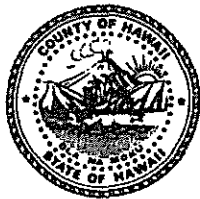


Harry Kim  
Mayor



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

September 10, 2008

Mr. Michael J. Riehm, A.I.A., Principal  
RIEHM OWENSBY PLANNERS ARCHITECTS  
P. O. Box 390747  
Kailua-Kona, HI 96739

Dear Mr. Riehm:

**SUBJECT: VARIANCE-VAR 07-068**  
**Applicant: RIEHM OWENSBY PLANNERS ARCHITECTS**  
**Owner: HILUHILU DEVELOPMENT LLC**  
**Request: Variance from Chapter 23, Subdivisions**

**VARIANCE-VAR 07-069**  
**Applicant: RIEHM OWENSBY PLANNERS ARCHITECTS**  
**Owner: HILUHILU DEVELOPMENT LLC**  
**Request: Variance from Chapter 25, Zoning**  
**Tax Map Key: 7-2-005:001, (PD-SUB 07-000695)**

After reviewing your variance applications, the Planning Director certifies the approval of Variance-Nos. 07-068 and 07-069 subject to conditions of approval. The subject property is being developed pursuant to Chapter 25, Zoning, Article 6, Optional Development Regulations, Division 4, Project Districts (PD). The Applicant, on behalf of the landowner, is requesting specific variances from minimum roadway and improvements required pursuant to Hawaii County Code, Chapter 23, Subdivisions, and Chapter 25, Zoning as part of the PD application.

**BACKGROUND**

1. **Location.** The proposed development, "PALAMANUT", will be situated upon the subject property containing approximately 725.204 acres being a portion of Puukala being "mauka" of Queen Kaahumanu Highway and "makai" of Makalei Estates, and is situated at Mahaiula-Kau, North Kona, Hawaii.

SEP 15 2008

Mr. Michael J. Riehm, A.I.A., Principal  
RIEHM OWENSBY PLANNERS ARCHITECTS

Page 2

September 10, 2008

2. **Zoning.** The subject property received a change of zone to a Project District (PD) by the adoption of Ordinance No. 06 105, effective July 17, 2006; subject to conditions. The property is designated Urban "U" by the State Land Use Commission (LUC). The property is not within the Special Management Area (SMA).
3. **Variance Applications-VAR 07-068 and VAR 07-069.** The Applicant submitted the subject applications "...for the variances as noted herein for the Palamanui development" (sic). The Applicant attached a background report titled "Palamanui" dated July 30, 2007 with each of the respective variance applications. The background report and referenced pages states, in part:

Page 1-2:

#### "1.1 PROJECT DESCRIPTION

Palamanui is a mixed use master planned community consisting of 1,116 residential units located on 725.204 acres in the district of North Kona, Hawaii with lots ranging in size from approximately  $\pm 4,000$  square feet to  $\pm 20,000$  square feet or larger. Emphasis is placed on the design of the streets to provide a safe setting for pedestrians, mitigate the speed of the automobile, and create a pedestrian scaled neighborhood environment.

#### 1.2 VARIANCE REQUEST

The Petitioner is requesting variances from the Zoning Code and the Subdivision Control Code to create a more neighborhood and pedestrian friendly environment and to allow for a roadway design that deviates from the County of Hawaii's Standard Details.

#### 1.3 PURPOSE FOR THE REQUEST

To provide local residents with a planned with a planned, pedestrian oriented, residential community that better addresses their needs and lifestyle than is possible utilizing a typical subdivision layout and County decidable (sic) roadway standards. In order to accomplish the objectives set forth, the Petitioner is requesting approval of the various variances contained herein since it affords the best flexibility in addressing design and aesthetic issues."

Page 2-2:

“2.1 GENERAL

The petitioner is requesting variances that deviate from the County of Hawaii’s Zoning Code and Subdivision Control Code. The Petitioner is also requesting all internal streets in the project be designated “private” and be exempt from the County of Hawaii’s requirements as detailed in “Chapter 22, Streets and Sidewalks”, and “Standard Details For Public Works Construction”.

