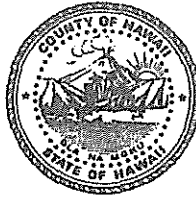


Harry Kim
Mayor



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

May 25, 2007

Mr. Robert Cross
P. O. Box 483
Kapaau, HI 96755

Dear Mr. Cross:

SUBJECT: VARIANCE-VAR 07-026
Applicant: ROBERT CROSS
Owner: CROSS FAMILY TRUST
Request: Variance from Chapter 23, Subdivisions,
Improvements Required
Tax Map Key: 5-3-009:004

After reviewing your variance application, the Planning Director certifies the approval of VAR 07-026 subject to variance conditions. The variance allows proposed Hale Maulili Condominium Project to access existing paved road within the 40 feet wide right-of-way (Halaula Maulili Road) fronting subject TMK property. The variance request is from Hawaii County Code, Chapter 23, Subdivisions, Article 12, Condominium Property Regimes, Section 23-140, Exemptions, (c)(3).

BACKGROUND

1. **Location.** The subject property containing approximately 16,199 square feet is Lot 120 as shown on Map 12 filed with Land Court Application 1116 and situated at Halaula, North Kohala, Hawaii.
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).

The first dwelling unit was constructed on the subject TMK property circa 1973. The subject TMK property was issued Ohana Dwelling Permit (OD 92-308) on November 30, 1992 to allow a second dwelling unit to be built on the subject TMK property. A building permit to construct the second (ohana) dwelling unit including driveway and other site improvements was issued on April 30, 1993.

MAY 29 2007

3. **Condominium Property Regime (CPR) Determination.** The owner's attorney submitted letter dated June 23, 2006 and submittals requesting information for proposed "TIARE" condominium project to the Planning Department. The Planning Department determination letter dated February 23, 2007 states in part:

"According to our files the subject 16,199-sf property was created by subdivision (SUB 2288) on May 6, 1965. Access is via a private road with a 40-foot right-of-way. You have confirmed that the roadway is paved to a width of approximately 21 feet.

Pursuant to Section 23-140(c)(3) of the Hawaii County Code (HCC) (Subdivision Code) the Planning Director may certify compliance with all County laws if requested under §514A-40, Hawaii Revised Statutes (HRS) to permit the developer to obtain an effective date for a final public report for a CPR creating two units on a lot, if the project lot has legal access on a State or County road having a minimum 20-foot wide pavement or on a private road built to current County-dedicable standards.

The current County of Hawaii standards for the subject residential road call for a 50-foot (R-33) paved right-of-way according to R-34 specifications for roads and shoulders.

In view of the above, we must regretfully deny your client's request for qualification of exemption from §23-124 of the Subdivision Code to allow for the creation of a CPR on the subject property. However, your client may apply for a variance from §23-140(c)(3) that would allow for confirmation that the subject property is in compliance with the HCC for the purposes of securing an effective date for a final public report. Please be advised that the mere application for a variance does not guarantee approval. An application for Variance from Subdivision Code is enclosed for your convenience."

4. **Variance Application.** The applicant-owner submitted the subject variance application on March 29, 2007.

The applicant's addendum or background report for the (Tiare Project) on the subject TMK property states in part:

Page 1. "The Purposed and Nature of this request is to allow the conversion of two older single family homes from their present status as rental units under one ownership (Mine), to become tow separately owned homes on the same lot."

“The 1965 subdivision complied with the intent and limits of the criteria at that time. Such a dramatic change in roadwidth (sic) status today should be viewed as totally not conforming with the intent of the subdivision statutes--At least with the rural welfare of this subdivision (sic)

The private road in front of the few modest homes was never planned for such a right-of-way because the homes are all low income residential. To propose such a widening—then or now—would compromise the essential rural character of the neighborhood.

The street serves only a handful of homes, several with legal second homes in place. No additional structures are planned, and no material or visible changes to the property will occur if you grant a variance from what obviously is not a prevalent rural standard.”

5. **Agency Comments and Requirements: VAR 07-026:**

- a. The Department of Water Supply (DWS) memorandum dated May 9, 2007 states in part:

“We have reviewed the subject application and have the following comments and conditions.

Please be informed that the subject parcel is currently served by one (1) existing 5/8-inch meter (Account No. 750-47400). Through copy of this letter, the applicant shall be informed that water availability is limited to the existing 5/8-inch meter and no additional services are available. Further, a 5/8-inch meter is limited to a maximum daily use of 600 gallons and suitable for only one single-family dwelling. Both homes on the subject parcel should not share the existing meter.”

