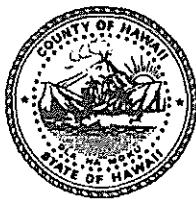


Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED® AP
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

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

October 15, 2006

Mr. Gary K. Ahu, Sr.
105 Hokulani Street
Hilo, HI 96720

Dear Mr. Ahu:

SUBJECT: VARIANCE-VAR 05-104
Applicant: GARY K. AHU, SR.
Owner: GARY K. AHU, SR.
Request: Variance from Chapter 23, Subdivisions
Tax Map Key: 2-5-060:001, (SUB 82-179)

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 05-104 subject to variance conditions. The variance permits 7-proposed lots to access the existing paved road within "ROADWAY LOT A" being created by pending subdivision (SUB 82-179-Kumulani Subdivision). The variance request is to delete a 10-foot wide "NO VEHICULAR ACCESS PLANTING SCREEN EASEMENT" denoted on proposed "LOT 1-B-3-B" on a revised (September 7, 1993) final plat map and Hawaii County Code, Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-88, Non-dedicable street; private dead-end street, (a).

BACKGROUND

1. **Location.** The subject TMK property, containing approximately 3.3166 acres, being a portion of Grant 4801 to Jose G. Serrao, and situated at Ponahawai, South Hilo.
2. **Zoning.** The subject property is zoned Single-Family Residential (RS-15) by the County and designated Urban ("U") by the State Land Use Commission (LUC).

3. **Subdivision Request/PPM.** The applicant/owner submitted proposed (8)-lot subdivision application (SUB 82-179-Kamulani Subdivision). Further action on this pending (8)-lot subdivision application and the application's preliminary plat map (PPM) and other submittals is being deferred.
4. **Variance Application.** The subject variance application was acknowledged by Planning Department letter dated March 10, 2006. The original applicant-All Aina Services submitted several background reports. A letter dated October 24, 2006 states in part:

"The applicant Gary Ahu would like to request a Variance from the Subdivision Code for TMK 2-5-060-001. The owner purchased this property with a pending subdivision. The owner is requesting a variance form the limit of access allowed on a private dead end street. The owner is requesting to be allowed to have 7 accessed (sic). However, the limit under Section 23-88 of the Subdivision Code is 6. The applicant has researched all other options and there are no other reasonable alternatives. It appears that there is no other reasonable solution to resolve this issue except to apply for a variance from the subdivision code. The architecturally approved plans for the building have been submitted and are now in the permitting process. There is also a sale in anticipation of the approved subdivision on part of the parcel."

Note: See pending variance application VAR 05-081 (Chapter 25, Zoning) regarding the building positions on subject TMK.

5. **Agency Comments and Requirements: VAR 05-104:**

- a. The Department of Water Supply (DWS) memorandum dated March 20, 2006 states:

"We have reviewed the subject application.

We have not received the conveyance documents requested in our July 20, 2005, letter to the applicant.

The applicant should submit the conveyance documents as soon as possible before July 19, 2006, otherwise the waterline must be rechlorinated and retested.

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Should there be any questions, please contact Mr. William Atkins of our Waste Water Resources and Planning Branch at 961-8070, extension 254.”

b. The County of Hawaii Fire Department memorandum dated March 20, 2006 is dated March 20, 2006. (Refer to copy of memorandum in subject variance file).

c. The State Department of Health (DOH) memorandum is dated March 24, 2006 states:

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

d. The Department of Public Works (DPW) memorandum dated April 3, 2006 states in part:

“We have reviewed the subject application forwarded by your memo dated March 10, 2005 and offer the following comment:

The DPW still believes that to safeguard public welfare and safety, road improvements to satisfy Section 23-88 of the Hawaii County Code (HCC) should be provided. However, if the Planning Director finds that the applicant’s reasons provide valid grounds to justify HCC, Section 23-15, the DPW defers to that determination.”

6. **Notice to Surrounding Owners/Posted Sign.** 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 the required notice was mailed on or about September 15, 2006; and, the required sign was posted on subject property on or about May 3, 2006.

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.

