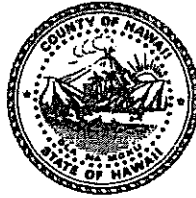


Harry Kim
Mayor



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 21, 2008

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

Dear Mr. Mooers:

VARIANCE-VAR 08-011

Applicant: GREGORY R. MOOERS
Owners: FRANCIS A. RUDDLE, ET AL.
Request: Variance from Chapter 23, Subdivisions
Tax Map Key: 6-6-004:113, (SUB 06-000466)

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 08-011 subject to variance conditions. The variance is from minimum road improvements for proposed subdivision (SUB 06-000466) required by Chapter 23, Subdivisions, Article 3, Division 4, Section 23-48, Cul-de-sacs, Article 6, Division 2, Improvements Required, Section 23-86, Requirements for dedicable streets, Section 23-88, Non-dedicable street; private dead-end street, Section 23-93, Street lights, and Section 23-95, Right-of-way improvement.

BACKGROUND

1. **Location.** The referenced TMK property containing approximately 49,645 square feet, is Lot 46 of Lalamilo House Lots, Second Series (H.T.S. PLAT 416), being the whole of Grant S-13860 to Frederick Charles Gross and Gwendolyne Mavis Gross, and situated at Lalamilo, South Kohala, Hawaii.
2. **Zoning.** The subject property is zoned Single-Family Residential (RS-10) by the County and designated Urban "U" by the State Land Use Commission (LUC).

MAY 21 2008

3. **Subdivision Request/PPM.** The owner's agent, Crystal Thomas Yamasaki, LPLS or Wes Thomas Associates, submitted subdivision application (SUB 06-000466) proposing to subdivide subject TMK property (Lot 46) into two 2-lots (Lot 46-A and Lot 46-B). Further action on the subdivision application and the application's preliminary plat map (PPM) is being deferred according to letter dated October 31, 2007 in the subdivision file.
4. **Variance Application.** The subject variance application was acknowledged by Planning Department letter dated March 4, 2008. The applicant's submitted background information and site photographs of the privately owned roadway and subject TMK property containing approximately 49,645 square feet.

The applicant's background information (Pages 1) states in part:

"Wes Thomas Associates submitted the subdivision application and the preliminary plat map dated August 7, 2006. The Planning Director deferred action on October 31, 2007, to allow resolution of the DPW comments on this access drive. DPW requested the applicants to construct 32-ft. wide pavement, with curbs, gutters and sidewalks within a 50-ft. right of way conforming to Standard Details R-32 and R-34. You suggested we seek variances from Section 23-86 and 23-95 of the subdivision code. These provisions of the code refer to dedicable streets. This lot is one of six that utilizes a 20-ft pavement (sic) within a 20-ft right of way. We believe that this is the standard established in section 23-88, Nondedicable street; private dead-end street. We believe a variance from the number of lots served by this standard street from six to seven will accomplish our goal of subdividing the subject property as proposed."

5. **Agency Comments and Requirements: VAR 08-011:**
 - 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."

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- b. The County of Hawaii Fire Department memorandum is dated March 17, 2008. (Refer to COH-HFD in variance file).
- c. The Department of Public Works (DPW) memorandum dated May 1, 2008 states in part:

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

- 1. The applicant should provide a turnaround for the private culdesac serving the subdivision access easement. We defer to the Hawaii Fire Department regarding a recommended (sic) turnaround geometry. No vehicular security gate should be allowed unless a turnaround is located on the public road side of the gate.
 - 2. From the photographs, it is apparent that the pavement is in poor condition and should be resurfaced.
 - 3. In this location, Kawaihae-Waimea Road is under the jurisdiction of the Hawaii Department of Transportation (HDOT). Comments and requirements concerning this road should be obtained from the HDOT.”
6. **Notice to Surrounding Owners/Posted Sign.** The applicant submitted letter dated March 14, 2008, copy of notice/map sent to surrounding property owners, and list of property owners with affixed postal receipt. According to these submittals, notice was mailed to surrounding property owners on March 14, 2008.
- Posted Sign:** The applicant submitted sign affidavit dated March 15, 2008 and pictures of posted sign upon subject TMK 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.

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ALTERNATIVES/SPECIAL AND UNUSUAL CIRCUMSTANCES

Lot Access/Roadways. The first alternative requires the owners or subdividers to construct roadway improvements stipulated by DPW memorandum or comments dated December 11, 2006, which state in part:

- “3. Access from Kawaihae Road to §23-88. The number of lots served by the existing Access Easement exceeds the maximum allowed by the code for a nondedicable street standard
 - a. §23-86/§23-95. Construct minimum 32-ft wide dedicable pavement with concrete curbs, gutters and sidewalks within a minimum 50-ft wide easement, conforming with DPW Standard Details R-32 and R-34.
 - b. §23-48. Construct dedicable turnaround conforming to DPW Standard R-32.
4. §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.
5. §23-80. The DPW defers to the Hawaii Department of Transportation (HDOT) for access requirements onto Kawaihae Road.”

