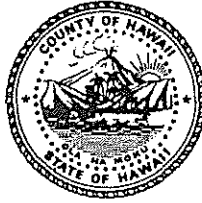


William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

County of Hawai'i

PLANNING DEPARTMENT

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

December 30, 2009

Sandra P. Song, Esq.
Sandra P. Song, Attorney at Law
10 Kamehameha Avenue
Hilo, HI 96720

Dear Ms. Song:

SUBJECT: VARIANCE-VAR 08-057

Representative: SANDRA P. SONG, Attorney at Law

Owner: HAMAKUA LAND & CATTLE, LLC

**Request: Variance from Chapter 25, Zoning
Minimum Building Site Average Width**

Tax Map Key: 2-8-009:047 and 048, (SUB 07-000519)

After reviewing variance application submitted by owner, the Planning Director certifies the approval of Variance-VAR 08-057 subject to variance conditions. The variance permits proposed 3-lot subdivision (SUB 07-000519) or proposed lot(s) zoned Agricultural (a-20a) to be created without meeting minimum building site average width requirement pursuant to Chapter 25, Zoning, Article 5, Division 7, Agricultural Districts, Section 25-5-75, Minimum building site average width.

BACKGROUND

1. **Location.** The referenced TMK property(s), being Lot 49 and Lot 50 consisting of 62.299 acres, Kaupakuea Farms Subdivision, being portion of R.P. 1654, L.C. Aw. 2289 to Kauhola and portion of Grant 872 to Emma Metcalf are situated at Kapehu, South Hilo, Hawaii.

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2. **Zoning.** The subject TMK properties are zoned Agricultural (A-20a) by the County and designated Agriculture "A" by the State Land Use Commission (LUC). The TMK parcels including roadway easement were created by subdivision (SUB 7685) circa 2003.
3. **Subdivision Request/PPM.** The applicant's surveyors submitted subdivision application (SUB 07-000519) and preliminary plat map (PPM) dated December 21, 2006 on January 26, 2007 proposing to subdivide subject TMK property into 3-lots. Further action on the subdivision application is being deferred pursuant to letters dated March 16, 2007 and August 31, 2007 in the subdivision file.
4. **Variance Application.** The applicant's representative submitted variance application from Chapter 25, Zoning on September 17, 2008. The variance application includes following information dated September 2, 2008::

"The purpose of this additional application is to request a variance for the minimum average lot width of proposed lots 50-A and 50-B. The existing improved road provides a convenient well established "boundary" to all three lots. This existing improved road is clearly the best way to create a boundary and access between the divided properties."

Note: According to an earlier staff calculation in the subdivision file regarding the PPM, it appears that the minimum building site average width or "MBSAW" for proposed LOT 50-A and LOT 50-B and proposed flag-lot-LOT 49-A were calculated as follows: "375.00" (LOT 50-A), "375.57" (LOT 50-B); and, proposed flag-lot (LOT 49-A) is " \pm 610".

5. **County Building Records:**

According to the PPM submittal and other County records there are no buildings or structures constructed upon subject TMK properties.

6. **Variance Application (VAR 08-057)-Agency Comments and Requirements:**

- a. The State Department of Health (DOH) memorandum is dated September 25, 2008 states:

"There are no additional concerns to those made previously."

7. **Notice to Surrounding Owners.** The owner's representative filed a transmittal letter dated October 2, 2008 regarding mailing of notice, list of surrounding property owner(s) of subject TMK property including list of surrounding property owners with affixed mailing receipt dated October 8, 2008. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on September 30, 2008.

Posted Sign. The owner's original representative submitted a photograph dated September 29, 2008 of sign posted upon subject TMK property.

