

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

March 23, 2011

Mr. Sidney Fuke, Planning Consultant
100 Pauahi Street, Suite 212
Hilo, HI 96720

Dear Mr. Fuke:

SUBJECT: Application: VARIANCE – VAR 10-056
Agent: MR. SIDNEY FUKU, PLANNING CONSULTANT
Applicant: HAWAII BREWERY DEVELOPMENT CO., INC.
Owner: HAWAII BREWERY DEVELOPMENT CO., INC.
Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required
Tax Map Key: 1-6-141:024, (SUB 10-000986)

After reviewing your variance application, the Planning Director certifies the approval of Variance – VAR 10-056 subject to variance conditions. The variance permits proposed 3-lot subdivision (SUB 10-000986) to be created without providing access and roadway improvements, identified by the Department of Public Works and required by Tentative Approval letter dated November 29, 2010. The variance is from Hawai'i County Code, Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required. The Planning Director has concluded that a variance application from the roadway requirements for the proposed subdivision be **approved** based on the following findings:

BACKGROUND

1. **Location.** The subject property, comprising approximately 7.82 acres, being Lot 9722, Land Court application 1053, is situated at Keaau, Puna, Hawai'i.

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2. **Zoning.** The subject property is zoned Family-Agriculture – 2 acres (FA-2a) 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 10-000986) proposing to subdivide the subject property into three (3) lots and a revised preliminary plat map (PPM), dated July 21, 2010.
4. **Variance Application.** The variance application and request for variance from roadway requirements, to permit the proposed subdivision, was acknowledged by Planning Department letter dated February 1, 2011. This variance application includes background history, circumstances and information regarding the pending subdivision application.
5. **Agency Comments and Requirements:**
 - a. The State of Hawai‘i Department of Health (DOH) memorandum is dated February 3, 2011. Refer to memorandum in variance file.
 - b. Hawai‘i County Fire Department (HFD) memorandum is dated February 10, 2011. Refer to memorandum in variance file.
 - c. The Department of Public Works (DPW) memorandum is dated February 24, 2011. Refer to memorandum in variance file.
6. **Public Notice.** The applicant submitted copy of notices sent to surrounding property owners, including affidavit stating notices were sent or mailed to surrounding property owners by U.S.P.S. According to the affidavit, notice(s) were mailed by the applicant to a list of surrounding property owners on February 9, 2011. Notice of this application was published in the Hawai‘i Tribune Herald and West Hawai‘i Today on February 7, 2011. The applicant submitted an affidavit, dated February 9, 2011, regarding sign posted on the subject property and photograph of the posted sign.
7. **Comments from Surrounding Property Owners or Public.**
 - a. Objection letter dated February 23, 2011 sent by Keisuke Horiike, Hawaiian Solo Company.

- b. Objection letter dated February 16, 2011 sent by David G. Schell, GM, Kea'au Operations, Island Princess Macadamia.
- c. Objection letter dated February 24, 2011 sent by Peter & Judi Houle.
- d. Support letter dated March 1, 2011 signed by Rick Hadley, Chairman and CEO, Hawaiian Springs, LLC.

ALTERNATIVES/SPECIAL AND UNUSUAL CIRCUMSTANCES

Lot Access/Roadways.

The subdivider has been requested to construct access and roadways pursuant to an earlier DPW memorandum dated September 24, 2010, or roadway requirements pursuant to Chapter 23, Subdivisions. The subject property currently has access to Volcano Road (a public roadway) via Shipman Road (a private roadway) and Slaughter House Road (a private access).

In lieu of improving or constructing roadways required by the DPW memorandum the owners contend that the existing paved private roadways are sufficient access to the subject property. The additional 2 lots to be created by the proposed subdivision will create minimal additional impact.