- b. The State Department of Health (DOH) memorandum is dated May 10, 2007. (Refer to DOH memorandum in variance file).
- c. The County of Hawaii-Hawaii Fire Department (HFD) memorandum dated May 10, 2007 states in part:

“We have no comment to offer at this time in reference to the above-mentioned Variance application request.”

6. **Notice to Surrounding Owners/Posted Sign.** The applicant submitted copy of notice, attachments, and proof of mailing notice to the Planning Department on May 15, 2007. The list and mailing receipts are dated May 10, 2007.

Posted Sign. The applicant submitted affidavit dated May 9, 2007 and photograph of sign (Exhibit A) posted on the property.

7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received. The following written objections to the variance application were received:

- 7a. Objection letter from Benjamin J. Fisher received on May 15, 2007.

The Planning Department received copy of the applicant's letter addressed to Mr. Ben Fisher dated May 19, 2007 on May 25, 2007.

ALTERNATIVES/SPECIAL AND UNUSUAL CIRCUMSTANCES

Project Access/Roadways. The first alternative requires the applicant or "Developer" of the CPR "Tiara Project" to access meet the roadway requirement pursuant of the Chapter 23, Section 23-140, Exemptions, (c)(3) which states:

"The lot has legal access on a State or County road having a minimum 20-foot wide pavement or on a private road built to current County dedicable standards", or access to the project is via minimum 20 feet wide paved road within minimum 50 feet wide right-of-way built to dedicable standards or DPW Standard Detail R-34.

The second alternative acknowledges the subject TMK property and proposed condominium project can access privately owned 21 feet wide paved road within existing privately owned 40 feet right-of-way (Maulili Loop) fronting the property (TMK: 5-3-009:087, Lot 216 and Lot 217) which connects to Akoni Pule Highway and acknowledge an existing 21 feet wide paved road fronting the proposed CPR project meets the minimum 20 feet paved road requirement.

INTENT AND PURPOSE OF THE SUBDIVISION CODE

Roadway Variance. The intent and purpose of access requirements to a proposed CPR is to ensure that the physical access to the proposed CPR clearly defined and accessible from a by domestic and police, fire, and other service vehicles under various weather conditions without constant maintenance.

The subject property and adjoining lots are residential in character. The property's access of status of ownership of the privately owned right-of-way fronting the property was created in 1965 prior to adoption of the 1967 Zoning and Subdivision Codes by the County of Hawaii. Therefore, given that proposed "Tiara" Condominium Project can access a minimum 20 + feet road (according to information and photographs in the Planning Department files) within the Maulili Loop Road identified on the condominium map dated February 23, 2006, there should be no adverse impact by allowing the proposed project to utilize the existing privately owned roadway within the 40 feet wide right-of-way. Road maintenance for the roadway fronting the subject TMK property will be continued to be privately addressed and shared among the current owners and users.

Based on the foregoing findings, the applicant's request for variance from Chapter 23, Subdivisions, 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 to allow a proposed CPR of the subject TMK property to access the existing privately owned paved roadway within privately owned 40 feet road right-of-way fronting subject TMK property is **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 "Tiara" Condominium Project will use and maintain the privately owned road fronting the subject TMK property on their own without any expectation of governmental assistance to maintain the existing access or roadway improvements within the privately owned 40 feet wide right-of-way (Maulili Loop or Maui Road denoted on the CPR project map dated February 23, 2006.

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 date of this letter and shall 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-owner.

- a. The applicant or owner 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 CPR project utilizing Maulili Loop or Halaula Maulili Road.

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 fronting the subject TMK property or "Tiara" CPR. Should the improvement district require acquisition of any privately owned rights-of-way fronting the subject TMK property, 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 owner(s) agree to participate in any road maintenance agreement or/and pay their fair share to maintain the existing road and right-of-way (Maulili Loop) or Halaula Maulili Road.

In the event that there are any amendments or changes to the CPR 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 CPR project.

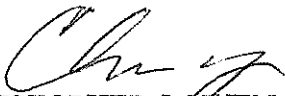
4. The CPR map shall meet all the requirements of the Hawaii County Zoning Code and/or Subdivision Code not covered by this variance. No other variances from Chapter 23, Subdivisions, shall be granted to permit the proposed CPR.
5. The subdivider, owner(s), their assigns or successors shall pay any outstanding real property taxes and comply with all other applicable State statutes and County ordinances pertaining to building improvements and land use.

Mr. Robert Cross
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May 25, 2007

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\FORML\TTVAR07-026SUBROADWAYTMK53009004.CROSS

xc: DPW-Engineering Branch
Benjamin J. Fisher
OD 92-308