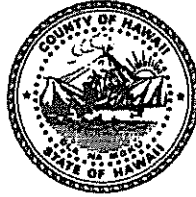


Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED® AP
Deputy Director

County of Hawaii
PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-4224
(808) 961-8288 • FAX (808) 961-8742

January 15, 2008

Mr. Gene Thomas
P. O. Box 2065
Pahoa, HI 96778

Dear Mr. Thomas:

SUBJECT: VARIANCE-VAR 07-061
Applicant: GENE THOMAS
Owner: BIG ISLAND BAMBOO LLC
Request: Variance from Chapter 23, Subdivisions
Tax Map Key: 1-3-008:027, (SUB 05-000211)

After reviewing your variance application, the Planning Director certifies approval of Variance-VAR 07-061 to allow alternative road improvements to be constructed for proposed subdivision (SUB 05-000211) of subject TMK property. The variance permits construction of non-dedicable roadway improvements in lieu of required dedicable roadway improvements within proposed road lot pursuant to Tentative Approval (TA) letter dated October 11, 2007, Condition(s) 3-c, 3-d, and 3-e. The variance is from the TA subdivision conditions and Chapter 23, Subdivisions, Article 3, Division 4, Street Design, Section 23-48, Cul-de-sacs, Section 23-50, Grades and curves, Article 6, Division 2, Improvements Required, Section 23-86, Requirements for dedicable streets, and Section 23-95, Right-of-way improvement.

BACKGROUND

1. **Location.** The referenced TMK property, Lot 3-A-6 or approximately 21.875 acres, being a portion of Grant 3209 to Robert Rycroft, is situated at Pohoiki, Puna, Hawaii.
2. **Zoning.** The subject property is zoned Agricultural (A-1a) by the County and designated Agriculture "A" by the State Land Use Commission (LUC).

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3. **Subdivision Request/PPM.** The owner or subdivider submitted preliminary plat map (PPM) for 8-lot subdivision (SUB 05-000211) of subject TMK property proposing creation of 7-building lots and 1-road lot. Tentative approval (TA) to PPM dated May 2, 2006 was granted on October 11, 2006 subject to conditions requiring subdivider to construct access and road improvements within proposed road lot.
4. **Variance Application.** The subject variance application was acknowledged by Planning Department letter dated August 24, 2007. The application includes background information dated August 5, 2007 which states in part:

“Big Island Bamboo/BIBCO, KKC (BIB) subdivision comprises 7 lots of approximately 3 acres in size, bordering Pohoiki Road, 2 miles mauka of Isaac Hale Beach Park in Puna. For aesthetic reasons, and in keeping with the rural appeal of the area, BIB is seeking a variance from “Tentative Approval” requiring construction of the subdivision road and construction plan (see attached) submitted to the County of Hawaii Engineering Dept. on 1/27/07 was for Std Det R-39 nondedicable private dead end street. The main difference between the two is R-34 standard requires paved shoulders and swales and R-39 standard does not. Also BIB is requesting a variance from Subdivision code 23-48 to allow the cul-de-sac dead end street to be 650’ in length.

The proposed road leading into the subdivision is straight with no grade exceeding 3.6%. R-34 detail would require the entire pavement width of the road to be 50’. This would be very out of place in this rural setting and would detract from the natural beauty and character BIB wishes to maintain in their subdivision. Pohoiki Road, itself, is only 20’ wide and does not currently meet R-39 detail, with many areas having shoulders less than 4’ in width (see attached photos). In addition, there is no power in the area. As seen from the attached road construction plan, the road ends with a cul-de-sac and there are no plans in the future for it ever to become a through fare with high traffic volume.

The proposed subdivision is located on land formerly used for papaya farming in the 1970’s and has excellent drainage. In fact, R-39 detail would provide superior drainage when heavy rainfall occurs, as the extra asphalt width required by R-34 detail would completely block the natural drainage of the rocky porous soil.”

