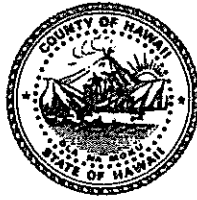


Harry Kim
Mayor



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 8, 2008

Mr. Sidney Fuke
Planning Consultant
100 Pauahi Street, Suite 212
Hilo, HI 96720

Dear Mr. Fuke:

VARIANCE-VAR 08-009

Representative: SIDNEY FUKU, PLANNING CONSULTANT

Applicant: PUAKO BAY INVESTORS, LLC

Owner: PUAKO BAY INVESTORS, LLC

Request: Variance from Chapter 23, Subdivisions

Tax Map Key: 6-9-002:001 and 002, (SUB 07-000662)

After reviewing your variance application, the Planning Director approves Variance-VAR 08-009 subject to variance conditions. The variance is from minimum road improvements for proposed subdivision (SUB 07-000662) required by Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-86, Requirements for dedicable streets, Section 23-93, Street lights, and Section 23-95, Right-of-way improvement.

BACKGROUND

1. **Location.** The subject TMK property(s) containing an aggregate area of approximately 6.71 acres, being portion of Grant 4856 to John Hind and Grant 10,644 to Ichiro Goto, are situated at Lalamilo, South Kohala, Hawaii.
2. **Zoning.** The subject property(s) are zoned Resort (V-1.25) by the County and designated Urban ("U") by the State Land Use Commission (LUC). The subject TMK property(s) or proposed subdivision is within the Special Management Area (SMA); and abuts the shoreline.

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SMA 07-000016. Pursuant to letter dated September 21, 2007, the Planning Commission at its dully held public hearing on August 31, 2007, voted to Special Management Area (SMA) Use Permit (SMA 07-000016) to allow the development of an 8-lot single-family residential subdivision and related improvements subject to SMA conditions effective August 31, 2007.

In addition, the letter dated September 21, 2007 (Page 5) states in part:

“The proposed development is consistent with the County General Plan and the Zoning Code. The General Plan Land Use Pattern Allocation Guide (LUPAG) Map establishes the basic urban and non-urban form for areas within the County. The subject area is designated Low Density Urban. The property is zoned Resort-1,250 square feet (V-1.25). Single family dwellings are permitted in the Resort-zoned district. Thus, the proposed development is consistent with the LUPAG Map designation and the Zoning Code.

Access to the project is proposed from Puako Beach Drive, a County-owned and maintained roadway with an approximately 18 to 20-foot pavement with inconsistent improved and unimproved paved/gravel/grass shoulder, all within a right-of-way of approximately 40 feet. As an alternative, the applicant may pursue a land and easement acquisition with the Department of Land and Natural Resources for a parcel of land (TMK: 6-9-1:15) located between the two subject parcels for access purposes.”

3. **Subdivision Request/PPM.** The owner’s agent-Imata & Associates, Inc. submitted subdivision application (SUB 07-000662) which included a preliminary plat map (PPM) dated September 4, 2007 denoting 12-lots (8-Building Lots, 2-Drainage Lot(s), 1-Buffer Area Lot, and 1-Roadway Lot A) Further action on subdivision application (SUB 07-000662) and preliminary plat map (PPM) dated September 4, 2007 was deferred according to letter dated November 7, 2007 in the subdivision file. The November 7, 2007 letter states in part:

“By a copy of this letter, we are forwarding the application and preliminary plat map to the listed officers for their review and comments. Please be advised that we are deferring action on the referenced application until all listed officers’ comments are received.”

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4. **Variance Application.** The variance application submitted by owner's representative or planning consultant-Sidney Fuke was acknowledged by Planning Department letter dated March 4, 2008. The representative's background information states in part:

“B. Requested Variance”

Final subdivision approval of this subdivision is subject to meeting a number of requirements, one of which is the construction of a County dedicable standard road per Section 23-86 (Requirements for dedicable streets) and 23-95 (Right-of-way improvement) of the Subdivision Code. A section of this type of improvement can be found in **Figure 4**.

The private road intended to serve the proposed 8 lots would have a 50-foot wide right-of-way with a 20-foot wide urban standard pavement. The grades and curves of this road will comply with Section 23-50. The applicant has no intention of having this road dedicated to the County and, as such, Section 23-86 (Requirements for dedicable streets) should not be applicable. However, the applicant's proposal cannot comply with Section 23-95 relating to right-of-way improvements, and this is the subject of this relief (variance) request.”

Note: “**Figure 4**” submitted by the applicant is a drawing or diagram of typical roadway section of proposed non-dedicable paved roadway and shoulder and landscaping improvements within and upon “Road Lot A” denoted on the PPM dated September 4, 2007.

To summarize, the developer proposes to construct non-dedicable roadway improvements consisting of a 20-foot wide paved roadway, 2-15-foot wide landscaped shoulder(s) including 5-foot grassed swales within a 50 foot wide within and upon privately owned cul-de-sac road lot (Road Lot A) including security gates and landscaped island within the terminus pursuant to alternative subdivision construction plans submitted for agency approval.

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The applicant seeks to depart from having to pave 15-foot wide shoulders on either side of the 20-foot pavement of the roadway required pursuant to Section 23-95, etc.

All of the roads in the proposed subdivision, including the one for which this variance is being sought shall remain private, and shall be maintained by the homeowners association.

5. **Agency Comments and Requirements: VAR 08-009:**

- a. The State Department of Health (DOH) memorandum dated March 10, 2008 states.

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

- b. The County of Hawaii Fire Department memorandum is dated March 13, 2008. Refer to COH-HFD memorandum in variance file.

