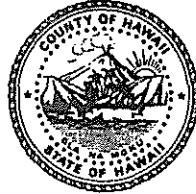


Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
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Deputy Director

County of Hawaii
PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • FAX (808) 961-8742

October 16, 2006

Mr. John D. Weeks II
JOHN D. WEEKS INC.
78-6877 Mamalahoa Highway
Holualoa, HI 96725

Dear Mr. Weeks:

SUBJECT: VARIANCE-VAR 05-011
Agent: JOHN D. WEEKS INC.
Applicant: STANLEY TOMONO
Owner: STANLEY TOMONO
Request: Variance from Chapter 23, Subdivisions
Tax Map Key: 8-2-2-008:022, Lot 1, (SUB 04-000071)

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 05-011 subject to variance conditions. The variance permits proposed 2-lot subdivision (SUB 04-000071) to be created with alternative access and paved roadway improvements within existing road easement. The variance is from access and roadway requirements required by tentative approval letter dated September 9, 2004, and Hawaii County Code, Chapter 23, Subdivisions, Division 2, 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 1 containing approximately 12.976 acres, being a portion of Grant 1181 to G.B. Kalaau, is situated at Kahauloa 1, South Kona, Hawaii.
2. **Zoning.** The subject property is zoned Agricultural (A-5a) by the County and designated Agriculture "A" by the State Land Use Commission (LUC). The property is within the Special Management Area (SMA). The property does not abut the shoreline.

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3. **Subdivision Request/PPM.** The applicant-owner submitted proposed 2-lot subdivision application (SUB 04-000071). Tentative subdivision approval was granted to the preliminary plat map dated May 4, 2004 on September 9, 2004 subject to tentative subdivision conditions.
4. **Variance Application.** The subject variance application was acknowledged by Planning Department letter dated June 3, 2005.

The original background report dated January 10, 2006 states in part:

“The owner feels that, the existing AC pavement which leads from the Napoopoo Road, through a number of existing “easements”, and running to the East access into proposed Lot 1-B is more that (sic) sufficient for the proposed 5 acre parcel.

Improvements, to reference the tentative approval letter, will not make what already exist safer for the owner, or general public.”

5. **Agency Comments and Requirements: VAR 05-011:**

- a. The State Department of Health (DOH) memorandum is dated June 16, 2005. (Refer to memorandum in file).
- b. The Department of Public Works (DPW) memorandum dated June 22, 2005 states in part:

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

1. According to the enclosed site map the existing driveway pavement on adjoining Lot 2 Parcel 55 is not contained in the easement.
 2. The existing driveway pavement is in fair condition and should be resurfaced.
 3. Install traffic signs, markings and a streetlight at the private road intersection with Napoopoo Road.”
- c. The Department of Water Supply (DWS) memorandum dated September 1, 2005 states:

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“We have reviewed the subject Variance Application and have the following comments.

We previously responded to the applicant’s Subdivision Application No. 04-0071 with our letter of July 22, 2004. At that time, we informed the applicant that the maximum allowable number of equivalent water units in the subject area was 7 units per lot of record.

Current water availability remains the same but is subject to change without notice. An equivalent water unit is a maximum day usage of 600 gallons per day (gpd). The maximum day usage is defined as 1.5 times the allowable average day usage, which is 400 gpd. Therefore, the allowable average day usage for 7 units is 2, 800 gpd with a maximum usage of 4,200 gallons for any one day.

The applicant was informed that his typical usage was well in excess of 23 units, which greatly exceeds the 7-unit capacity of the existing 1-inch meter. Excessive use can damage the meter, which belongs to the Department of Water Supply (DWS). It was also pointed out that the applicant was greatly exceeding the 7-unit maximum water availability per lot of record.

The letter then mentions that a teleconference between the DWS and the applicant resulted in a verbal agreement that the applicant would practice water conservation and use alternate sources of water resulting in the applicant requiring only 6 units of water from the Department’s water system facility for Lot 1-A, and thereby freeing up 1 unit of water for Lot 1-B. This would then allow for the subdivision with regards to water.

