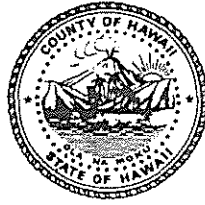


William P. Kenoi
Mayor



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

April 29, 2010

Mr. Scott Nakahara
S. Nakahara, LLC
45-3290 Ohia Street
Honoka'a, HI 96727

Dear Mr. Nakahara:

SUBJECT: VARIANCE APPLICATION – VAR-09-053
Applicant: Bolton Engineering Corporation
Owners: S. Nakahara, LLC
**Request: Variance from Chapter 23, Subdivisions, Article 3,
Design Standards, and Article 6, Improvements.**
TMK: 6-5-007:006, (Subdivision 08-000821)

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 09-053 (VAR-09-053), subject to variance conditions. The applicant requests a variance to permit proposed 2-lot-subdivision (SUB 08-000821) of above referenced TMK property without constructing minimum access and roadway improvements required by Chapter 23, Subdivisions. The applicant specifically requests variance from Hawaii County Code, Chapter 23, Subdivisions, Article 3, Design Standards, division 4, section 23-41, Minimum right-of-way and pavement widths, Section 23-45, Intersection angles: corner radius, Section 23-48, Cul-de-sacs, Article 6, Improvements Required, Section 23-86, Requirements for non-dedicable street: escrow maintenance fund.

BACKGROUND AND FINDINGS

1. **Location:** The subject property, consisting of approximately 32,475 square feet of land, being a portion of Grant 7307 to George Lindsey, portion of Waimea homesteads, is situated at South Kohala, Hawai'i.

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2. **Zoning:** The subject property is zoned Village Commercial – 7,500 square feet (CV-7.5) by the County and designated Urban or “U” by the State Land Use Commission (LUC).
3. **Subdivision Application/PPM.** The Applicant, on behalf of the owners, submitted a revised preliminary plat map (PPM) for the proposed subdivision (SUB-08-000821). The revised preliminary plat map (PPM) is dated October 28, 2010.
4. **Variance Application:** The Applicant, on behalf of the owners, is seeking variance from the required subdivision’s roadway requirements for the revised preliminary plat map pursuant to DPW memorandum dated December 3, 2009 in the subdivision file (SUB-08-000821). The variance application and attachments were received by our office on November 2, 2009.

5. **Variance Application (VAR: 09-053)-Agency Comments and Requirements:**

- a. The State Department of Health (DOH) memorandum dated November 24, 2009 states:

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

- b. The Department of Public Works (DPW) Memorandum dated December 3, 2009 states:

“We reviewed the subject application and our comments are as follows:

The applicant provides no detailed written explanation of the purpose or nature of the request.

1. From our 2007 photo log, it appears that the approach is existing and shared with the adjacent parcel TMK: 6-5-007:047 for their outbound traffic. We recommend the approach to the flagpole of the subject subdivision be used for outbound movements only to avoid conflicts between the outbound traffic from parcel 47 and inbound traffic. The inbound traffic should be limited to one a shared approach on the east frontage of TMK 6-5-007:047. This circulation pattern should be shown on any construction plans or site plans for Plan Approval and be implemented by using signs, markings and traffic islands as needed.

2. The southbound approach to Kawaihae Road appears to be too close to the west property line to avoid conflict with a utility pole and a water meter and should be provided with a setback. The applicant should show the pavement return to Kawaihae Road assuming a future 3-lane configuration on Kawaihae Road assuming a future 3-lane configuration on Kawaihae Road (2 through lanes and a center two-way left turn lane). Hold a 5 foot minimum edge of pavement setback from the face of the pole.
 3. The turnaround geometry appears to encroach in the parking spaces. The turnaround should be reviewed and approved by HFD.
 4. The subdivision access (alley) shall not be eligible for conveyance to the County.
 5. If required by DPW, the owner/applicant shall install streetlights, signs and markings.
 6. No vehicular security gate shall be allowed within 35 feet of Kawaihae Road right-of-way.
 7. Access to Kawaihae Road, including the provision of adequate sight distances, shall meet with the approval of DPW, Chapter 22, Streets and Sidewalks, of the Hawaii County Code and County Standards details R-37 and R-38. All sight distances shall meet the minimum recommended by AASHTO. Kawaihae Road, fronting the subject property, is a 60-foot wide County road.
 8. All development generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties. A drainage study shall be prepared, and the recommended drainage system shall be constructed meeting with the approval of DPW. The drainage plan shall include topography and/or a grading plan.
 9. All earthwork and grading shall conform to Chapter 10, erosion and sediment control, of the Hawaii County Code.”
- c. The Department of Water Supply Memorandum dated December 10, 2009 states:

We have reviewed the subject variance application and our comments are as follows.