As stipulated in the Hawaii County Code, “Chapter 25-Zoning”, Section 25-6-40

“The project district (PD) development is intended to provide for a flexible and creative planning approach rather than specific land use designations, for quality development. It would also allow for flexibility in the location of specific (sic) uses and mixes of structural alternatives. The planning approach would establish a continuity (sic) in land uses and designs while providing for a comprehensive network of infrastructural facilities and (sic) systems. A variety of uses as well as open space, parks, and other project uses are intended to be in accord with each individual project district objective. A project district is an amendment to this chapter which changes the district boundaries in accordance with the individual project district.”

4. **Subdivision Request/PPM.** The landowner’s agent submitted the proposed subdivision application on November 19, 2007, to initiate the implementation of the Project District concept. Further action on the proposed subdivision application (SUB 07-000695) and original preliminary plat map (PPM) dated November 15, 2007 is being deferred according to letter dated January 3, 2008 in the subdivision file, pending action on the subject variance applications.

5. **Agency Comments and Requirements: VAR 07-068:**

- a. The State Department of Hawaii Health (DOH) memorandum dated October 25, 2007 states.

“The submittals for the subject development have been transmitted to our Environmental Management programs for their coordinated review and comments. Upon receipt of their reply their comments will be forwarded to your office.”

Mr. Michael J. Riehm, A.I.A., Principal  
RIEHM OWENSBY PLANNERS ARCHITECTS  
Page 4  
September 10, 2008

- b. The County of Hawaii-Hawaii Fire Department (COH-HFD) memorandum is dated December 3, 2007.

Refer to COH-HFD memorandum dated December 3, 2007 in variance file-VAR 07-068.

- c. The Department of Public Works (DPW) memorandum dated July 24, 2008 states in part:

“We received the (undated) sheet A-1.2 with colored roadway legend specifying which are to be County and private roads. After further discussion with the applicant’s representative, we received the revised preliminary plat dated July 9, 2008 and the applicant’s reply to our June 12, 2008 comments by letter, dated July 8, 2008. We have the following comments:

The required Road 5 from Ord 06 105 is provided but is not numbered and is missing the geometry data on the plat. The alignment is now acceptable on the revised plat as opposed to Sheet A-1.2. Regarding the construction schedule for Road 5 and Road 3, see Ord 06 105 Condition X-9.

Though the sheet A-1.2 specifies which roads are private and which are County, we still need it specified in the variance approval. We defer to you on the method.

With regard to Road 6A and keeping it private, a concern is not only for future extension which I understand the Planning Director has dismissed. It’s that we have no control over traffic operation near the roundabout. I discussed this with Roger and he thought they may eliminate the parking on the north-bound side of the Block T-3 either now or later. That may not be necessary; however, the location of parking and midblock crosswalk close to that intersection could be a problem. We suggest you include a condition that if our Traffic Division requests changes within the private roads, such as parking, crosswalks, signs and markings, streetlights and sight distance obstructions, to allow for better operation of the Road A intersections, they must implement them within a 30 day period or as determined by the Public Works Director.

Regarding the above, if DPW requested that parking to be partially eliminated on Road 6A could there be a conflict in doing so with the Zoning Code? Parking is shown within the street right-of-way on the typical section Exhibit 12.

Conditions should allow DPW authority to require construction plan and subsequent plat changes as necessary for intersections with the dedicable roads.

Regarding the variance from Section 23-94, our comments remains unchanged. DPW TRF Division has not been providing review of signs and markings within private roads except for approaches to intersections with County dedicable roadways.”

6. **Agency Comments and Requirements: VAR 07-069:**

- a. The State of Hawaii Department of Health (DOH) memorandum dated October 25, 2007 states:

“The submittals for the subject development have been transmitted to our Environmental Management programs for their coordinated review and comments. Upon receipt of their early reply, their comments will be forwarded to your office.”

- b. The County of Hawaii-Hawaii Fire Department (COH-HFD) memorandum is dated November 8, 2007.

Refer to COH-HFD memorandum dated November 8, 2007 in variance file-VAR 07-069.