5. **Agency Comments and Requirements: VAR 07-061:**

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- a. The State Department of Health (DOH) memorandum is dated August 31, 2007. Refer to DOH memorandum in subject variance file.
- b. The Department of Public Works (DPW) memorandum dated September 11, 2007 states in part:

“We have reviewed the subject application received on August 24, 2007 and offer the following comment:

The DPW still believes that to safeguard public welfare and safety, road improvements to satisfy Section 23-86 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.

The Subdivision improvements as stated in our memo dated August 4, 2006 are the minimum improvements required by the subdivision code. The DPW believes that allowing subdivisions without at least providing the minimum requirements as required by code will compromise public safety and welfare.

We do not believe there are special and unusual circumstances with regard to the requirements of Sections 23-86. These are the minimum dedicable street requirements imposed on all subdivisions of this type.

Therefore, street requirements as noted in the memo to you dated August 4, 2006 regarding the review of the subject’s preliminary plat should remain.”

- c. The County of Hawaii-Hawaii Fire Department memorandum is dated September 12, 2007. Refer to COH-HFD memorandum in subject variance file.
6. **Notice to Surrounding Owners/Posted Sign.** The applicant’s agent submitted affidavit regarding posting of sign and copy of notice mailed to surrounding property owners and proof of mailing to the Planning Department. According to these submittals, it appears that the notice was mailed on September 10, 2007.

Posted Sign. A photograph of posted sign is attached to affidavit dated September 12, 2007.

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 subdivider to install access and roadway improvements meeting County dedicable paved road standards according to tentative approval letter and TA conditions dated October 11, 2006.

The second alternative is to consider applicant's request for variance to allow installation of non-dedicable privately owned paved roadway within proposed road lot which is similar or substantially equivalent to the paved road within Pohoiki Road right-of-way owned by the County fronting the subject TMK property. Specifically, the applicant is requesting variance to allow construction of a privately owned 20 feet paved non-dedicable access or cul-de-sac roadway and turn around with grassed shoulders and swales within proposed 50 feet wide privately owned cul-de-sac road lot (exceeding 600 feet in length) in lieu of dedicable road improvements required by Condition No. 3, "c), d), and e), dated October 11, 2007 requiring:

- "c) Roadway design/layout including allowable street grades and curve radii to provide the minimum sight distance shall conform to Section 23-50 of the Hawaii County Code (HCC).
- d) For the proposed subdivision road lot, construct minimum 20-ft. wide dedicable pavement with paved shoulders and swales, within a minimum 50-ft. wide right-of-way conforming to DPW Std Det R-34. Roadway shall be designed to support axle and wheel loads permitted under Section 291-35, Hawaii Revised Statutes (HRS):
- e) Construct dedicable turnaround conforming to DPW Std Det R-33."

Note: The subdivider will still be required to comply and meet remaining TA conditions including Condition No. 3, "a), b), and f) 1., 2., and 3." dated October 11, 2007.

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 building lots 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.

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The proposed subdivision and adjoining areas are agricultural in character; and, the subject TMK property has frontage and access to Pohoiki Road. According to recent photographs submitted with the variance application, the paved road within the Pohoiki Road (owned by the County) fronting the subject TMK property is at least 20 feet wide with variable width grassed shoulders along the paved road. In lieu of installing dedicable road improvements within the proposed cul-de-sac road lot required by tentative approval letter and TA conditions, the applicant is requesting variance to permit construction of a non-dedicable cul-de-sac road (approximately 650 linear feet) within the proposed road lot. In sum, the applicant proposes to construct minimum 20 feet wide non-dedicable paved road including 15 feet wide grassed shoulders and swales along the paved non-dedicable cul-de-sac road between the intersection of the roadway at Pohoiki Road to a non-dedicable turnaround or terminus within proposed cul-de-sac road lot in accordance with private dead end road standards pursuant to DPW-Standard Detail R-39. The property is being developed with 3 acre lots although the zoning is A-1a. If the zoning was A-3a, the DPW-Standard Detail R-39 would normally apply. Conditions of variance approval will prevent the re-subdivision of the resulting lots, so it is consistent with the standards to treat this property as A-3a and allow an R-39 road.