Subsequent to the receipt of the above DPW memorandum, the Planning Department's letter dated October 31, 2006 in the subdivision file states in part:

“Please be advised that the Department of Public Works (DPW) has commented that the access from Kawaihae Road is via an existing substandard Access Easement and that the number of lots served by said Access Road is via an existing substandard Access Easement and that the number of lots served by said

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Access Easement exceeds the maximum allowed by Section 23-88 of the Subdivision Code. DPW recommends the construction of a minimum 32-ft. wide dedicable pavement with concrete curbs, gutters and sidewalks within a minimum 50-ft. wide easement, conforming with DPW Standard Details R-32 and R-34.

As such, to gain relief from the above requirement, a variance from Article 6, Division 2, Sections 23-86 and 23-95 of Chapter 23 (Subdivision) of the County Codes, must be applied for and secured from this department (sic)"

The applicant's variance application and background information states in part;

"One alternative would be not subdivide the subject property. This action will in no manner decrease the traffic on the access drive or reduce the number of homes that are currently served by the access drive. This alternative will prevent the owners from leaving a subdivided home and lot to their children.

We believe that the most viable alternative is to continue to use the same roadway (driveway) that has been utilized for the last fifty years with no adverse impacts to the owners or the neighbors.

Thus the limitation of the maximum number of lots to be served by a nondedicable private dead-end street would be creating excessive demands on the petitioners when a more reasonable alternative is available."

Note: In addition, the DPW comments or requirements for dedicable roadways also triggers and requires dedicable intersection road improvements to be constructed at intersection of the dedicable roadway with Kawaihae-Waimea Road meeting State-DOT requirements.

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.

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The applicant's background information states in part:

"The subject property was a part of an original subdivision in the 1950s, over 50-years ago. The home on proposed in lot 46-B was built in 1959 and the ohana house built on proposed lot 46-A was completed in 1969 and they have been continuously occupied since that time. This proposed subdivision was initiated to subdivide the property with one home on each of the proposed new lots to allow the applicants to give one home and lot to each of their adult children as part of their estate planning. The applicants have been sharing the existing 20-ft. wide paved private dead-end street access to their houses with their neighbors for nearly 50-years with no negative impacts or any difficulty. The proposed subdivision action will not add any additional homes or any additional traffic to the existing access drive."

The status of property access and status of ownership of the privately owned and/or publicly owned network of rights-of-way within this neighborhood district was created in the late 1950s and prior to adoption of the 1967 Zoning and Subdivision Codes by the County of Hawaii. The dwellings constructed upon subject TMK property (without subdividing) currently access Kawaihae-Waimea Road via a privately owned and maintained paved roadway upon utility and access easement identified on the subdivision application's PPM. Therefore, the Planning Director has concluded that dedicable roadways required by the DPW/State-DOT for proposed 2-subdivision are not required; and, there should be no adverse impact by allowing the proposed subdivision to continue using the privately owned roadway upon the access and utility easement created in the late 1950s. Road maintenance for the paved roadway upon existing privately owned access and utility easement upon proposed lot "46-B" will be continued to be privately addressed and shared among the current owners and users.

Therefore, based on the representations made by the applicant and evaluation of current access and to subject TMK property or proposed 2-lot subdivision including the adjoining properties, the Planning Director has concluded that the DPW comments to construct dedicable roadway improvements are not necessary or required to permit the proposed 2-lot subdivision; and that access within the subdivision or physical access between proposed subdivision to Kawaihae-Waimea Road will be addressed privately by the subdividers and/or maintained privately by users.

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The subject variance application was acknowledged by letter dated March 4, 2008. Additional time was requested by the applicant to incorporate agency comments into the variance background report. The applicant agreed to an extension of time and granted the Planning Director additional time to render decision on the variance application to on or before May 23, 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 application to allow alternative non-dedicable roadway improvements to be constructed in lieu of dedicable roadway improvements required for proposed 2-lot subdivision (SUB 06-000466) 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 to construct non-dedicable turnaround and roadway improvements to widen existing driveway to minimum 18 feet upon existing easements for agency review and approval.
3. ROAD VARIANCE. The subdivider, owners, their assigns, or successors understand that the 2-lots arising out of SUB 06-000466 will use and maintain the privately owned road and utility easement on their own without any expectation of governmental assistance to maintain the existing access or roadway improvements within the privately owned access and utility easement identified on the subdivisions preliminary map or approved final plat map or any other necessary access and utility easement(s) within the proposed subdivision.

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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 06-000466. The proposed lots 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 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 06-000466. Should the improvement district require acquisition of any privately owned rights-of-way fronting the lots arising out of SUB 06-000466, 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.

- b. The future lot owner(s) agree to participate in any road maintenance agreement or/and pay their fair share to maintain existing access and utility easements.

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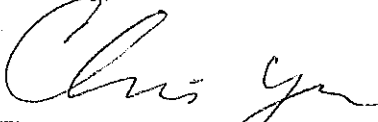
In the event that there are any amendments or changes to the subdivision after the agreement is signed, the applicant shall be responsible for informing the County Planning Department of such amendments or changes so that the agreement can be amended concomitantly. Further, the written or recorded agreement 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 subdivision application's (SUB 06-000466) final plat map shall meet all the 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 06-000466.
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

WRY/DSA:cs
P\WP60\WRY\FORMLETT\VAR08-01\SUBROADWAYAPP.MOOERS-RUDDLE

xc: DPW-Engineering Branch
DWS-Engineering Branch
SUB 06-000466