- c. The Department of Public Works (DPW) memorandum dated June 12, 2008 states in part:

“We reviewed the subject application and our comments to each variance request are as follows:

All new building construction shall conform to current Building Code requirements.

Section 25-4-40 and 25-4-42

Please be aware of potential conflict with Hawaii County Code Section 22-2-72 requirements for sight distance at intersections of County Roads. In addition, applicant shall provide intersection horizontal sight distance and intersection sight distance for all subdivision streets, meeting with AASHTO guidelines. The applicant shall show lines of sight based on design speed to confirm compliance and provide necessary sight distance easements on the construction plans and final plat. Building setbacks should be checked against such easement for conflicts.”

7. **Notice to Surrounding Owners/Posted Sign.** The applicant and/or owners submitted a copy notice(s) dated August 27, 2007 and October 29, 2007 and attachments sent or mailed to surrounding property owners. According to mailing list(s) and affixed USPS mailing receipt(s), notices regarding both variance application(s) from Chapter 23, Subdivisions and Chapter 25, Zoning, were mailed by the USPS to surrounding property owners on August 30, 2007 and October 30, 2007.

**Affidavit/Posted Sign:** The applicant submitted an affidavit dated January 9, 2008 and pictures or photographs of posted sign(s) upon subject TMK property.

8. **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**

The owner-Hiluhilu Development LLC is requesting variances for “Palamanui” according to revised “BACKGROUND REPORT” in Change of Zone No. 05-000010 (File 2 of 3), dated January 12, 2006, which states in part:

Page 1:

*“The project, referred to as “Palamanui”, proposes a master planned community with a mix of single-family and multiple-family residential units (approximately 930 units), commercial spaces, 120-room University Village Inn, 18-hole golf course, dry forest preserve, archaeological and cave preserve areas, active and passive parks, a trail system and supporting infrastructure. As part of the request, the applicant requests deviations from minimum lot size, setback and roadway requirements.”*

Mr. Michael J. Riehm, A.I.A., Principal  
RIEHM OWENSBY PLANNERS ARCHITECTS  
Page 7  
September 10, 2008

Page 2-3:

*"Variances: The applicant requests variances from Chapter 23 (Subdivision Code) and Chapter 25 (Zoning Code). The proposed project follows a guiding design principle generally referred to as "New Urbanism", which emphasizes a pedestrian orientation in a village setting. The proposed variances fall into two general categories: 1) variances that facilitate development of the higher density town and residential center; and 2) variances that maximize the development of the lower density golf-oriented residential lots. The applicant states that the variances relating to minimum block size, residential lot size, residential lot width and street frontage, street rights-of-ways (sic), street lighting, and the request to allow alleys in a residential development are all necessary to implement the New Urbanism philosophy. (Exhibit 2-Applicant's November 21, 2005 letter with attached Tables 1 to 9, relating to Variance Requested from Sections in Subdivision and Zoning Codes, Applicant's Figure 2-Conceptual Character of Town Center/Residential Village Center, Figure 3a-Residential Village Center Alternatives-4,000 SF Lot, Figure 3b-Residential Village Center Alternatives-6,000 SF Lot, Figure 4a-Conceptual Plan: Roadway Concepts-Dedicable, Figure 5-Residential Village Center Alternatives: Zone Lot Line Concepts" (sic)*

Generally, the intent and purpose of Palamanui-PD is to create a master planned pedestrian-oriented community consisting of subdivided lots for commercial, single and multiple family residential units, parks, open space lots for active and passive recreation and other purposes. An earlier letter associated with the related change of zone application file (REZ-05-000010) cites the landowner's intent to create a designed community having a "tight interaction among proposed streets, lots, and buildings", with "front porches of homes" that "overlook sidewalks that are visually oriented to a mixed-use commercial town center", and blend of a careful mix of smaller residential lots abutting proposed commercial town center and/or near to an educational campus upon abutting property. Small and large open space lots have been carefully designed or placed into or around the commercial town center and dense residential neighborhoods to accommodate and encourage pedestrian travel, etc. near the town center and between neighborhood nodes. In addition, "Palamanui" can be classified as a "neo-traditional development" which depends or places emphasis on a detailed and thoughtful site plan layout or "master plan" of the subject property specifying exactly where business and surrounding single or multiple residential units and mixing of neighborhoods to be sited and built in close association with access to private and active and passive open space lots, etc. which promotes community and social interaction between the residents.

