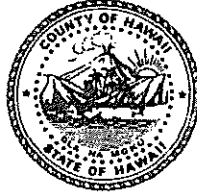


Harry Kim
Mayor



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

June 29, 2007

Plant-Mason Family Trust
c/o Mr. Sidney Fuke
SIDNEY FUKU PLANNING CONSULTANT
100 Pauahi Street, Suite 212
Hilo, HI 96720

Dear Mr. Fuke:

SUBJECT: VARIANCE-VAR 07-023
Applicant: PLANT-MASON FAMILY TRUST
Owner: PLANT-MASON FAMILY TRUST
Request: Variance from Chapter 23, Subdivisions
Improvements Required
Tax Map Key: 2-6-032:006, (SUB 05-000135)

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 07-023 subject to variance conditions. The variance allows alternative road improvements to be constructed for proposed subdivision (SUB 05-000135) of subject TMK property. The variance is from road condition 3-c or requirement to construct certain road improvements according to Tentative Subdivision letter dated February 28, 2007 or Chapter 23, Subdivisions, Division 2, Improvements Required, Section 23-50, Grades and curves, Section 23-41, Minimum right-of-way and pavement widths, Section 23-86, Requirements for dedicable streets, and Section 23-95, Right-of-way improvement.

BACKGROUND

1. **Location.** The referenced TMK property is Lot 1-D containing approximately 14 + acres is part of Wainaku Farms Subdivision being portion of Grant 2975 to Kekaula and Grant 2977 to Maa, and situated at Wainaku, South Hilo, Hawaii.
2. **Zoning.** The subject property is zoned Residential and Agricultural (RA-1a) by the County and designated Rural "R" by the State Land Use Commission (LUC). The property is subject to Ordinance

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3. **Subdivision Request/PPM.** The owner's agent submitted proposed subdivision application (SUB 05-000135). Tentative approval (TA) to the subdivision's preliminary plan map (PPM) was granted on February 28, 2007 subject to TA conditions.
4. **Variance Application.** The subject variance application was acknowledged by Planning Department letter dated April 18, 2007. The agent's background report states in part:

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"B. Requested Variance

As note above, final approval of this subdivision is subject to meeting all conditions of tentative approval. Condition 3c requires improvements to Kulana Kea Road consistent with Sections 23-41 improvements to Kulana Kea Road consistent with Sections 23-41 improvements to Kulana Kea Road consistent with Sections 23-41 (Minimum right-of-way and pavement widths), 23-50 (Grades and curves), 23-86 (Requirements for dedicable streets), and 23-95 (Right-of-way improvement).

The private road serving the subject property has a 60-foot wide right-of-way with a 20-foot wide agricultural standard pavement. The grades and curves of this road also comply with Section 23-50. The applicant has no intension of having Kulana Kea Road dedicated to the County and, as such, Section 23-86 is not applicable. However, the applicant cannot comply with Section 23-95, and this is the subject of this relief (variance) request.

As Kulana Kea Road is intended to be a private road and commonly owned eventually by all the landowners of the Wainaku Farm Lots Subdivision and the future lot owners of the proposed subdivision, the applicant is requesting some measure of relief from the full County road standard requirement. Specifically, the request is to gain exemption from grading and paving the shoulders and swales or that area between the edge of the roadway pavement and the balance of the road right-of-way."

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“It should be noted that the applicant will be making some measure of improvements to the intersection of Kulana Kea Road and the “public” Wainaku Avenue. This is a requirement outlined in the rezoning of this site (Condition E. Ord. No.06 116) This, as well, as the water line improvements, will have general benefit to other homeowners within the Wailuku Farm Subdivision. Cumulatively, that cost plus the road right-of-way improvements, make the burden on one applicant quite excessive.”

5. **Agency Comments and Requirements: VAR 07-023:**

- a The Department of Public Works (DPW) memorandum dated May 7, 2007 states in part:

“We have reviewed the subject application received on April 18, 2007 and offer the following comment:

The DPW still believes that to safeguard public welfare and safety, road improvements for Kulana Kea Road to satisfy Section 23-41, 23-50, 23-86 and 23-95 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.”

- b. The County of Hawaii Fire Department memorandum is dated May 10, 2007. (Refer to the HFD memorandum in variance file).

6. **Notice to Surrounding Property Owners/Posted Sign.** The applicant’s agent submitted an affidavit and copy of notice mailed to surrounding property owners within “five hundred feet of the perimeter boundary” of subject TMK property. According to the affidavit and submittals the notice was mailed on or about May 3, 2007.

