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Director

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County of Hawai'i

PLANNING DEPARTMENT

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February 15, 2011

Mr. Niels Christensen, L.P.L.S.
The Independent Hawaii Surveyors, LLC
P. O. Box 577
Hilo, HI 96721

Dear Mr. Christensen:

SUBJECT: VARIANCE PERMIT-VAR 10-034

Applicant: THE INDEPENDENT HAWAII SURVEYORS, LLC
Owner: FONGPO WU AND ZHENG SUI WANG
**Request: Variance from Chapter 23, Subdivisions,
Improvements Required,**
Tax Map Key: 2-2-041:055, (SUB 09-000927)

After reviewing your variance application, the Planning Director certifies the approval of Variance-10-034 subject to variance conditions. The variance permits alternative access and roadway improvements for the proposed two (2) lot subdivision (09-000927). The variance is from Hawai'i County Code, Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-88, Nondedicable street, dead-end street, and Section 23-95, Right-of-way improvement.

The Planning Director has concluded that the variance from the minimum subdivision roadway improvement requirements be **approved** based on the following findings:

BACKGROUND

1. **Location.** The subject property, contains approximately 21,780 square feet of land area, being Lot 11-A, situated at Waiakea Homesteads House Lots, Waiakea, South Hilo, Hawai'i.

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2. **Zoning.** The subject property is zoned Single Family-Residence – 10,000 square feet (RS-10) by the County and designated Urban (“U”) by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** The applicants/owners submitted a subdivision application (SUB-09-000927) and preliminary plat map (PPM), dated November 16, 2009, proposing to subdivide subject property into two (2) lots.
4. **Variance Application.** The applicant submitted the variance application on or about October 11, 2010. The variance concerns the use of the existing driveway constructed along the north side of the residence.
5. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum is dated November 3, 2010 (refer to memorandum in variance file).
 - b. The Hawai‘i County Fire Department memorandum dated November 8, 2010 (refer to memorandum in variance file).
 - c. No comments were received by the Department of Public Works (DPW) as of this date.
6. **Notice to Surrounding Owners/Posted Sign.** The applicant submitted a copy of a notice sent to a list of surrounding property owner(s), and other submittals. Pursuant to these submittals, it appears that the applicant’s notice was mailed to the surrounding property owners by USPO on November 9, 2010. In accordance with Ordinance No. 05-135, the applicants submitted a notarized affidavit, dated January 26, 2011, and photographs to confirm posting of required sign. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on November 5, 2010.
7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received and no objections were received from surrounding property owners or the public.

ALTERNATIVES/SPECIAL AND UNUSUAL CIRCUMSTANCES

The variance seeks relief from conditions 3 c) and e) of the subdivision Tentative Approval.

There are no other reasonable alternatives in resolving the difficulty of the applicant. The first alternative requires the applicant to construct the following access and roadway

improvements in accordance to following the tentative approval letter condition dated January 21, 2010:

- 3) c. For Easement RU-A, construct minimum 12-ft. wide non-dedicable pavement within a minimum 16-ft wide right-of-way conforming to Std Det. R-34. Where grades are 8% or greater, the roadway section shall be paved per Std. Det. R-34.
- 3) e. Submit construction plans and drainage report for review and approval.

Considering the foregoing issues, there are special and unusual circumstances applying to the subject property which exist either to a degree which deprives the applicant of substantial property rights that would be available or to a degree which obviously interferes with the highest and best use or manner of development of the property.

The second alternative acknowledges that the existing paved driveway or access easement along the northern boundary of the subject property is adequate access to accommodate the 2-lot subdivision.

INTENT AND PURPOSE - ROAD VARIANCE

The intent and purpose of road/access requirements to a proposed subdivision is to ensure legal and physical access to the proposed lots that are 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 subject property is presently being accessed by a paved (concrete) driveway consisting of 8 feet of pavement within a ten foot wide setback between the house and a side property line. The applicant is seeking relief from Items 3c) and 3e) of the Tentative approval letter dated January 21, 2010 by allowing access to the lots be allowed via a 10 foot wide easement and the existing pavement as shown on the Preliminary Plat map dated December 28, 2009.

The applicant has stated, "To move the driveway to the south boundary would:

- a) Be impractical since parking and access (doors) for the existing house is from the north side.
- b) Be expensive, to remove existing pavement and construct a new paved driveway along the south boundary.
- c) Require the relocation of the fire hydrant be at the southeast corner of the property".

In view of the condition of the existing 10-foot wide access easement upon the subject property, there should be no adverse impact by allowing the proposed two (2) lot subdivision to access and use the existing driveway. Road maintenance for the existing driveway will be privately addressed and shared among the current owners and users.

Therefore, based on the information submitted by the applicant's agent and evaluation of the existing paved access easement by the Planning Department, the Planning Director has concluded that the tentative approval condition requiring the subdivider to construct non-dedicable road improvements upon the subject property is not necessary and can be deleted by variance subject to variance conditions. Condition "3" still requires the applicant or subdivider to submit drainage report to the DPW for review and comment prior to issuance of final subdivision approval.

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.

The subject variance application was acknowledged on November 1, 2010. Additional time was requested by the Planning Department to complete the variance background report requirements. The applicant granted an extension of time to render a decision on the variance application to February 28, 2011.

VARIANCE DECISION-CONDITIONS

VARIANCE-10-034, concerning the applicant's request to allow the proposed two-lot subdivision of the subject property without constructing dedicable road improvements required by the County DPW **is hereby approved subject to following variance conditions:**

General Conditions

1. The applicant, owners, their assigns, or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant or subdivider and all grantees, successors, and assigns acknowledge that the parcel was created by a variance from the normal subdivision requirements of Hawai'i County, and that there are no special or unusual circumstances applying to the property, which deprive the owner of substantial property rights, or to a degree which obviously interferes with the best use or manner of development of the property, and

hence, no grounds exist, or will exist, for a variance from the subdivision code to permit further subdivision of the property, and that changes in the owner's personal or financial situation after acquiring the property also will not constitute grounds for a variance from the subdivision code to permit further subdivision of the property.

3. No condominium property regime (CPR) shall be permitted on any lots created by SUB 09-000927.
4. No Planning Department or Building Division permit will be issued to allow construction of an ohana dwelling on the subject property or upon lots created by proposed subdivision, subject to provisions of the Zoning Code or State Law, which may change from time to time.
5. The subdivision application's (SUB 09-000927) final plat map shall meet with all the conditions of this variance and/or the Hawai'i 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 09-000927.
6. 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.

Road Variance Conditions:

1. The subdivider, owners, their assigns, or successors understand that the 2-lots arising out of SUB 09-000927 will use and maintain the privately owned roadways and/or necessary easement(s) on their own without any expectation of governmental assistance to maintain the existing access driveway improvement within and upon "Easement RU-A" identified on the subdivisions preliminary plat map or any other necessary access and utility easement(s) within the proposed subdivision.
2. The current owner(s) or future owner(s) of the lots created by the proposed subdivision (SUB-09-000927) agree to participate in any current Homeowner or maintenance agreement or pay their fair share to maintain the current access driveway.

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Should any of the foregoing stated conditions not be complied with, the Planning Director may proceed to declare the subject Variance Permit null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

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xc: Real Property Tax Office (Hilo)
Manager-DWS
DPW - Engineering Division
SUB 09-000927