Mr. Michael J. Riehm, A.I.A., Principal  
RIEHM OWENSBY PLANNERS ARCHITECTS

Page 8

September 10, 2008

Ordinance No. 06 105 and its conditions, specifically Condition M, granted specific variances to develop a unique land pattern and construct unique dedicable and privately-owned road rights-of-way including associated bikeways, pedestrian pathways or trails, etc. and other phased infrastructure to be built upon the subject property to create Palamanui's "sense of place". Further, Ordinance No. 06 105 requires commercial development and neighborhoods to be clustered to connect and close to thoroughfares being planned or constructed upon abutting and nearby property and requires the developer to make contributions to insure that the network of roadways and other facilities to be completed in a timely fashion and benefit the residents. To this end, the Applicant or landowner-developer is specifically requesting a series of variances from the minimum requirements of the Zoning and Subdivision Codes to facilitate the development of Palamanui in manner consistent with general representations made during the review and eventual approval of the Project District. The applicant submitted a revised subdivision preliminary plat map (PPM) dated July 9, 2008 and other supplemental drawings A-1.2 and A-1.3 showing proposed road sections for dedicable and non dedicable roads and streetscape improvements, etc.

In view of Ordinance No. 06 105 and its conditions of approval, the Planning Department and the County-DPW reviewed the revised PPM dated July 9, 2008 and supplemental maps in relation to adjoining and improved and unimproved properties within this region to insure that proposed rights-of-way and its alignments, proposed lot sizes and its uses are consistent with the recent master plan. In considering the numerous variances sought by the Applicant and landowner, the revised PPM, current master plan, and updated supplemental maps including road sections, etc. were examined to consider and ensure that 1) adequate light and air, proper siting and arrangements of all structures and improvements (e.g. detached garages, alley ways, etc.) was address and provided for, 2) traffic generated by Palamanui and abutting developments was considered; and future uses and traffic, pedestrian safety, and emergency access for build out have been addressed, etc., 3) landscaping upon public and private open spaces including rights-of-way is commensurate with uses and surroundings, 4) unsightly areas associated with commercial and residential use(s) or public places and park(s) are properly protected and/or screened or eliminated, etc. 5) an adequate mix of off-street parking for commercial, residential, and public spaces are provided commensurate with uses, 6) access to parking and traffic movement into and throughout the development is designed and managed to prevent potential accident hazards, etc., and 7) historical and/or important natural and man-made features (e.g. lots for open space, specimen trees, historical preserve, water supply, etc.) are identified and preserved upon the subject property.



The revised PPM and associated drawings and additional exhibits submitted by the Applicant addresses comments and concerns from the reviewing agencies regarding road dedication, roadway safety, streetscape design, lot geometry, residential building envelopes, and other items. The proposed dedicable roadways and privately-owned rights-of-way will be improved and built according to specific roadway sections (exhibits) denoted on current master plan map submittal Sheet A-1.2 (Revised August 29, 2008), and revised PPM dated July 9, 2008. The proposed lot sizes identified on the revised PPM and other building improvements and uses identified on supplemental plans are subject to and permitted by Ordinance No. 06 105 and/or variances from the Subdivision and Zoning Codes granted by Ordinance No. 06 105, Condition M.

### VARIANCES

In view of variances granted by the Ordinance No. 06 105 and comments and requirements received from the County-DPW and other reviewing agencies regarding revised PPM map dated July 9, 2008, supplemental maps, and the subject variance applications, the following variances, as detailed below, from **Hawaii County Code (HCC) Chapter 23, Subdivisions, (VAR 07-068)** and **Chapter 25, Zoning, (VAR 07-069)** are hereby approved subject to conditions of approval.