We have no objections to the proposed request, as the request will not affect the Department’s existing water system facilities. However, the applicant shall be informed, through a copy of this letter, that the water system for the pending

subdivision shall be designed and constructed in accordance with the Department's Water System Standards and Rules and Regulations.

Should there be any questions, please contact Mr. Ryan Quitarano of our Water Resources and Planning Branch at 961-8070, extension 256.

- d. The Hawaii Fire Department Memorandum dated December 14, 2009 states:

"In regards to the above-mentioned Variance application, the following shall be in accordance:

Fire apparatus access roads shall be in accordance with UFC Section 10.207:

"Fire Apparatus Access Roads

"Sec. 10.207. (a) General. Fire apparatus access roads shall be provided and maintained in accordance with the provisions of this section.

"(b) Where Required. Fire apparatus access roads shall be required for every building hereafter constructed when any portion of an exterior wall of the first story is located more than 150 feet from fire department vehicle access as measured by an unobstructed route around the exterior of the building.

EXCEPTIONS: 1. When buildings are completely protected with an Automatic fire sprinkler system, the provisions of this section may be Modified.

"2. When access roadways cannot be installed due to topography, waterways, nonnegotiable grades or other similar conditions, the chief may require additional fire protection as specified in Section 10.301 (b).

"3. When there are not more than tow Group R, Division 3 or group M Occupancies, the requirements of this section may be modified, provided In the opinion of the chief, fire-fighting or rescue operations would not be impaired.

"More than one fire apparatus road may be required when it is determined by the chief that access by a single road may be impaired by vehicle congestion, condition of terrain, climatic conditions or other factors that could limit access.

"For high-piled combustible storage, see Section 81.109.

“(c) **Width.** The unobstructed width of a fire apparatus access road shall meet the requirements of the appropriate county jurisdiction.

“(d) **Vertical Clearance.** Fire apparatus access roads shall have an unobstructed vertical clearance of not less than 13 feet 6 inches.

“**EXCEPTION:** Upon approval vertical clearance may be reduced, provided such reduction does not impair access by fire apparatus and approved signs are installed and maintained indicating the established vertical clearance.

“(e) **Permissible Modifications.** Vertical clearances or widths required by this section may be increased when, in the opinion of the chief, vertical clearances or widths are not adequate to provide fire apparatus access.

“(f) **Surface.** Fire apparatus access roads shall be designed and maintained to support the imposed loads of fire apparatus and shall be provided with a surface so as to provide all weather driving capabilities.” (20 tons)

“(g) **Turning Radius.** The turning radius of a fire apparatus access road shall be as approved by the chief.” (45 feet)

“(h) **Turnarounds.** All dead-end fire apparatus access roads in excess of 150 feet in length shall be provided with approved provisions for the turning around of fire apparatus.

“(i) **Bridges.** When a bridge is required to be used as access under this section, it shall be constructed and maintained in accordance with the applicable sections of the Building Code and using designed live loading sufficient to carry the imposed loads of fire apparatus.

“(j) **Grade.** The gradient for a fire apparatus access road shall not exceed the maximum approved by the chief.” (15%)

“(k) **Obstruction.** The required width of any fire apparatus access road shall not be obstructed in any manner, including parking of vehicles. Minimum required widths and clearances established under this section shall be maintained at all times.”

“(l) **Signs.** When required by the fire chief, approved signs or other approved notices shall be provided and maintained for fire apparatus access roads to identify such roads and prohibit the obstruction thereof or both.”

Water supply shall be in accordance with UFC Section 10.301(c):

“(c) **Water Supply.** An approved water supply capable of supplying required fire flow for fire protection shall be provided to all premises upon which buildings or portions of buildings are hereafter constructed, in accordance with the respective county water requirements. There shall be provided, when required by the chief, on-site fire hydrants and mains capable of supplying the required fire flow.

“Water supply may consist of reservoirs, pressure tanks, elevated tanks, water mains or other fixed systems capable of providing the required fire flow.

“The location, number and type of fire hydrants connected to a water supply capable of delivering the required fire flow shall be protected as set forth by respective county water requirements. All hydrants shall be accessible to the fire department apparatus by roadways meeting the requirements of Section 10.207.

6. **Notice to Surrounding Property Owners/Posted sign.** The applicant’s agent submitted copy of notice mailed on November 25, 2009 to the surrounding property owners within “the 300-foot perimeter boundary of the Subject Property.”

Posted Sign: The applicant’s agent submitted an affidavit dated April 21, 2009 regarding a posting of required sign and photographs of the posted sign.

7. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or general public were received by the Planning Department.

