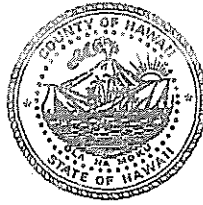


Harry Kim
Mayor



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

October 10, 2005

Mr. Sidney M. Fuke
SIDNEY FUKU PLANNING CONSULTANT
100 Pauahi Street, Suite 212
Kamuela, HI 96720

Dear Mr. Fuke:

VARIANCE PERMIT NO. WH (VAR 05-027)-REVISED

Applicant: MAUKA REALTY FUND V, LLC
Owner: MAUKA REALTY FUND V, LLC
Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required
Tax Map Key: 7-6-008:020, (SUB 03-0090)

After reviewing your variance application, the Planning Director certifies the approval of your variance request subject to conditions. The variance allows construction of 16 feet wide non-dedicable paved roadway improvements within proposed-EASEMENT "1" in lieu of required dedicable roadway and shoulder improvements required for proposed 9-lot subdivision (SUB 03-0090). The variance request is from Hawaii County Code, Chapter 23, Subdivisions, Article 3, Design Standards, Division 4, Street Design, Section 23-41, Minimum right-of-way and pavement widths, Article 6, Improvements, Division 2, Improvements Required, Section 23-86, Requirements for dedicable streets, and Section 23-88, Standard for non-dedicable street; escrow maintenance fund.

BACKGROUND

1. **Location.** The subject property, consisting of approximately 11.707 acres, being portions of Allotment 70 of Holualoa 1st and 2nd. Hui Partition (Makai Station), being a portion of R.P. 4475, L.C. Aw. 7713, Ap. 43 to V. Kamamalu, and situated at Holualoa 1st and 2nd, North Kona, Puna, Hawaii.

Hawai'i County is an equal opportunity provider and employer.

Zoning. The subject property is zoned Resort (V-1.25) and Agricultural (A-1a) by the County. The area zoned Resort is designated Urban ("U") and the area zoned Agricultural is designated Agriculture ("A") by the State Land Use Commission (LUC).

2. **Subdivision Request/PPM.** The applicant or owner submitted a subdivision application (SUB 03-0090). The subdivision application's preliminary plat map (PPM) was prepared by Wes Thomas Associates and is dated July 7, 2003.
3. **Variance Application.** Access to the proposed 9-lot subdivision is via proposed EASEMENT "1" situated on Lot 9 and Mamalahoa Highway. The applicant's agent submitted the subject variance application and other required submittals on or about March 14, 2005.

4. **Agency Comments and Requirements-WH (VAR 05-027):**

- a. The County of Hawaii Fire Department (HCFD) memorandum dated April 11, 2005, states:

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

- b. The State Department of Health (DOH) memorandum, dated April 27, 2005, states:

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

- c. The Department of Public Works (DPW) memorandum dated June 14, 2005 states:

"We reviewed the subject application to construct a non-conforming, private, non-dedicable road for the subdivision and our comments are as follows:

The driveway throat should be designed to accommodate 2-way traffic according to the Guidelines for Driveway Location and Design by the Institute of Traffic Engineers for a low volume commercial driveway. A low volume commercial driveway is recommended to have a 30-foot throat width and 20-foot radius flares.

We have no objection to the width reduction transition to 16 feet with 2 foot shoulders, according to Standard Detail R-39 beyond the off-street parking area. Regarding the request for relief from Condition 3(f) of the tentative approval, any alternative turnaround should be designated by a licensed professional engineer and accommodate an SU vehicle or Fire Department apparatus. Please also be advised, the easement shown on the preliminary plat dated July 7, 2003 will not meet the requirements of Hawaii County Code Sections 22-4.9 (c) and 23-45.

1. All driveway connections to a County road shall conform to Chapter 22, Streets and Sidewalks, of the Hawaii County Code. Driveways approaches shall also conform to County standards details R-37 and R-38. All sight distances shall meet AASHTO Standards. The applicant shall also remove any encroachments or obstructions within the County right-of-way.
2. Any vehicular security gate shall be located a minimum of 40 feet from the Mamalahoa Highway Right-of-Way. Provide a turn around on the County Road side of the gate.

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

5. **Notice to Surrounding Owners.** The applicant’s agent forwarded a transmittal letter dated April 8, 2005, copy of notice, etc., and notarized affidavit. According to the submittals, it appears that a copy of a notice dated April 8, 2005 was mailed to surrounding property owners of the subject TMK property on or about April 8, 2005 according to submittals and USPO receipt(s).
6. **Comments from Surrounding Property Owners or Public.** No further comments to the subject variance application were received from the agencies. The following objection and follow-up letters were received:
 - 6a. Objection letter dated April 25, 2005 was received from Tyrone Ohta (TMK: (3) 7-6-008:015) on or about April 29, 2005. A follow-up letter from Mr. Tyrone Ohta dated September 25, 2005 withdrawing his objection to the applicant’s request or subject variance application was received on or about September 29, 2005.