### CHAPTER 23, HCC – Subdivisions

The variances granted by Ordinance No. 06 105, Condition M, and following variance(s) from **Chapter 23, Subdivisions**, are hereby approved subject to agency comments and requirements received for respective variance application(s) and specific agency requirements received for the recent variance site plan map-PPM date July 9, 2008 and exhibits:

- S-1. **Section 23-29. Block Sizes.** Ordinance No. 06 105 specifies that block lengths shall not be less than 175 feet, in lieu of the required 400 feet. This variance confirms a minimum block length of 175 feet, which is less than the depth of two lots and should provide for sufficient flexibility in the design of lots and its adjoining roadway intersections.
- S-2. **Section 23-35. Lot Side Lines.** The Subdivision Code requires and specifies that lot lines shall run a right angles to the street “as far as practicable”. Given preliminary review of the July 9, 2008 PPM, the proposed land patterns incorporate the retention of unaltered small and large open space lots including trails. This variance allows deviations from this requirement to avoid the creation and appearance of the classic “cookie-cutter” subdivision land pattern, as long as every reasonable effort is made to have a lot line approach a street at a right angle. Given this project’s design philosophy and preference for preservation of open space retaining natural topography and need to

position and create new roads with unusual road geometry make having all side lines of proposed lots to "run at right angles to the proposed streets, loops, and/or cul-de-sacs upon which the lot faces" difficult, when the ultimate goal should be the best lot or subdivision configuration suitable for its intended purpose without extensive lot preparation.

- S-3. **Section 23-41. Minimum Right-of-Way and Pavement Widths.** Ordinance No. 06 105 permits alternative roadways to be constructed within the Project District-PD and permits deviations from the minimum requirements of Chapter 23, Subdivisions, and DPW-Standard Details. The ordinance requires the phased creation specific rights-of-way lots and specific roadway improvements including roundabouts to be constructed in a timely fashion and dedicated to the County of Hawaii upon completion and allows specific non dedicable privately owned rights-of-ways lots, roadways, alleys, and trails to be constructed within the PD. The design or profiles of these alternative rights-of-way include deviations from minimum rights-of-way widths, pavement widths, shoulder improvements, and streetscape improvements are detailed on Sheet A-1.2, Revised August 29, 2008 (e.g. Exhibits-9, 10, 12, 13, 16, 18, 19, 20, 21, 22, 23, 24, and 25). Proposed rights-of-way (road lots) and specifications for road and streetscape including location and designation of on-street parking within or near proposed dedicable rights-of-way and within non dedicable privately owned rights-of-way are subject to further review by the County-DPW and agency requirements during review of the detailed subdivision construction plans.
- S-4. **Section 23-45. Intersection Angles; Corner Radius.** Ordinance No. 06 105 allows a minimum 30 degree street intersection angle verses a preferred 60 to 90 degrees. This variance will permit a minimum 30 degree intersection angle consistent with Ordinance No. 06 105 and no minimum corner radius for the privately owned non dedicable roadways. However, this variance pertains to only intersections of privately owned non dedicable road rights-of-way within the PD. Intersections of roadways within the road lots being dedicated to the County of Hawaii shall be constructed in accordance with approved subdivision construction plans.
- S-5. **Section 23-48. Cul-de-Sacs.** The proposed cul-de-sac designs servicing more than 18 lots and cul-de-sac length exceeding 600 feet in length, including terminus designs, are permitted provided adequate and/or minimum turn around space for emergency vehicles is provided and/or COH-Hawaii Fire Department requirements are met.

