

Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii
PLANNING DEPARTMENT
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(808) 961-8288 • Fax (808) 961-8742

February 28, 2005

Mr. Steven S. C. Lim, Esq.
CARLSMITH BALL LLP
121 Waiuanuenue Avenue
Hilo, HI 96720

Dear Mr. Lim:

VARIANCE PERMIT NO. 1503 (VAR 04-0103)-Dated: February 8, 2005

Re: (Revised Variance Conditions)
Applicant: CONTINENTAL PACIFIC, LLC
Owner: CONTINENTAL PACIFIC, LLC
**Request: Variance from Chapter 23, Subdivisions,
Water System and Roadway Improvements**

Tax Map Key: ~~2-6-029-017~~, (SUB 04-0151)

2-8-008:003 Lot 70 (corrected on March 3, 2011)

The Variance Permit No. 1503, Variance Conditions, beginning or listed on Page 6 thru Page 9 (Inclusive), of Variance Permit letter dated February 8, 2005, are hereby revised to read as follows:

“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 December 13, 2004 and additional time by the subdivider to submit documents requested by the Planning Director and complete the variance background was necessary. The applicant agreed to extend the date on which the Planning Director shall render a decision on the subject variance to no later than February 8, 2005.

The variance requested to allow a proposed 12-lot subdivision without providing the minimum road and water system improvements stipulated by the respective DPW and DWS memorandums to allow the proposed 9-buildable lots/3-roadway lot subdivision shall be modified 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 9-lots arising out of SUB 04-0151 will use and maintain the existing Beach Road, and roadway improvements within the privately owned roadway lots "A" "B" and "C", and other proposed access easement(s) within the subject TMK property on their own without any expectation of governmental assistance to maintain private roadway lot access or any other privately owned access or easement improvements within the subject TMK property or adjoining areas.
3. Construct 18 feet paved roadway and necessary intersection improvements within proposed roadway "Lot C". Construct additional gravel and/or cinder shoulders along Railroad, from intersection with Pepeekeo Mill Road, to the southern boundary of proposed Lot 70-H (not counting the pole portion of the lot), so that the total improved width (pavement plus shoulders) is a minimum of 18'. This width does not have to be met where existing road cuts or dropoffs make it impossible to improve to 18' wide.
4. Any existing legal access to the Hawaii Belt Road from any of the proposed lots shall be terminated upon request of the State Department of Transportation or the Planning Director, prior to final subdivision approval.
5. The future lot owner(s) will given gate keys or codes to any gate(s) or access codes to any gate(s) on the Beach Road, including the existing gate on Pepeekeo Mill Road, and intersection of proposed Roadway "Lot C" (Banyan Tree Road) and Beach Road. Final subdivision map shall clearly show that access is allowed from Beach Road to the current subdivision.

6. The applicant, 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 tentative subdivision approval and prior to receipt of final subdivision approval of SUB 04-0151. 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 SUB-0149 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 lots "A" "B" and "C" an/or any other easements outside and within the existing TMK property designated on the subdivision application's (SUB 04-0151) final plat map.
 - b. The owners understand that the lots created by SUB 04-0151 have been approved with this road and water improvements variance, and that they will use and maintain the privately owned access roads to and within their property, private water system, and drainage improvements on their own without any expectation of governmental assistance, including any road improvements within private roadways, easements, and the intersection between the privately owned roadways and the Hawaii Belt Road.
 - c. The owners agree to participate in any road maintenance agreement agreed to among the majority of easement holders for the applicable roadway lots or access easement(s) serving their lot. Said maintenance shall include, without limitation, grass cutting (mowing), timely repair and/or filling of any and all rutted areas and "potholes", and periodic grading and regrassing of existing roadway shoulders within roadway lots or easements to ensure that existing drainage patterns are maintained and that soil runoff within the privately owned rights-of-ways do not affect the surrounding property or immediate areas.

- d. The owners agree and accept the fact that a County dedicable public water system is not now able to service the proposed additional lots without public water created by SUB 04-0151. 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.
- e. The owners agree and accept the fact that the County will not, at this time, bear the responsibility of supplying public water to the proposed or affected additional lot created by SUB 04-0151 not serviced by a County water system. No further subdivision of the lots created by SUB 04-0151 will be permitted unless county water system requirements and other requirement of Chapter 23, Subdivisions, are met.
- f. Any lots created by SUB 04-0151 may not be made subject to a condominium property regime.
- g. Any farm dwelling constructed on a proposed lot not serviced by a County water system shall be provided with and maintain a private potable rain catchment system which includes a minimum 6000-gallon water storage capacity for domestic consumption or potable uses. This private water catchment system shall adhere to the Department of Public Works, Building Division's "Guidelines for Owners of Rain Catchment Water Systems" as well as the State Department of Health requirements related to water testing and water purifying devices.
- h. 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.

- i. In the event that the County notifies the owner(s) of the lot(s) created by SUB 04-0151 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 04-0151, the owner(s) of the lot(s) created by SUB 04-0151 shall participate in such improvement district or shall pay their pro-rata share of the upgrade and installation of laterals, as determined by the Department of Water Supply.
 - j. Any existing legal access to the Hawaii Belt Road shall be terminated upon request of the Planning Director or the State Department of Transportation.
 - k. The subject property was created by subdivision of a larger parcel pursuant to a variance from the water supply requirement in Section 23-84 of the Hawaii County Code. The subdivider or grantee, the assigns or successors acknowledges that there are no special or unusual circumstances existing on the property, and, there are no grounds for the subdivider or grantee, the assigns or successors to request a further variance from the water supply requirements to permit further subdivision of any lots arising out of SUB 04-0151.
7. 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.

Mr. Steven S. C. Lim, Esq.
CARLSMITH BALL LLP
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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.”

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

WRY/CJY:cd

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xc: DPW-Engineering-Hilo
DWS-Manager
DOT-Hilo
SUB 04-0151