SPECIAL AND UNUSUAL CIRCUMSTANCES

Mr. Sidney M. Fuke
SIDNEY FUKU PLANNING CONSULTANT
Page 4
October 10, 2005

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 the proposed subdivision 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 EASEMENT "1". This is the selected alternative. In essence, this is a variance to allow proposed 9-buildable lots to be accessed via paved roadway within an easement on proposed Lot 9. The subdivision's access and paved 16-foot wide subdivision roadway together with any other utility improvements within the 20-foot wide easement will be owned and maintained privately. The roadway connection or intersection between the Easement and Mamalahoa Highway will be designed to accommodate 2-way traffic and non-dedicable roadways and other utility improvements will be constructed and installed within the Mamalahoa Highway right-of-way and Easement by the subdivider or developer in accordance with subdivision construction plans reviewed and approved by the affected agencies to construct alternative paved non-dedicable roadway improvements within EASEMENT "1". Any necessary signage and pavement striping at the intersection between the private roadway and Mamalahoa Highway will be installed by the subdivider or developer pursuant to approved subdivision construction plans.*

Road maintenance 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.

Mr. Sidney M. Fuke
SIDNEY FUKU PLANNING CONSULTANT
Page 5
October 10, 2005

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 27, 2003 in the subdivision file or requirements of Chapter 23, Subdivisions.

The surrounding land patterns and lot sizes are resort and agricultural. The property has public access to the Mamalahoa Highway roadway and subdivider's request to install nondedicable 16-foot wide paved roadway and grassed shoulders within the easement 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 to preserve a previous store included within the "Holualoa Heritage Corridor". Therefore, after considering the developer's intent to preserve a historical building and State Historical Preservation Office's comments in a letter dated November 4, 2004, character of the neighborhood or surrounding area, and variance background information, the Planning Director has concluded that the tentative subdivision approval conditions dated February 18, 2005 to install dedicable roadway pavement improvements can be deleted or modified to allow non-dedicable access and roadway improvements within proposed 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 March 22, 2005. Additional time to consider DPW comments received and address proposed parking improvements associated with an existing commercial building (Tomikawa Store) situated on proposed Lot 9 was necessary. The applicant's agent agreed to extension of time for the Planning Director 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 this variance.

2. The subdivider, owners, their assigns, or successors understand that the 9-buildable lots arising out of SUB 03-0090 will use and maintain the proposed 16-foot wide paved roadway, grassed roadway shoulders/landscaping, and any required drainage improvements within EASEMENT "1" 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 or the driveway throat should be designed to accommodate 2-way traffic according to the Guidelines for Driveway Location and Design by the Institute of Traffic Engineers for low volume commercial driveway meeting DPW-Kona Engineering Division approval. The proposed minimum 16 feet wide paved non-dedicable paved roadway and other required subdivision improvements shall be installed within proposed EASEMENT "1" or 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 within the subdivision shall be constructed meeting with the approval of DPW. The subdivision construction plans to install required water system, 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.
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 03-0090. 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:

Mr. Sidney M. Fuke
SIDNEY FUKU PLANNING CONSULTANT

Page 7

October 10, 2005

- 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 EASEMENT "1" designated on the subdivision application's (SUB 03-0090) 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 03-0090 or other adjoining public roads. Should the improvement district require acquisition of rights-of-way within the lots arising out of SUB 03-0090, 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. Any lot zoned Agricultural 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 03-0090. The subject property or any of the proposed 9-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 03-0090 have been approved with this road variance, and that they will use and maintain the privately owned access, paved roadway, and drainage improvements on their own without any expectation of governmental assistance, including any road improvements within EASEMENT "1".
- e. The owners agree to participate in any road maintenance agreement agreed to among the majority of easement holders for the applicable access easement(s) serving their lot. 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 EASEMENT "1" and ensure that existing drainage patterns are maintained and any soil runoff within subdivision does not affect the proposed lots, surrounding property or immediate areas.

Mr. Sidney M. Fuke
SIDNEY FUKU PLANNING CONSULTANT
Page 8
October 10, 2005

- 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:cd

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xc: DPW-Engineering Branch
DWS-Engineering Branch
SUB 03-0090
Planning Dept.-Kona
Tyrone Ohta