- S-6. **Section 23-50. Grades and curves.** Ordinance No. 06 105 allows for deviation from grades and vertical and horizontal curves subject to declared parameters. The variance requested by the applicant is approved given the nature of the proposed development to preserve existing terrain including certain trees, etc. within lots set aside for open space, etc. Pursuant to Section 23-50(b), the Applicant or Applicant's engineer can propose and identify variations from grades and horizontal and vertical curves in detailed subdivision construction plans submitted for agency review. Therefore, variations from the required curves and grades may be permitted by the County-DPW and Planning Department due to unusual site conditions and shall be determined during review of the detailed construction plans. Deviations from the standard minimum requirements from grades and curves for dedicable and non dedicable privately owned rights-of-way within Palanamui shall be specified and approved by the County-DPW. A condition of this variance will require that roadway designs shall follow guidelines incorporated in the Hawaii Statewide Uniform Design Manual for Streets and Highways or the applicable AASHTO design guide for the appropriate design speed. This will ensure reasonable design criteria that will not compromise public health and safety.
- S-7. **Section 23-52. Alleys.** This variance will permit a proposed alley design (Exhibit 22) having a minimum 18-foot wide travel lane within a minimum 24-foot wide right-of-way with 3-foot wide gravel/grassed shoulders. Private driveways fronting detached garages and entering the alleyway shall be paved and/or minimum 24-foot long clear back-up aisle space measured from the wall of the garage and extending into the paved alley is provided for vehicles parked in detached garages (Sheet A-1.2a).
- S-8. **Section 23-93. Street lights.** This variance is approved subject to provision that standard and/or alternative architectural lighting fixtures and traffic signs/names installed within the rights-of-way (road lots) and roadways including shoulder improvements being dedicated to the County are approved by the DPW and placement of architectural lighting/street names/ and traffic signs installed within the private roadways, alleys, and pedestrian rights-of-way, etc. are certified by a licensed engineer for adequacy and safety. The street lights fixtures and/or lighting within the Project District or Palamanui shall comply with Hawaii County and/or DPW outdoor lighting code requirements.
- S-9. **Section 23-94. Street names and traffic signs.** This variance is approved subject to provision that standard and/or alternative architectural lighting fixtures and traffic signs/names installed within the rights-of-way (road lots) and roadways including shoulder improvements being dedicated to the County are approved by the DPW and placement of architectural lighting/street names/ and traffic signs installed within the private roadways, alleys, and pedestrian rights-of-way (trails), etc. are certified by a

licensed engineer for adequacy and safety. Traffic signs and street names shall meet minimum ASHTO specifications and standards.

- S-10. **Section 23-95. Right-of-way improvement.** The proposed variable width rights-of-way and improvements therein requested for roadways to be dedicate to the County or privately maintained owned road rights-of-way shall conform to appropriate exhibit(s) on Sheet A-1.2, Revised August 29, 2008 (e.g. Exhibits-9, 10, 12, 13, 16, 18, 19, 20, 21, 22, 23, 24, and 25). Proposed rights-of-way (road lots) and specifications for road and streetscape including location and designation of on-street parking within the proposed rights-of-way are subject to further review and County-DPW requirements during review of subdivision construction drawings consistent with the project development's master plan.

The proposed roads to be dedicated to the County of Hawaii and privately-owned road lots and associated areas shall be designated and denoted on the subdivision final plat map and on subdivision construction drawings that shall be approved by the County-DPW and other applicable agencies.

#### **CHAPTER 25, HCC – Zoning**

And, the specific variances granted by Ordinance No. 06 105, Condition M, with the following variance(s) from **Chapter 25, Zoning**, are hereby approved subject to agency comments and requirements received for respective variance application(s) and specific agency requirements received for the recent variance site plan map-PPM date July 9, 2008 and associated submittals:

- Z-1. **Section 25-4-30. Minimum street frontage.** Ordinance No. 06 105 allows and requires a minimum 10-foot wide street frontage for every building site. This variance will confirm a minimum 10-foot wide street frontage consistent with Ordinance No. 06 105 since a minimum access pole to a flag lot is 15 feet, greater than the minimum frontage being offered through this variance.
- Z-2. **Section 25-4-31. Minimum building site area; minimum average width.** Ordinance No. 06 105 allows and permits minimum 40'-0" building site average width and minimum 4,000 square-foot lots for residential lots. This variance will confirm a reduction of building site average width to 40 feet and 4,000 square-foot minimum lot sizes for residential lots, with minor exceptions to be permitted due to reasonable design considerations or topographic constraints.