Therefore, water can be made available to the subdivision, and no variance is required for water if the applicant follows through on what was agreed upon. Lot 1-A would be limited to 6 units, or 3,600 gpd maximum day usage. Lot 1-B would be limited to 1 unit of water which is a maximum day usage of 600 gpd.

The letter further explained that final subdivision approval will be subject to the applicant complying with the following requirements:

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1. Submit, in writing, that the applicant understands and will abide by the verbal agreement.
2. Note on the final plat map and service lateral installation plans that Easement B is in favor of Lot 1-A and Lot 1-B, and Easements C and D are in favor of Lot 1-B.
3. Construct necessary water system improvement, which shall include, but not be limited to:
 - a. installation of a service lateral that will accommodate a 5/8-inch sized meter to Lot 1-B.
 - b. subject to other agencies' requirements to construct improvements within the road right-of-way fronting the property affected by the proposed development, the applicant shall be responsible for the relocation and adjustment of the Department's affected water system facilities, should they be necessary.
4. Submit construction plans and design calculations prepared by a professional engineer, architect, or land surveyor, registered in the State of Hawai'i, for review and approval.
5. Should it be necessary, the appropriate documents shall be submitted, properly prepared and executed, to convey the water system improvements and necessary easements to the Water Board of the County of Hawai'i prior to final subdivision being granted. A registered land surveyor shall stamp and certify the metes and bounds description within the conveyance documents. However, prior to water services being granted to the development, or any lots within, the conveyance documents shall be accepted by the Water Board.

The aforementioned letter was sent to the Planning Department and copied to Mr. Stanley Tomono and Mr. John D. Weeks, II.

Should there be any questions please contact Mr. Lawrence Beck of our Water Resources and Planning Branch at 961-8070, extension 256."

Note: The agent's request for a variance from the water supply requirements was withdrawn pursuant to the above DWS memorandum dated September 1, 2005. Water to the proposed 2-lot subdivision is available subject to the DWS memorandum and DWS requirements and conditions dated September 1, 2005. (See variance conditions).

6. **Notice to Surrounding Owners.** The applicant's agent submitted affidavits regarding a notice mailed to property owners to list of surrounding property owners and photograph of a sign posted on subject property. According to the agent's affidavits and submittals, it appears that a notice was mailed on or about – June 14, 2005.
7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received. No written objections to the variance application were received from surrounding property owners or public.

ALTERNATIVES/SPECIAL AND UNUSUAL CIRCUMSTANCES

Lot Access/Roadways. The first alternative requires the subdividers to construct access and road improvements pursuant to tentative subdivision conditions dated September 9, 2006, Condition No. 3, which states in part:

“Construct minimum 20-ft. wide agricultural pavement within a minimum 50-ft. wide easement conforming to Department of Public Works Standard Detail R-39. Where grades are 8% or greater, the roadway section shall be paved per Standard Detail R-34.”

The second alternative acknowledges the proposed subdivision's access to Napoopoo Road and paved 10 feet driveway (roadway) to the subject TMK property and within proposed subdivision have been built within a series of existing easements “A”, “B”, “C”, and “D” identified on the subdivision's preliminary plat map. The agent submitted a series of photographs to confirm the location and condition of the paved roadway improvements within the proposed subdivision. The subdivider-owner is proposing to extend the existing 10 feet wide driveway between Easement “C” and Easement “D” to proposed “Lot 1-B”, realign the paved driveway within easement “C” and easement “B”, and make limited paved improvements and install necessary signage at the intersection of easement “A” with Napoopoo Road.

