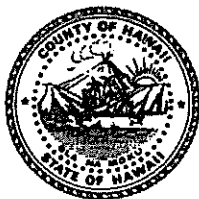


Harry Kim
Mayor



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

March 13, 2008

Mr. Gregory R. Mooers, President
MOOERS ENTERPRISES, LLC
P. O. Box 1101
Kamuela, HI 96743

Dear Mr. Mooers:

SUBJECT: VARIANCE-VAR 08-002

Representative: MOOERS ENTERPRISES, LLC

Applicants: TOOMAN FAMILY TRUST, ET AL.

Owners: TOOMAN FAMILY TRUST, ET AL.

**Request: Variance from Chapter 23, Subdivisions,
Improvements Required**

Tax Map Key: 6-2-009:026, (SUB 05-000187)

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 08-002 subject to variance conditions. The variance permits alternative road improvements to be constructed for proposed 2-lot subdivision (SUB 05-000187) of subject TMK property. The variance permits construction of alternative non-dedicable roadway improvements in lieu of non-dedicable roadway improvements required by Tentative Approval (TA) letter dated March 6, 2007. The variance is from the TA subdivision conditions and Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-88, Nondedicable street; private dead-end street, and Section 23-95, Right-of-way improvement.

BACKGROUND

1. **Location.** The referenced TMK property, Lot 26 containing 5.312 acres, being portion of R.P. 2237, L.C. Aw. 8518-B, Ap.1 to James Young Kanehoa, is situated at Ouli, South Kohala, Hawaii.

MAR 18 2008

Mr. Gregory R. Mooers, President
MOOERS ENTERPRISES, LLC
Page 2
March 13, 2008

2. **Zoning.** The subject property is zoned Residential and Agricultural Districts (RA-2a) by the County and designated Rural "R" by the State Land Use Commission (LUC). The subject TMK property is subject to Ordinance No. 05 120 and rezoning conditions effective August 25, 2005.
3. **Subdivision Request/PPM.** The owner's submitted subdivision application (SUB 05-000187) proposing to subdivide subject TMK property into 2-lots. The application's preliminary plat map (PPM) was granted tentative approval (TA) on March 6, 2007 subject to TA conditions including access and roadway requirements (TA-Condition 2).
4. **Variance Application.** The applicant's representative filed a variance application-VAR 08-002 on behalf of the owners. The variance application was acknowledged by Planning Department letter dated January 25, 2008. The variance application's background report states in part:

Page 2:

"This property is zoned RA-2a, and is comprised of 5.312 acres. The two families that own the property would like to subdivide the parcel and eliminate the existing CPR that allowed the construction of a single-family residence on each of the proposed lots eighteen (18) years ago.

The homes were constructed eighteen years ago and have continuously occupied since that time. The existing 10-foot wide driveway has adequately served these two lots for this period. When the subject property was redistricted from Agricultural to Rural and rezoned from A-5a to RA-2a conditions were applied. One of those conditions required the owners to record deed covenants that prohibit the construction of a second dwelling on either of the two proposed lots. A copy of that covenant is enclosed as an exhibit. This covenant guarantees that there will never be an increase in density and assures that this 10-foot wide road will continue to serve only the existing two single-family homes."

Mr. Gregory R. Mooers, President
MOOERS ENTERPRISES, LLC
Page 3
March 13, 2008

5. **Agency Comments and Requirements: VAR 08-002:**

- a. The State Department of Health (DOH) memorandum dated February 5, 2008 states:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."
- b. The Department of Public Works (DPW) memorandum dated February 5, 2008 states in part:

"We reviewed the subject application and have no comments or objections to the requested variance."
- c. The County of Hawaii Fire Department (HFD) memorandum dated February 5, 2008 states:

"We have no comments to offer at this time in reference to the above-mentioned Variance application request."

6. **Notice to Surrounding Owners/Posted Sign.** The applicant's representative submitted copy of notice and other attachments showing notice was mailed to surrounding property owners to the Planning Department. According to these submittals and US mail postal receipts affixed to list of surrounding property owners, the notice was mailed on February 6, 2008.

Posted Sign: The applicant's representative submit an affidavit dated February 9, 2008 regarding posting of sign and pictures of a sign posted "on the property".

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.