- Z-3. **Section 25-4-32. Reduction of building site below minimum area.** Ordinance No. 06 105 permits minimum of 4,000 to 6,000 square feet lots to be created for lots designated to be occupied by a single or 1-dwelling unit on a lot (RS) and duplex or 2 dwellings on a lot (RD) or multiple dwellings on a lot (RM).
- Z-4. **Section 25-4-40. General requirement for yards and open spaces.** Ordinance No. 06 105, requires residential buildings or uses upon sites exceeding 6,000 square feet designated RS, RD, and RM to have a minimum 10-foot front and rear yards and minimum 8 feet side yard(s). This variance clarifies and allows "zero lotline" residential and commercial projects for residential and commercial uses or projects upon minimum 4,000 square feet to 6,000 square feet lots within "Palamanui" and upon any proposed lot within "towncenter" (Exhibit 1), excluding, accessory buildings (e.g. garages) built along alley(s) (Sheet A-1.3 Rev. August 29, 2008) which require a minimum 4-foot minimum yard, etc. (Exhibit 22). The applicant's request for this variance to allow flexible yards and open spaces for commercial uses within the PD or "Palamanui" is approved subject to Ordinance No. 06 105 and UBC-Uniform Building Code and/or the current County Building Code requirements. This variance allows buildings having minimum yards and open spaces consistent with Ordinance No. 06 105 conditions and referenced exhibits. The minimum yards and open yard spaces for building and accessory buildings sited upon lot size within the project district are further clarified and cited below in "Z-7".
- Z-5. **Section 25-4-42. Corner building sites.** Corner or residential building sites are required to have at least one front yard with no rear yards. We have no objection to designating the required yards in the manner as shown on Exhibit 3 of the Variance application which requires one front yard of a corner lot to be designated as a side yard and a rear yard to be established.
- Z-6. **Section 25-4-47. Minimum distance between main buildings on same building site.** The Applicant is requesting that the minimum 15-foot distance between main buildings be waived. We have no objection to this request provided that the minimum distances between main or permitted accessory buildings on same building site shall be subject to the UBC-Uniform Building Code and/or the current County Building Code requirements.
- Z-7. **Section 25-5-7. Minimum yards; Section 25-5-26. Minimum yards; Section 25-5-36. Minimum yards; Section 25-5-46. Minimum yards; Section 25-5-106. Minimum yards; Section 25-5-116. Minimum yards; Section 25-5-126. Minimum yards; Section 25-5-136. Minimum yards; Section 25-5-146. Minimum yards; Section 25-5-156. Minimum yards.** Ordinance No. 06 105, Condition M, designated minimum front yards for lots designated RS, RD, RM, CN, CV, CG within the proposed

subdivision. Applicant is requesting that minimum yard setbacks be waived for all lots within the proposed development with the exception of lots designated for single family, double family and multiple family residential uses. The requested variances to allow flexible yards and open spaces are approved subject to Ordinance No. 06 105 and further subject to UBC-Uniform Building Code and/or the current County Building Code requirements. Note that relief from this minimum requirement shall not conflict with the need to provide landscaping pursuant to Planning Department Rule No. 17.

For lots designated RS, RD, and RM on the Palamanui-Detailed Master Plan, the minimum yards for main buildings are as follows:

Lot Sizes- Minimum 4,000 square feet to 6,000 square feet:

Front yard: Minimum 10'-0" front yard required for lots outside "mixed use commercial area designated on the Palamanui-Detailed Master Plan;  
Rear/Side yards: None required.  
Detached accessory garages along with access from an alley-Minimum-4'-0".

Lot Sizes- Exceeding 6,000 square feet:

Front yard: Minimum 10'-0" front and rear yards required;  
Side yard: Minimum 8'-0" required  
Minimum open yard spaces subject to UBC or current County Building Code requirements.

For lots designated CN, CV, CG, ML, and MG, and lots designated for Open on the Palamanui-Detailed Master Plan, the minimum yards for permitted structures are:

There shall be no minimum yards for proposed bulk lots or lots within "towncenter" (Exhibit 1) and proposed lots abutting "towncenter" (Exhibit 1) streets except as specified as a condition of approval attached to any plan approval.

For lots outside the "towncenter" (Exhibit 1), the minimum yard designation for the adjoining property(s) or lots shall be used as a guide.

Note: Any proposed building(s) and uses upon lots designated RCX, CN, CV, CG, MCX, ML, and MG within Palamanui are subject to review under Plan Approval of the Zoning Code. The variance from minimum yards and open yard spaces does not exempt the owner(s) or uses to provide minimum off-street parking spaces, loading

spaces, and landscaping required pursuant to Plan Approval and Rule 17,  
Landscaping Requirements, pursuant to Chapter 25, Zoning.