ALTERNATIVES/SPECIAL AND UNUSUAL CIRCUMSTANCES

Lot Access/Roadways: The first alternative requires the subdivision to construct “Access and roadway improvements” pursuant to Chapter 23, subdivisions, Article 3, Design Standards, Division 4, Section 23-41, Minimum right-of-way and pavement widths, Section 23-45, Intersection angles; corner radius, Section 23-48 Cul-de-sacs, Article 6, improvements, Division 2, Improvements Required, Section 23-86, Requirements for non-dedicable streets; escrow maintenance fund.

The access to the proposed subdivision is via Kawaihae Road (County owned and maintained Right-of-Way). The applicant is requesting a variance to permit construction of alternative “non-dedicable” paved roadways, light fixtures, and signage, etc. within the

privately-owned right-of-way or proposed roadway lot within the pending subdivision. The developer or owners will construct a privately-owned "non-dedicable" roadway system meeting "the minimum standards for right-of-way and pavement widths" in accordance with alternative subdivision construction plans. The upkeep and maintenance of these privately-owned subdivision improvements will be borne by the owners.

INTENT AND PURPOSE OF THE SUBDIVISION CODE

Roadway Variance: The intent and purpose of access requirements to a proposed subdivision are to ensure legal and physical access to the proposed lots that is clearly defined and accessible from a public road by domestic vehicles, police, fire, and other service vehicles under various weather conditions without constant maintenance.

The subject property is a flag lot off of Kawaihae Road in Waimea (behind Hayashi Store/Hawaiian Style Café). The proposed subdivision and adjoining areas are of mixed uses, commercial and residential.

The subject property is a flag lot off of Kawaihae Road in Waimea (behind Hayashi Store/Hawaiian Style Café). The proposed subdivision and adjoining areas are of mixed uses, commercial and residential. The Planning Director finds that the applicant's proposed alternative "non-dedicable" infrastructure improvements and design goals for the proposed subdivision's roadway can meet the intent and purpose of Chapter 23, Subdivisions. To this end, the applicant or subdivider will install "non-dedicable" access and roadway, alternative lighting, street signage, and other roadway improvements; in accordance with alternative subdivision construction plans that are reviewed and approved by the agencies. Maintenance of the completed non-dedicable subdivision improvements will be privately addressed and paid for by the owners.

The subject variance application was acknowledged by letter dated November 12, 2009. The applicant agreed to extend the decision date to on or before May 10, 2010.

Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district and the intents and purpose 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 roadway improvements to be constructed in lieu of certain roadway improvements stipulated by Department of Public Works dated

December 3, 2009 to permit proposed 2-lot subdivision (SUB 08-000821) 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 for agency review and approval.
3. ROAD VARIANCE. The subdivider, owners, their assigns, or successors understand that the lots arising out of SUB 08-000821 will use and maintain the privately-owned non-dedicable paved road and "pull-out" including any necessary emergency access and/or utility easements within the proposed subdivision on their own without any expectation of governmental assistance to maintain the non-dedicable paved roadway improvements within easements identified on the subdivisions preliminary or approved final plat map and/or any necessary emergency access and/or 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 08-000821. 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 the privately-owned non-dedicable road/pull-out, including shoulders, swales, and associated 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 08-000821. Should the improvement district require acquisition of any portion of the privately owned rights-of-way arising out of SUB 08-000821, such rights-of-way shall be dedicated without cost to the County of Hawai'i.

- b. The subdivision application's (SUB 08-000821) final plat map shall meet all the requirements of the Hawaii County Zoning Code and the Subdivision Code not covered by this variance.

As a further condition of this variance, the director may require safety improvements at the intersection of the non-dedicable road with Kawaihae Road intersection as recommended by DPW.

- c. Along with construction drawings for the roadways using grassed drainage swales and shoulders, or prior to submitting full construction drawings, the applicant shall submit an engineer's report showing that the shoulders and swales will be stable and not erode or wash out during storm water flow conditions considering the grades and soil conditions. The report shall be reviewed by DPW. The Planning Director, in consultation with DPW, may require paving, stabilization, or alternative shoulder and swale treatment to take care of any erosion problems. The road maintenance association or equivalent shall be responsible for continual maintenance and upkeep of the shoulders and swales. The applicant shall ensure adequate sight distance and roadside clear zones.
4. The subdivision application's (SUB-08-000821) final plat map shall meet all the requirements of the Hawai'i 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-08-000821.
 5. The subdivider, owner(s), their assigns or successors shall 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.

Scott Nakahara
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April 29, 2010

Thank you for your understanding and patience during our review.

Sincerely,

A handwritten signature in black ink, appearing to read "BJ Leithhead Todd". The signature is written in a cursive, flowing style.

BJ LEITHEAD TODD
Planning Director

LHN:kwr

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xc: Planning Department-Kona Office
Real Property Tax Office (Kona)