Mr. Gregory R. Mooers, President
MOOERS ENTERPRISES, LLC
Page 4
March 13, 2008

ALTERNATIVES/SPECIAL AND UNUSUAL CIRCUMSTANCES

Lot Access/Roadways. The first alternative requires the subdividers to construct access and roadway improvements pursuant to the TA letter dated March 6, 2007, Condition No. 2 which states:

- "2) Access and Roadway Improvements
 - a) For the proposed Access Easement "A-1", construct minimum 12-ft. wide nondedicable pavement, conforming to DPW Std Det R-39.
 - b) Submit construction plans for review and comment."

The second alternative acknowledges the subject TMK property and proposed subdivision can utilize the access and private roadway (paved driveway) upon access and utility easement "A-1" on proposed "LOT 26-B".

INTENT AND PURPOSE OF THE SUBDIVISION CODE

Variance from Access/Roadway. 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 proposed subdivision is zoned rural-agricultural and subject to rezoning conditions. Access to the proposed subdivision is via access from Kanehoa Street and common 10 foot wide (approximately 430 feet) driveway within a 25 feet wide "pole" and other driveway(s) denoted on variance application's site plan map for both dwellings. Both dwellings on the subject TMK property (without subdividing) access Kanehoa Street utilizing 10 foot wide paved common driveway within the 25 feet wide "pole" of the subject TMK property constructed approximately 18 years ago or upon proposed "LOT 26-B". Given the rezoning conditions and limitations to limit the number of dwellings constructed upon subject TMK property to the dwelling already constructed upon proposed Lot "26-A" and Lot "26-B", there should be no adverse impact by allowing privately addressed and maintained by users or proposed lot owner(s).

Mr. Gregory R. Mooers, President
MOOERS ENTERPRISES, LLC
Page 5
March 13, 2008

proposed 2-lot subdivision and existing dwellings to continue using existing privately owned paved 10 feet wide driveway or roadway within access and utility easement "A-1". Road maintenance to maintain existing 10 feet wide paved roadway including shoulders within the 25 feet wide access and utility easement "A-1" will be continued to be

Therefore, based on the representations made by the applicant's representative and evaluation of access to the property utilizing a paved 10 feet wide driveway or roadway within the "pole" of the subject TMK property and other paved driveway improvements denoted on the proposed lots of the proposed subdivision, the Planning Director has concluded that variance to delete tentative subdivision condition "2)" or access and roadway improvements recommended by the DPW and required by the TA letter dated March 6, 2007 are not necessary and can be deleted subject to variance and variance conditions.

The variance application was acknowledged by letter dated January 25, 2008 and additional time was required to review agency comments. The applicant's representative granted the Planning Director additional time to consider agency comments and render decision on the variance application to March 21, 2008.

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 to allow a proposed 2-lot subdivision of the subject TMK property and delete access and roadway condition stipulated by tentative subdivision letter dated March 6, 2007, 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.

Mr. Gregory R. Mooers, President
MOOERS ENTERPRISES, LLC
Page 6
March 13, 2008

2. ROAD VARIANCE. The subdivider, owners, their assigns, or successors understand that the 2-lots arising out of SUB 05-000187 will use and maintain the access and paved roadway upon easement "A-1" on their own without any expectation of governmental assistance to maintain the access or paved roadway or driveway improvements identified on the subdivisions preliminary plat map or upon "A-1" and/or 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 05-000187. 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 any 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 05-000187. Should the improvement district require acquisition of any portion of the privately owned rights-of-way arising out of SUB 05-000187, such rights-of-way shall be dedicated without cost to the County of Hawaii.

Mr. Gregory R. Mooers, President
MOOERS ENTERPRISES, LLC

Page 7

March 13, 2008

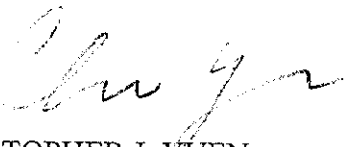
- b. The future lot owner(s) agree to participate in any road maintenance agreement or/and pay their fair share to maintain the existing access and paved roadway with easement "A-1".

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.

3. The subdivision application (SUB 05-000187) and final plat map shall meet remaining conditions pursuant to tentative subdivision letter dated March 6, 2007, and requirements of the Hawaii County Zoning Code and the Subdivision Code not covered by this variance. No other variances from Chapter 23, Subdivisions, shall be granted to permit subdivision application SUB 05-000187.
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.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

Mr. Gregory R. Mooers, President
MOOERS ENTERPRISES, LLC
Page 8
March 13, 2008

xc: DPW-Engineering Branch
SUB 05-000187