistance to maintain the privately owned road lot ("A") or any other access and nondedicable roadway and driveway improvements within the subdivision.
3. A drainage study shall be prepared and submitted to the DPW for review and approval. Any required drainage system within the subdivision shall be constructed meeting with the approval of DPW. The required subdivision construction plans to install the water system, alternative and any necessary dedicable roadway improvements; including necessary culvert and drainage improvements, and other appurtenances, utilities-streetlights, signage, etc. within roadlot ("A") or within the subdivision shall be designed by a licensed engineer and submitted to the affected agencies for review and approval. The applicants or owners shall submit water system construction plans and alternative subdivision construction plans for the nondedicable roadway improvements and specifications within roadlot ("A") to the affected agencies for approval. The proposed minimum 20 feet wide paved roadway shall be installed within proposed roadlot ("A") and "grassed" shoulders and other related shoulder improvements will be allowed to be installed in accordance with this variance or roadway section submitted with the variance application, where, the road grade within roadlot ("A") is less than eight percent. Otherwise, where the road grade exceeds eight percent within roadlot ("A"), construct minimum 20 feet wide dedicable pavement with paved shoulders and swales conforming to DPW Std. Detail R-34.
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 04-0127. This agreement shall contain the

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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 lot within the existing TMK property designated on the subdivision application's (SUB 04-0127) 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 Road and Utility Easements serving the proposed lot(s) arising out of SUB 04-0127 or other adjoining public roads. Should the improvement district require acquisition of rights-of-way within the lots arising out of SUB 04-0127, 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 04-0127 shall have no more than one dwelling or subject to density permitted by the Zoning Code. No ohana dwelling permit or ohana dwelling shall be permitted on any lot created by SUB 04-0127. The subject property or any of the proposed 11-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 04-0127 have been approved with this road variance, and that they will use and maintain the privately owned access roads to and within their property, water system, and drainage improvements on their own without any expectation of governmental assistance, including any road improvements within the privately owned roadway lot or "ROAD LOT A".
- e. The owners agree to participate in any road maintenance agreement agreed to among the majority of easement holders for the applicable access

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- f. easement(s) serving their lot.

Said maintenance shall include, without limitation, grass cutting (mowing), timely repair of the private roadway and/or filling of any and all rutted areas and "potholes", mowing of the grassed roadway shoulders within the privately owned roadway lot and ensure that existing drainage patterns are maintained and any soil runoff within and the roadway lot or subdivision does not affect the proposed lots, surrounding property or immediate areas.

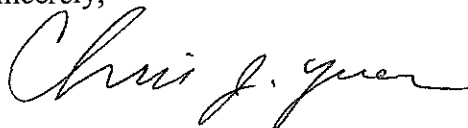
- g. In the event that there are any amendments or changes to the subdivision after the agreement is signed, the applicant shall be responsible for informing the County Planning Department of such amendments or changes so that the agreement can be amended concomitantly. Further, the written or recorded 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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xc: DPW-Engineering Branch
DWS-Engineering Branch
SUB 04-0127

Planning Dept.-Kona