8. **Comments from Surrounding Property Owners or Public.** No other agency comments were received. No objection letters from surrounding property owners or public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The subject TMK properties, zoned Agricultural (A-20a), were created by subdivision (SUB 7685) in 2003. The owners are requesting subdivision of parcel "047" (Lot 50 containing 31.219 acres) and parcel "048" (Lot 49 containing 31.08 acres) including a road and utility easement, containing 0.826 acre, upon Lot 50 as access for Lot 49 are requesting a 3 lot subdivision (SUB 07-000519) of Lot 50 and Lot 49 into Lot 49-A (22.229 acres), Lot 50-A (20.050 acres) and Lot 50-B (20.020 acres). The location or position and entire area of the road and utility easement upon Lot 50 originally created in 2003 will be incorporated into the "pole" of proposed Lot 49-A's access to Lauhulu Road.

Property or proposed lots zoned Agricultural (A-20a) require a minimum 500 feet minimum building site average width pursuant to Chapter 25, Zoning. The building site average width means that figure obtained by dividing the total area of a building site by

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the maximum depth of the building site measured in the general direction of the side lines.

The owners became aware of the minimum building site average width issue or requirement for proposed Lot 50-A and Lot 50-B during a meeting with the Planning Director on or about August 25, 2008 regarding subdivision improvements required for the proposed 3-lot subdivision pursuant to Chapter 23, Subdivisions. Pursuant to this meeting, the current owners or owner's representative was directed and required to file variance to permit proposed "LOT 50-A" and "LOT 50-B" without meeting the minimum 500 feet building site average width requirement. The site plan map filed or submitted with both variance applications from Chapter 23 and Chapter 25 utilize the proposed 3-lot subdivision's PPM dated December 21, 2006 prepared by a surveyor.

After reviewing the PPM, it appears that the width or subareas of TMK: 2-8-009:048 or "LOT 50" abutting or along the current roadway easement upon "LOT 50" created in 2003, without subdividing, are less than 500 feet or approximately 375 feet. The proposed 3-lot subdivision will result in the creation of 2-proposed lots "LOT 50-A" and "LOT 50-B" each calculated to have approximately 375 feet +/- average lot width in lieu of the minimum 500 feet average width required.

ALTERNATIVES

Alternatives available to the applicant to augment the subject TMK property's geometry or property's width along the right-of-way include the following action:

Consolidation of the subject TMK property with abutting subject TMK properties to modify the property lines to create property which can be equally subdivided into lots meeting minimum lot size and geometry meeting minimum feet average building width, etc.

INTENT AND PURPOSE

The intent and purpose of requiring lots to meet a minimum average width is to create a consistent land pattern and building sites with proper lot geometry to locate and accommodate buildings and permitted uses meeting minimum yards including access to light, air circulation, safety, etc.

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According to the final plat map in subdivision file (SUB 7685) the subject TMK parcels (i.e. 047 being Lot 49 and 048 being Lot 51) and easement upon Lot 50 properties frontage along and position of the easement upon both current TMK properties was permitted by an earlier subdivision circa 2003. Given the current circumstances limiting the location of building improvements upon "LOT 50", without subdividing, the Planning Director feels that the proposed lots and resulting buildable areas upon proposed Lot 50-A and Lot 50-B abutting the proposed "pole" of LOT 49-A will have adequate buildable areas to accommodate any farm dwelling and water catchment building improvements.

Therefore, in view of TMK property's unusual geometry and other unusual circumstances created by the subdivision in 2003 including other findings, the Planning Director feels that the owners or representative's request for variance is reasonable to allow proposed 3-lot subdivision (SUB 07-000519) of the subject TMK properties resulting in the creation of 2 proposed lots ("LOT 50-A" and "LOT 50-B") each having a minimum building site average width of approximate 375 feet which still abuts original roadway or easement area entirely incorporated into the "pole" or access to the proposed third lot ("LOT 49-A").

The request for variance and variance application was acknowledged by letter dated February 4, 2009 and additional time was required by the representative to submit further information and other variances requested to permit proposed 3-lot subdivision. The owner's current representative granted the Planning Director an extension of time to render a decision on the variance application.

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.

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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.
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 upon lots created by proposed 3-lot subdivision application (SUB 07-000519), 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-VAR 08-057 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

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xc: Real Property Tax Office-(Hilo)
SUB 07-000519