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INTENT AND PURPOSE OF THE SUBDIVISION CODE

Roadway Variance. 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 proposed subdivision and adjoining areas are agricultural in character. The status of property access and status of ownership of the privately owned network of rights-of-way within this district was created before the 1967 Zoning and Subdivision Codes by the County of Hawaii. According to the subdivision PPM dated May 4, 2004, there is a paved 10 feet wide driveway within a series of easements between proposed subdivision and Napoopoo Road. There should be no adverse impact by allowing the proposed subdivision to continue using the existing privately owned paved 10 feet wide roadway or driveway within the series of easements on subject TMK and adjoining TMK property. Road maintenance for the roadway or paved driveway within the existing privately owned easements will be continued to be privately addressed and shared among the current owners and users. The subdivider will extend the existing 10 feet paved driveway within the easement "D", make "alignment" corrections to the paved driveway with easement "B" and easement "C", and install additional signage and pavement improvements within easement "A" for safety pursuant to variance conditions.

Therefore, based on the representations made by the applicant's agent and evaluation of existing paved improvements within the subject TMK property or within the series of easements to proposed "Lot 1-A" and "Lot 1-B" utilizing the existing series of easements, the access or minimum 20 feet agricultural road improvements required by tentative subdivision approval conditions dated September 9, 2004 can be modified subject to variance and variance conditions.

The subject variance application was acknowledged by letter dated June 3, 2005. Additional time was required by DWS to evaluate the variance from the water supply and discuss the proposed driveway improvements with the subdivider. The applicant's agent, on behalf of the applicant-owner agreed to extend the decision date to on or before November 30, 2006.

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.

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DETERMINATION-VARIANCE CONDITIONS

The variance requested to permit proposed 2-lot subdivision of the subject TMK property to be created without installing access and roadway improvements in accordance with tentative subdivision approval is hereby **approved** subject to the following variance conditions:

1. The applicant, owners, their assigns, or successors shall be responsible for complying with all stated conditions of approval.
2. The owners, their assigns, or successors shall contact the Department of Water Supply (DWS) and file written agreement required by DWS and DWS memorandum dated September 1, 2005, Item No. 1.
3. Submit alternative roadway or driveway construction plans to DPW and install the alternative 10 feet wide paved road or driveway improvements within easement "A", "B", "C", and "D" including signage with easement "A" and any necessary drainage improvements required by the DPW prior to issuance of final subdivision approval. Identify the paved driveway improvements within easement "A", "B", "C", and "D" on the subdivision's final plat map.
4. ROAD VARIANCE. The subdivider, owners, their assigns, or successors understand that the lots arising out of SUB 04-000071 will use and maintain the privately owned roadway within the easement(s) on their own without any expectation of governmental assistance to maintain the existing access or paved roadway improvements within the privately owned easements identified on the subdivision's preliminary plat map or any other necessary access and utility easement(s) within the proposed subdivision.

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 04-00071. The proposed lots shall form an Homeowner or Road Association or include appropriate deed language, being covenants, conditions, and restrictions, which affect the entire property and/or proposed lots arising from the approval of the 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 owner(s) 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 existing easement(s).

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 04-000071 or easement(s) fronting SUB 04-000071. Should the improvement district require acquisition of any privately owned rights-of-way or easements for lots arising out of SUB 04-000071, 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 respective 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.

- b. The future lot owner(s) agree to participate in any road maintenance agreement or/and pay their fair share to maintain the road within easement "A", "B", "C", and "D".

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.

4. The subdivision application's (SUB 04-000071) final plat map shall meet all the requirements of the Hawaii County Zoning Code and the Subdivision Code not covered by this variance. No other variances from Chapter 23, Subdivisions, shall be granted to permit subdivision application SUB 04-000071.

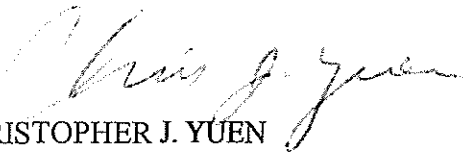
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5. The subdivider, owner(s), their assigns or successors shall pay any outstanding real property taxes and comply with all other applicable State statutes and County ordinances pertaining to building improvements and land use.

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/DSA:cd
PWP60\WRY\FORMLETTVAR05-01\SUBWATER-ROADWAY\TMK82008022.WEEKS-TOMONO

xc: DPW-Engineering Branch
DWS-Engineering Branch
SUB 04-000071