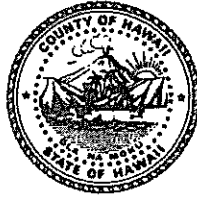


Harry Kim
Mayor



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

May 30, 2008

Mr. Bryan Mims
P. O. Box 1151
Keaau, HI 96749

Dear Mr. Mims:

VARIANCE-VAR 07-089

Applicant: BRYAN MIMS
Owners: BRYAN MIMS, ET AL.
Request: Variance from Chapter 25, Zoning
Minimum Building Site Average Width
Tax Map Key: 3-1-004:035, (SUB 06-000443)

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 07-089 subject to variance conditions. The variance permits proposed 2-lot subdivision (SUB 06-000443) zoned Agricultural, (A-20a), and allows the creation of a lot not meeting the required minimum 500 feet building site average width pursuant to Chapter 25, Zoning, Article 5, Division 7, Agricultural Districts, Section 25-5-75, Minimum building site average width.

BACKGROUND AND FINDINGS

1. **Location.** The referenced TMK property containing 40.00 acres is a portion of Lot 7 Grant 5025 to Joseph H. Moragne, McKenzie Settlement Association Lots, and situated at Kamaee Homesteads, North Hilo, Hawaii.

The property is zoned Agricultural (A-20a) by the County and designated Agriculture or "A" by the Land Use Commission (LUC).

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2. **Subdivision Request/PPM.** The applicant or owner's surveyor (The Independent Hawaii Surveyors, LLC, filed subdivision application (SUB 06-000443) and preliminary plat map (PPM), dated February 20, 2006 proposing to equally subdivide the subject TMK property into two (2) lots (Lot 7-A and Lot 7-B) containing 20.00 acres. The letter addressed to the surveyor, dated November 3, 2006, in the subdivision application file, states in part:

Page 1. "The proposed "rear lot (Lot 7-A) fails to meet the minimum building site average width of 500 feet as required by the Zoning Code. As stated in our letter dated May 24, 2006, the proposed lot does not meet this standard. During a November 2, 2006 telephone conversation between Bryan Mims and Daryn Arai of this office, Mr. Mims indicated that he intends to submit an application for a variance from the minimum building site average width requirements of the Zoning Code."

Page 2. "We also note that the proposed subdivision will utilize a water catchment system to service the proposed lots. Therefore, the applicants should submit an application to seek a variance from the minimum water requirements of the Subdivision Code."

In addition to the above, the November 3, 2006 deferred further action on proposed 2-lot subdivision.

3. **Variance Application-Site Plan.** The applicant filed variance applications, attachments, and filing fee for variances from Chapter 23, Subdivision and Chapter 25, Zoning on December 26, 2007. The variance application (VAR 07-089) from the Zoning Code includes a copy of the PPM dated February 20, 2006, drawn to scale. The PPM indicates that the average width of proposed "Lot 7-A" is less than minimum 500 feet required building site average width pursuant to the Zoning Code.

The applicant's background states in part:

“Width variance: Due to the irregular shape of the property, it would be impossible to meet the minimum width requirement. This parcel is shaped to follow streams for most of the boundaries, approximately a quarter mile long and averages only 325 feet wide for the total length, due to along narrow area between the two wide areas.

Detailed discussion:

- There are two distinct wide areas containing good building sites and agricultural areas. Each wide area, one mauka and one makai, are plenty wide for housing and agricultural purposes (sic).
- The mauka area is (sic) averages 600 feet by 1200 feet and is mostly pasture.
- The mauka area averages 500 feet by 700 feet and is mostly being planted in fruit and nut trees.
- The narrow area between averages 290 feet by 2000 feet.”

Note: The variance site plan map does not identify the location of any buildings or fencing, and landscaping, etc. along or straddling common boundary lines.

4. **County Building Records:**

According to the applicant, a small storage agricultural shed is situated upon subject TMK property.

5. **Agency Comments and Requirements-VAR 07-089:**

- a. The Department of Public Works (DPW) comments or memorandum dated January 9, 2008 states in part:

“NO COMMENTS”

- b. The State Department of Health (DOH) memorandum is dated February 22, 2008 states in part:

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

Mr. Bryan Mims
Page 4
May 30, 2008

6. **Notice to Surrounding Property Owners.** The applicant submitted copy of notice, other submittals, and proof of mailing notice surrounding property owners. According to the applicant's submittals, notice(s) regarding variance(s) were mailed on December 27, 2007 and December 31, 2007 according to mailing receipts affixed to a list. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on December 26, 2007.

Posted Sign/Photographs of Posted Sign: The applicant submitted affidavit regarding posting of sign related to VAR 07-088 and VAR 07-089 dated January 10, 2008 and photograph of posted sign.

7. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written comments or objections from surrounding property owners or the general public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

According to the owner(s), a portion of the subject TMK property was quarried to produce rock, etc. for cane roads needed to access property planted with sugar cane before the demise of the sugar industry. Currently, watercress is being grown and harvested upon the subject TMK property or upon proposed "mauka" lot-Lot 7-B. The owner(s) intend to continue growing watercress and establish orchards and other related agriculture uses, etc.

The applicant's surveyor and owners became aware of the minimum building site average width requirement after submitting proposed 2-lot subdivision application. The building site average width means that figure obtained by dividing the total area of a building site by the maximum depth of the building site measured in the general direction of the side lines. Subsequent to filing the subdivision and letter dated November 3, 2006, the applicant filed variance application (VAR 07-089) requesting variance to permit Lot 7-A to be created with meeting the minimum (500') building site average width including variance application (VAR 07-088) from Chapter 23, Subdivision regarding the proposed subdivision's required water supply and roadway requirements. The variance application's site plan map submitted with both applications is a copy of the subdivision's PPM, prepared by the applicant's surveyor and drawn to scale.

Mr. Bryan Mims

Page 5

May 30, 2008

The resultant property's area and geometry is unusual due to subject TMK property's boundary lines along and shared with 2-50 foot wide road reserves and the boundary line within the middle of Mahimaki Stream and/or along Mahiola Gulch. Proposed Lot 7-A's minimum average building width is approximately 352 feet (871,000.00 s.f./ 2475.00 feet = 352 feet) or say-148 feet below minimum 500 feet average width requirement.

In addition to the above, it appears that the subject TMK property containing 40 acres was created or that Lot 7 existed prior to September 21, 1966. Therefore, Lot 7's minimum average width is (1,742,000 s.f./2475 feet + say-1700 feet (4175 feet) = 417 + feet. Therefore, the subject TMK property or Lot 7's building site average width 417 feet (less than 500 feet), without subdividing, is non-conforming.

ALTERNATIVES

Alternatives available to the applicant to correct and/or address the lot's geometry include the following action:

Consolidation of the subject TMK property or Lot 7 with adjoining properties to modify the property lines to create a property which can be equally subdivided into 2 lots; and, meeting minimum 500 feet average building width.

INTENT AND PURPOSE

The intent and purpose of requiring lots to meet a minimum average width is to create a consistent land pattern and assure that building sites are adequate to assure that minimum yards, and buildings have access to light, air circulation, etc.

Lot 7's geometry is unusual. Proposed Lot 7-A's minimum average width is approximately 512 feet (871,000 s.f./ Say-1700 feet + 512 feet); and, proposed Lot 7-B's minimum average width is approximately 352 feet. Notwithstanding Lot 7's unusual geometry and non-conformity, given the minimum area required for each lot (20.00 acres) and noting that proposed Lot 7-A's minimum average lot width is 512 + feet and proposed 7-B's minimum average lot width is 352 feet, the Planning Director feels that resultant buildable areas within proposed lots or subdivision are more than adequate to construct a dwelling or farm buildings necessary for agriculture activities and uses.

Mr. Bryan Mims

Page 6

May 30, 2008

Therefore, in view of the property's unusual geometry and application's background and findings including the nature of the subdivision, the Planning Director feels that the applicant's or subdividers request for variance is reasonable to allow proposed 2-lot subdivision (SUB 06-000443) and allow proposed Lot 7-B containing minimum 20.00 acres having minimum 352 feet average width and that the variance application can be approved and created by variance.

The variance application was acknowledged by letter dated December 18, 2007 and additional time was required by the applicant to send notices to surrounding property owners regarding concurrent variance applications related to proposed 2-lot subdivision of the subject TMK property. The applicant agreed for an extension of time to May 31, 2008 to complete the variance background report and render a decision on the variance application concurrently with applicant's request for variance from subdivision.

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 request 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.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

This variance application is **approved** subject to the following variance conditions:

1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns 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 applicants/owners, their successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.

Mr. Bryan Mims

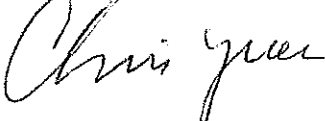
Page 7

May 30, 2008

3. No permit shall be granted to allow an ohana dwelling or building permit issued to allow construction of an "ohana" dwelling shall be granted to the subject TMK property or lots created by proposed 2-lot subdivision application (SUB 06-000443), subject to provisions of the Zoning Code or State Law which may change from time to time.
4. Future or new building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare subject Variance null and void.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

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xc: Real Property Tax Office-(Hilo)