Therefore, based on the representations made by the applicant, evaluation of current road improvements located within Pohoiki Road owned by the County fronting the subject TMK property, and considering the size of lots within proposed subdivision, the Planning Director has concluded that variance to allow construction of proposed non-dedicable 20-foot wide paved cul-de-sac road exceeding 600 linear feet, grassed shoulders and swales within proposed 50 feet wide cul-de-sac road lot in accordance with alternative construction plan submitted with the variance application is reasonable and can be constructed for proposed subdivision in lieu of the required paved dedicable improvements required by certain access and roadway conditions in the TA letter cited above. The cost to design and construct alternative non-dedicable paved road including water supply system and necessary intersection improvements at Pohoiki Road including any necessary signage and lighting will be constructed in accordance with variance and alternative subdivision construction plans submitted with the variance application and/or alternative construction plans approved by DPW, Hawaii County Fire Department, Department of Water Supply (DWS), Planning Department, and any other affected agencies prior to issuance of Final Subdivision Approval of SUB 05-000211; and, future maintenance of the alternative non-dedicable paved road and alternative turn around constructed within proposed road lot (0.807 Acre) within proposed subdivision will be paid for by the subdivider and/or users.

The subject variance application was acknowledged by letter dated August 24, 2007. Additional time was required to consider agency comments and complete the variance background report. The applicant agreed to extend the decision date to on or before January 18, 2008.

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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 to allow alternative roadway improvements to be constructed within proposed subdivision of subject TMK property 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. Submit alternative roadway improvement construction drawings for agency review and approval.
3. **ROAD VARIANCE.** The subdivider, owners, their assigns, or successors understand that the lots arising out of SUB 05-000211 will use and maintain the privately owned road lot including non-dedicable paved road within the road lot and/or within proposed subdivision on their own without any expectation of governmental assistance to maintain the non-dedicable paved roadway improvements within proposed road lot and/or other access and utility easements identified on the approved final plat map for 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 05-000211. The proposed subdivision shall form a Homeowner or Road Association or equivalent entity consisting of all lot owners with the power to levy mandatory road assessments, responsible to maintain, repair, and reconstruct the privately owned non-dedicable road including shoulders, swales, and associated drainage features. These requirements shall be enforced by 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 that also require that:

- 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 privately owned non-dedicable roadways.

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 for any improvement district adopted for the purpose of roadway improvements serving the proposed lot(s) arising out of SUB 05-000211. Should the improvement district require acquisition of any portion of the privately owned rights-of-way arising out of SUB 05-000211, such rights-of-way shall be dedicated without cost to the County of Hawaii.

- b. The subdivision application's (SUB 05-000211) final plat map shall meet all the requirements of the Hawaii County Zoning Code and the Subdivision Code not covered by this variance.
- c. 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.
- d. Along with construction drawings for the roadways using grassed drainage swales and shoulders, or prior to submitting full construction drawings, the applicant shall submit an engineer's report showing that the shoulders and swales will be stable and not erode or wash out during stormwater flow conditions considering the grades and soil conditions. The report shall be reviewed by DPW. The Planning Director, in consultation with DPW, may require paving, stabilization, or alternative shoulder and swale treatment to take care of any erosion problems. The road maintenance association or equivalent shall be responsible for continual maintenance and upkeep of the shoulders and swales. The applicant shall ensure adequate sight distance and roadside clear zones.

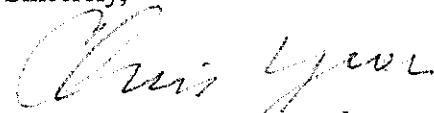
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- e. The subdivider and all grantees, successors, and assigns acknowledge that the parcel was created by a variance from the normal subdivision requirements of Hawaii County, and that there are no special or unusual circumstances applying to the property which deprive the owner of substantial property rights or to a degree which obviously interferes with the best use or manner of development of the property, and hence, no grounds exist or will exist for a variance from the subdivision code to permit further subdivision of the property, and that changes in the owner's personal or financial situation after acquiring the property also will not constitute grounds for a variance from the subdivision code to permit further subdivision of the property.
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 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
DWS-Engineering Branch
SUB 05-000211