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ALTERNATIVES/SPECIAL AND UNUSUAL CIRCUMSTANCES

Lot Access/Roadways. The pending 8 lot subdivision application (SUB 82-179) was issued tentative subdivision approval on September 15, 1982 subject to conditions. Between 1982 and 1994, the subdivider constructed non-dedicable roadway improvements within a 30 feet wide roadway lot in accordance with Chapter 23, Section 23-88 or tentative subdivision roadway conditions dated September 15, 1982. TA-Condition No. 2, dated September 15, 1982, states "Denote a 10-foot wide no access planting screen easement along frontages of Lots 1-B-3-A and 1-B-3-B abutting Roadway Lot A. Access to these lots shall be from Hokulani Street only". However, between 1987 and 1996, dwelling and other building improvements were constructed on "proposed" Lot 1-B-3-A and Lot 1-B-3-B.

The applicant's submitted a revised map dated August 28, 2006, denoting the location of all building improvements on the subject TMK property, "AS-BUILT". The position of the existing shed or dwelling improvements on proposed Lot 1-B-3-B (originally a flag lot) precludes access via the proposed "pole" from Hokulani Street. After reviewing building activity on the subject TMK property and the building permits issued to the subject TMK property between 1987 and 2004 permitting the dwelling improvements on proposed Lot 1-B-3-B, the subdividers filed the subject variance request to remove the "no access" provision on proposed Lot 1-B-3-B to require access to proposed Lot 1-B-3-B via "Roadway Lot A" and allow the "Existing Dwelling" improvements constructed on proposed Lot 1-B-3-A to remain, "AS-BUILT", subject to another variance from Chapter 25, Zoning.

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 urban in character. After evaluating the existing building pattern on the property and within the proposed subdivision after tentative subdivision approval was granted; and, access to the proposed lots created by the proposed 8-lot subdivision, it is felt that by removing the "10 foot no access planting screen easement" on proposed Lot 1-B-3-B and allowing access to proposed Lot 1-B-3-B via the existing paved road within "Roadway Lot A" would promote safety and not create an adverse impact within the proposed subdivision. By granting this variance, there should be no adverse impact to the adjoining properties or publicly owned right-of-way (Hokulani Street).

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Road maintenance cost and upkeep of the privately owned paved dead end roadway lot, mowing of grassed shoulders, drainage improvements, signage, etc, within the privately owned cul-de sac or "Roadway Lot A" will be borne and paid by the owner(s) or users.

Therefore, after considering the representations and background presented by the applicant-subdivider, evaluation of access available to the proposed subdivision and evaluation of building improvement history on the subject TMK property, the Planning Director given the unusual circumstances finds that the variance request is reasonable.

The subject variance application was acknowledged by letter dated March 10, 2006. Additional time was requested by the applicant to submit an accurate site plat map, drawn to scale, denoting the location of existing building improvements, "AS-BUILT" and additional time to send notice to surrounding property owners. The applicant, on behalf of the owner, granted the Planning Director and extension of time to October 15, 2006 to render a decision of the subject variance application.

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.

DETERMINATION-VARIANCE CONDITIONS

The variance application 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. **ROAD VARIANCE.** The subdivider, owners, their assigns, or successors understand that the proposed 7-lots arising out of SUB 82-179 with access to "Roadway Lot A" will use and maintain the privately owned road and utility easement-"Roadway Lot A" on their own without any expectation of governmental assistance to maintain the existing access or roadway improvements within the privately owned "Roadway Lot A" identified on the subdivision's approved final 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 prior to receipt of final subdivision approval of SUB 82-179. The proposed lots or owner(s) of "Roadway Lot A" 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 7-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 this existing private utility and access easement.

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 92-179. Should the improvement district require acquisition of any privately owned rights-of-way fronting the lots arising out of SUB 82-179, 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 "Roadway Lot A".

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.

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4. The subdivision application's (SUB 82-179) final plat map shall meet all the requirements of the Hawaii County Zoning Code and the Subdivision Code not covered by this variance.
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

P\WP60\WRY\FORMLTT\VAR05-104SUBROADWAYTMK25060001.AHU

xc: DPW-Engineering Branch
DWS-Engineering Branch
SUB 82-179
Imata & Associates, Inc.