Posted Sign: The applicant’s agent submitted photograph of the original sign and revised sign posted on the property and affidavits dated May 7, 2007 and June 15, 2007.

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7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received. The following objection letter and support letters were received:
 - 7a. Objection letter dated May 11, 2007 from Keith De La Cruz.
 - 7b. Letter dated May 18, 2007 signed by Evonne F. Bjornen (TMK: 2-6-032:020) and Paul N. Tallett (TMK: 2-6-032:024) supporting the variance request.

ALTERNATIVES/SPECIAL AND UNUSUAL CIRCUMSTANCES

Access/Roadway. The first alternative requires the subdivider or owners to construct access and roadways improvements pursuant to tentative subdivision approval letter and conditions dated February 28, 2007. The applicant's agent is requesting variance from tentative subdivision condition-Item No. 3, dated February 28, 2007, specifically "3) c)" which states:

"Improvements to Kulana Kea Road shall conform to Sections 23-41, 23-50 and 23-86 of the Hawaii County (Subdivision) Code. The entire road right-of-way shall be improved as required by Section 23-95 of the Subdivision Code and in conformance with DPW Standard Details R-33 and R-34."

The second alternative acknowledges that existing paved road within the Kulana Kea Road or "Drive" right-of-way fronting the subject TMK property or proposed subdivision is adequate.

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 subject TMK property was recently rezoned and subject to rezoning conditions. The network of paved roads fronting the subject TMK property were created and paved prior to the rezoning of the property. According to Planning Department records, "Kulana Kea Road has a right-of-way width of 60 feet with a 20-foot wide pavement in good condition, and this is a private roadway. The shoulders are basically grassed".

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In view of the condition of the 20 feet wide paved road and grassed shoulders within Kulana Kea Drive right-of-way identified on the PPM, there should be no adverse impact by allowing the proposed subdivision to access and use the existing privately owned 20-foot wide paved road (Kulana Kea Drive) fronting the proposed subdivision. Road maintenance for Kulana Kea (Drive) Road fronting the proposed subdivision identified on the PPM will be privately addressed and shared among the current owners and users.

Therefore, based on the representations made by the applicant's agent and evaluation of existing paved roadway and shoulder improvements (Kulana Kea Drive) within Kulana Kea Road right-of-way fronting the subject TMK property by the Planning Department, the Planning Director has concluded that the tentative approval condition requiring the subdivider to construct dedicable road improvements within Kulana Kea Road are not necessary.

The subject variance application was acknowledged by letter dated April 18, 2007 and additional time to incorporate information dated June 12, 2007 regarding intersection improvements and revised affidavit dated June 15, 2007 regarding the posted posting sign was necessary. In consideration of the foregoing, the applicant granted the Planning Director an extension of time to June 29, 2007 to render decision on 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 requested from Tentative Approval condition to improved Kulana Kea (Drive) Road (excluding necessary road improvements to road within the Kulana Kea Road (Right-of-Way) near the intersection Wainaku Road and Kulana Kea Road required by Ordinance No. 06 116) to allow proposed subdivision of subject TMK property is **approved** subject to following variance conditions:

1. The applicant, owners, their assigns, or successors shall be responsible for complying with all stated conditions of approval including remaining conditions of Tentative Subdivision approval letter dated February 28, 2007.

2. ROAD VARIANCE. The subdivider, owners, their assigns, or successors understand that the lots arising out of SUB 05-000135 will use and maintain the privately owned Kulana Kea (Drive) Road on their own without any expectation of governmental assistance to maintain the existing access or roadway improvements within the privately owned Kulana Kea (Drive) Road identified on the subdivisions 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 05-000135. The proposed lots shall form a 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 paved road or utilities within the Kulana Kea Road right-of-way.

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 05-000135. Should the improvement district require acquisition of any privately owned rights-of-way fronting the lots arising out of SUB 05-000135, 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.

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- b. The future lot owner(s) agree to participate in any road maintenance agreement or/and pay their fair share to maintain access and paved roadway within the Kulana Kea right-of-way.

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.

- c. Implement drainage improvements to mitigate stormwater runoff along Kulana Kea Drive.
3. The subdivision application's (SUB 05-000135) final plat map shall meet Ordinance No. 06 116 conditions, Tentative Subdivision Approval conditions dated February 28, 2007, and requirements of the Hawaii County Zoning Code, Ordinance and Subdivision Code not covered by this variance.
4. 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 subject Variance null and void.

Thank you for your understanding and patience during our review.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

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xc: DPW-Engineering Branch
SUB 05-000135
Keith De La Cruz
Evonne F. Bjornen