In view of above, the specific variances granted to the proposed PD project or "Palamanui" by Ordinance No. 06 105, Condition M, the following variance(s) from **Chapter 23, Subdivisions and Chapter 25, Zoning, are hereby approved** subject to agency reservations for the recent variance site plan map-PPM date July 9, 2008 including references to original and/or revised exhibits submitted for the respective variance applications to guide the proposed PD-subdivision or "Palamanui".

The variance applications-VAR 07-068 and VAR 07-069 were acknowledged by letter(s) dated October 22, 2007. Additional time was required by the applicant and agencies to review revised plans and other submittals including the Palamanui Master Plan affecting both applications. The applicant agreed to extend the decision date on both variance applications to September 12, 2008.

Pursuant to Ordinance No. 06 105 and these foregoing findings, the specific variances requested by the Applicant 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 applications from Chapter 23, Subdivisions (VAR 07-068) and Chapter 25, Zoning (VAR 07-069) submitted by the Applicant/landowner are approved subject to the following variance conditions:

1. The applicant, owner(s), their assigns, or successors shall be responsible for complying with Ordinance No. 06 105 rezoning conditions, VAR 07-068 conditions and VAR 07-069 variance conditions, and subdivision conditions imposed for PD subdivision to permit SUB 07-000695 and associated Palamanui Master Plan approved by the PD.
2. The applicant and owner shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim or demand for the property damage, personal injury or death arising out of any act or omission of the applicant, owner(s), its successors or assigns, officers and agents related to or connected to the variance(s).
3. The applicant-owner shall comply with rezoning conditions and tentative subdivision conditions for proposed SUB 07-000695. The proposed "Palamanui" PD subdivision shall be developed in accordance with the revised preliminary subdivision map dated

July 9, 2008 and/or refined drawings and/or any supplemental drawings and any modification to current exhibits required by the agencies. The subdivision construction plans shall be submitted to the agencies including the Hawaii County Fire Department and other state agencies for review and approval.

4. ROAD VARIANCE. The subdivider, owners, their assigns, or successors understand that the PD-lots arising out of SUB 07-000695 will use and maintain the privately owned road lots and privately owned non-dedicable roadways including any necessary emergency access and/or utility easements on their own without any expectation of governmental assistance to maintain the non-dedicable roadway improvements within roadway lots identified on the subdivisions preliminary plat map and/or any necessary emergency access and/or 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 07-000695. 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 all privately owned roads, 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 of any improvement district adopted for the purpose of roadway improvements serving the proposed lot(s) arising out of SUB 07-000695. Should the improvement district require acquisition of any portion of the privately owned rights-of-way arising out of SUB 07-000695, such rights-of-way shall be dedicated without cost to the County of Hawaii.



Mr. Michael J. Riehm, A.I.A., Principal  
RIEHM OWENSBY PLANNERS ARCHITECTS  
Page 17  
September 10, 2008

5. All roadways shall follow the guidelines incorporated in the Hawaii Statewide Uniform Design Manual for Streets and Highways or the applicable AASHTO design guide for the appropriate design speed.

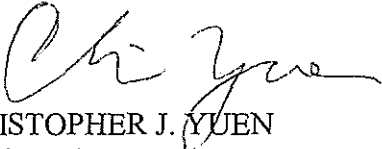
The subdivision application's (SUB 07-000695) preliminary and final plat maps shall meet all the requirements of the Hawaii County Zoning Code and the Subdivision Code not covered by this variance. The owner-developer shall comply with all subdivision conditions and agency requirements prior to approving SUB 07-000695.

6. 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 the subject variance null and void.

Thank you for your understanding and patience during our review.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

WRY/DSA;jlh

PWP60\WRY\FORMLETT\VAR07-068\SUB-ROADWAY;VAR07-069ZC-LOTDESIGN.ROPA-HDLLC.1

xc: DPW-Engineering Branch  
DWS-Engineering Branch  
COH-Fire Department  
SUB 07-000695