- c. The Department of Public Works (DPW) memorandum dated May 5, 2008 states in part:

“We reviewed the subject application and have the following comments:

The subdivision roads are to be privately owned and maintained.

As required by SMA 07-000016, any common vehicular security gate shall be minimum of 40 feet (exclusive of gate swing) from the right of way line with a turnaround on the Puako Beach Drive side of the common gate.”

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6. **Notice to Surrounding Owners/Posted Sign.** The applicant copy of notice/map sent to surrounding property owners, and list of property owners and affidavit dated May 5, 2008. According to these submittals, the notice is dated March 10, 2008 and was mailed on "March 10".

Posted Sign: The applicant submitted sign affidavit dated March 5, 2008 and photographs of posted sign.

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 owners or developer to construct roadway improvements stipulated by DPW memorandum or comments dated December 7, 2007, for the PPM in the subdivision file which states in part:

- "8. Proposed Roadway Lot A shall be improved in accordance with HCC, Section 23.95.1, applicable to resort subdivisions.
9. §23-79. Submit construction plans and drainage report for review and comment.
 - a. §23-92. Additional storm runoff due to development shall be disposed within the subdivision and shall not be discharged onto adjacent properties or roadways.
 - b. §23-93. Install streetlights/signs/pavement markings as required by the Traffic Division."

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Note: Pursuant to letter dated September 21, 2007, the subject area is designated Low Density Urban by the General Plan Land Use Pattern Allocation Guide (LUPAG) Map. Therefore, pursuant to Chapter 23, Subdivisions, the proposed project is not classified or defined as a "Resort subdivision"; and, dedicable road improvements are required for the proposed subdivision and built within and upon proposed Road Lot A pursuant to Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-86, Requirements for dedicable streets, Section 23-93, Street lights, and Section 23-95, Right-of-way improvement.

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 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 applicant's background information states in part:

"The intent of requiring full improvements within the right-of-way is to minimize the cost of its maintenance by the County. Having the entire right-of-way paved minimizes erosion to the edge of road pavement as well as well as reduces the control of any landscaping or unwanted weeds creeping into the paved section. While that may be understandable for a public road, the proposed road would be PRIVATELY owned, where the issues commonly associated with public have a responsibility to maintain this private road, a responsibility that would be outlined in a deed restriction affecting all of these lots. Hence having landscaping beyond the road and within the balance of the right-of-way would not generate any public burden."

In view of the information submitted by the applicant and findings above, the Planning Director has concluded that dedicable roadway improvements required for proposed subdivision are not required; and, there should be no adverse impact to the surrounding areas by allowing the owners or subdivider to construct non-dedicable roadway including landscaped shoulders within proposed Road Lot A. Maintenance of the proposed non-dedicable paved roadway and shoulder improvements including gates, etc, will be addressed and shared among the lot owners and/or users.

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Therefore, given the unusual circumstances regarding the nature of the variance and consideration of the property's access via the County owned Kawaihae-Puako Road and condition and width of the paved roadway and shoulders fronting proposed subdivision, the Planning Director has concluded that the dedicable roadway improvements required for proposed subdivision (SUB 07-000662) are not necessary or required; and, that non-dedicable access or alternative non-dedicable road and shoulder improvements including landscaping shoulders, gates, and other landscaped features can be constructed in accordance with alternative subdivision plans reviewed by the agencies. These non-dedicable roadways including landscaping and gates, etc. with Road Lot A will be privately maintained by the owners or users.

The subject variance application was acknowledged by letter dated March 4, 2008. Additional time was required to allow the owner's representative to submit additional information background information. The applicant granted the Planning Director additional time to render decision of the variance application to May 16, 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 subdivision of the subject TMK property without constructing dedicable roadway improvements 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 variance conditions of approval including SMA 07-000016 and SMA conditions.
2. Submit roadway or subdivision plans to construct non-dedicable roadway improvements and other subdivision improvements for agency review and approval.

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3. ROAD VARIANCE. The subdivider, owners, their assigns, or successors understand that the lots arising out of SUB 07-000662 will use and maintain the proposed privately owned road lot on their own without any expectation of governmental assistance to maintain proposed roadway improvements constructed upon proposed road lot or "Road Lot A" and intersection improvements identified on the subdivisions preliminary plat map including other necessary access and utility easement(s) within 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 07-000662. The developer or owners of the proposed subdivision shall form an Homeowner or Road Association or include 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 SUB 07-000662 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:

- 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 this existing private utility and access easement. 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 07-000662. Should the improvement district require acquisition of any privately owned rights-of-way fronting the lots arising out of SUB 07-000662, 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.

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- b. The future lot owner(s) agree to participate in any road maintenance agreement or/and pay their fair share to maintain proposed non-dedicable roadway and appurtenances constructed upon "Roadway Lot A".

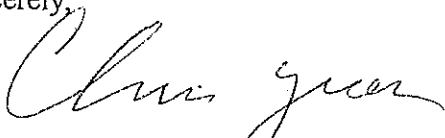
In the event that there are any amendments or changes to the subdivision after the agreement is signed, the applicant shall be responsible for informing the County Planning Department of such amendments or changes so that the agreement can be amended concomitantly. Further, the written or recorded agreement 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.

4. The proposed subdivision and Final Plat Map submitted for proposed subdivision (SUB 07-000662) shall meet all the requirements and conditions of SMA 07-000016, Hawaii County Zoning Code, and Subdivision Code not covered by this variance. No other variances from Chapter 23, Subdivisions, shall be granted to permit subdivision application SUB 07-000662.
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.

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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

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xc: DPW-Engineering Branch
DWS-Engineering Branch
SUB 07-000662