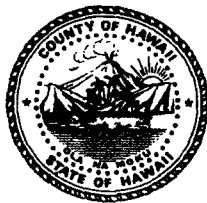


William P. Kenoi
Mayor



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

July 13, 2009

Steven S. C. Lim, Esq.
CARLSMITH BALL LLP
121 Waianuenue Avenue
Hilo, HI 96720

Dear Mr. Lim:

SUBJECT: VARIANCE-VAR 09-010

Applicant: STEVEN S.C. LIM, ESQ

Owners: GREG NELSON, ET AL.

**Request: Variance from Chapter 25, Zoning
Minimum building site average width**

Tax Map Key: 9-4-005:004, (SUB 09-000864)

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 09-010 subject to variance conditions. The variance permits proposed 2-lot subdivision (SUB 09-000864) of property zoned Agricultural (A-20a) without requiring proposed lots to meet minimum building site average width. The variance is from Chapter 25, Zoning, Article 5, Division 7, A, Agricultural Districts, Section 25-5-75, Minimum building site average width.

The Planning Director has concluded that the variance application to permit proposed subdivision or creation of a lot not meeting minimum building site average width can be **approved** based on the following findings:

BACKGROUND

1. **Location.** The referenced TMK property, containing approximately 40.261 acres, being Lot 9-A of Kiolakaa-Keaa Homesteads Lots (Registered Map No. 2176), being the Whole of Grant 7996 to M. P. Lorenzo, is situated at Puueo, Kau, Island and County of Hawaii.

JUL 21 2009

2. **Zoning.** The subject property is zoned Agricultural (A-20a) by the County and designated Agriculture "A" by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** The applicant or subdivider submitted a subdivision application (SUB 09-000864) and revised preliminary plat map (PPM) proposing to subdivide subject TMK property into 2-lots. Further action on the subdivision application is being deferred pursuant to letter dated April 24, 2009 in the subdivision file.
4. **Variance Application.** The applicant submitted a variance application requesting variance from minimum building site average width to permit 2-lot subdivision on March 10, 2009. The variance application submittals include background information or report (March, 2009) consisting of 4 pages including referenced exhibits and maps regarding status of uses and buildings constructed upon the property and other unusual circumstances regarding proposed 2-lot subdivision.
5. **Variance Application-VAR 09-010-Agency Comments and Requirements:**
 - a. The State of Hawaii Department of Health (DOH) memorandum dated May 12, 2009 states:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."
 - b. The Hawaii Fire Department (HFD) memorandum dated May 15, 2009 states:

"We have no comments to offer at this time in reference to the above-mentioned Variance application request."
6. **Notice to Surrounding Owners.** The applicant submitted copy of notices sent to surrounding property owner(s) within 500 feet of subject TMK property and affidavits dated May 15, 2009 and June 23, 2009 indicating notices were mailed to surrounding property owners on May 12, 2009 and June 22, 2009, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on May 15, 2009.

Posted Sign. The applicant submitted an affidavit dated April 14, 2009 regarding signs posted upon subject TMK property and photograph of the posted signs.

7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received and no objections were received from surrounding property owners or public.

Therefore, after considering the applicant's variance application and variance background information including status or nature of the proposed 2-lot subdivision, it is felt that there are special or unusual circumstances applying to subject TMK property which exist either to a degree which deprives the applicant or owners of property rights that would otherwise be available or to a degree which obviously interferes with the best use or manner of development of the subject property.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant or owners became aware of the minimum building site average width requirement after submitting proposed 2-lot subdivision application (SUB 09-000864). 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.

Concurrently with filing of proposed subdivision, the applicant filed variance applications to address the proposed subdivision's water supply from Chapter 23, Subdivisions and minimum building site average width from Chapter 25, Zoning. The variance application's site plan map from minimum building site average width is the PPM prepared by a surveyor.

In addition to applicant's background information, without subdividing, the 800 feet frontage along Lorenzo Road or approximate width of the subject TMK property or average lot width of Lot 9 (say 800 feet +/-) is more than the minimum 500 feet (200 feet + 300 feet) building site average width required by the Zoning Code for the subject TMK property zoned Agricultural or A-20a. Further, in addition to the subject TMK property (Lot 9) having frontage along Lorenzo Road (East), Lot 9 also shares boundaries with a 20 feet wide "Roadway Easement" and 50 feet wide "U.S.E.D. Road" (West). However, since the subject TMK property or Lot 9 currently derives access via Lorenzo Road, the proposed 2-lot subdivision will result in the creation of a new lot or proposed "LOT 9-A-2" or "flag lot" with an access drive or "pole" to Lorenzo Road having a 397 +/- feet average lot width according to the Zoning Code's "lot width" formula, i.e. $878,823 \text{ square feet} / 2212 \text{ feet (longest side yard measured from Lorenzo Road)} = 397 \text{ +/- feet average width}$. However, the usable "flag" portion of proposed "flag lot" LOT 9-A-2" denotes a minimum width of approximately 796 +/- feet.

Steven S. C. Lim, Esq.
CARLSMITH BALL LLP
Page 4
July 13, 2009

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:

Subdivision of the subject TMK property or consolidation with adjoining properties and subsequent subdivision to modify the property lines to create property allowing a subdivision which can be equally subdivided into lots meeting minimum average building width (500 feet) required for property or subdivision zoned A-20a.

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 accommodate buildings and permitted uses including access to light, air circulation, etc.

Pursuant to the background information and findings, the subject TMK property current frontage along Lorenzo Road, without subdividing, exceeds minimum 500 feet building site average required for property zoned A-20a. Given that subject TMK property is improved with permitted and "un-permitted structures" and nature of the subdivision, the Planning Director feels that both lots created by the proposed 2-lot subdivision will result in lots have adequate buildable areas to accommodate dwelling and water catchment building improvements.

Therefore, after considering the property's unusual building history, nature of the subdivision, and other circumstances cited by the applicant, the Planning Director feels that the applicant or commissioner's request for variance is reasonable to allow proposed 2-lot subdivision (SUB 09-000864) to permit subdivision of the subject TMK property resulting in the creation of a lot (LOT 9-2-A) not having at least 500 feet minimum building site average width.

The applicant's variance application was acknowledged by letter dated May 7, 2009 and additional time to confirm posted signs and incorporate other submittals into Planning Department files. The applicant or applicant's representative granted the Planning Director an extension of time to render decision on the variance application to July 17, 2009.

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 detrimental to the

Steven S. C. Lim, Esq.
CARLSMITH BALL LLP
Page 5
July 13, 2009

public's welfare and will not cause substantial adverse impact to the area's character and to adjoining properties.

VARIANCE DECISION-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.
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 2-lot subdivision application (SUB 09-000864), 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 stated conditions not be complied with, the Planning Director may proceed to declare Variance-VAR 09-010 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

WRY:mad

P:\WP60\WRY\FORMLETT\VAR09-010 ZCMINBLDGSITEAWEWIDTH .NELSON-CBLP

Steven S. C. Lim, Esq.
CARLSMITH BALL LLP
Page 6
July 13, 2009

xc: SUB 09-000864