The owner is requesting a variance not to construct roadway improvements, specifically by allowing the retention of the existing private 22-24 foot roadway from Volcano Road to the site and without having to improve the shoulders and swales within a 50-ft. wide right-of-way conforming to Std. Detail R-34 and street lights. The variance is also to permit the existing 18-foot paved road within the project area to be deemed sufficient as it meets with the requirement of Section 23-88 (Non-dedicable Street; private dead-end street) of the Subdivision Code. Furthermore the application seeks relief from providing a professional engineer's certification or certified as-built plans for said roadways.

INTENT AND PURPOSE

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.

Therefore, given the circumstances cited by the applicant and evaluation of the request to improve the existing roadway, required by the Department of Public Works memorandum dated

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September 24, 2010, the Planning Director has concluded that the current roadways (Shipman and Slaughter House Roads) are sufficient access to the subject property.

Given the circumstances cited by the applicant's representative, the request for variance from roadway requirements, at this time, 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, it is felt that this variance 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 February 1, 2011. 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 March 25, 2011.

VARIANCE DECISION – CONDITIONS

The variance application, to allow alternative roadway improvements to be constructed/retained in lieu of certain roadway improvements stipulated by Department of Public Works dated September 24, 2010, to permit proposed 3-lot subdivision (SUB 10-000986) 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. **ROAD VARIANCE.** The subdivider, owners, their assigns, or successors understand that the three (3) lots arising out of SUB 10-000986 will use and maintain the privately-owned road, and/or any other necessary easement(s), on their own, without any expectation of governmental assistance to maintain the existing privately-owned access or roadway improvements within Shipman and Slaughter House Roads identified on the subdivisions preliminary plat map, or any other necessary access and utility easement(s) within or upon proposed lots or 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 10-000986. 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 Hawai'i 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 Hawai'i or County of Hawai'i from any and all liability arising out of vehicular access to and from the subject property utilizing this existing private utility and access easement.
 - b. Upon written demand of the County of Hawai'i, 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 10-000986. Should the improvement district require acquisition of any privately-owned rights-of-way fronting the lots arising out of SUB 10-000986, 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.
 - c. The future lot owner(s) agree to participate in any road maintenance agreement or/and pay their fair share to maintain the roadway. 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.
3. The subdivision application's final plat map for proposed 3-lot subdivision shall meet all the requirements of the Hawai'i County Zoning Code and the Subdivision Code not covered by this variance.
 4. 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.

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Should any of the foregoing stated conditions not be complied with, the Planning Director may proceed to declare subject Variance – VAR 10-056 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

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xc: DPW – Engineering Division
SUB 10-000986

LAND COURT SYSTEM



R-388

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

JUL 06, 2011 12:00 PM

Doc No(s) 2011-105528

AFTER RECORDATION, RETURN BY

Sidney M. Fuke
100 Pauahi Street, Suite 212
Hilo, Hawai'i 96720



/s/ NICKI ANN THOMPSON
REGISTRAR

20 1/1 Z1

THIS DOCUMENT CONTAINS 3 PAGES

TITLE OF DOCUMENT:

ROAD VARIANCE AGREEMENT

PARTY TO DOCUMENT:

**HAWAII BREWERY DEVELOPMENT CO., INC., whose mailing address is
1240 Ala Moana Boulevard, Suite 315 Honolulu, Hawai'i 96814**

PROPERTY DESCRIPTION:

Tax Map Key: (3) 1-6-141: 024

ROAD VARIANCE AGREEMENT

HAWAII BREWERY DEVELOPMENT CO., INC., whose mailing address is 1250 Ala Moana Boulevard, Suite 315, Honolulu, Hawai'i 96814 (hereinafter referred to as "Subdivider"), hereby agrees to the following stipulations and covenants in compliance with Condition No. 2 of Variance Permit No. 10-056, as granted in a letter, date March 23, 2011, by the PLANNING DIRECTOR, PLANNING DEPARTMENT, COUNTY OF HAWAII, whose address is 101 Pauahi Street, Suite 3 Hilo, Hawai'i 96720 (hereinafter referred to as ("Department")), concerning a variance from the minimum road requirements of the Subdivision Control Code for Tax Map Key: (3) 1-6-141: 024, located at Kea'au, Puna,

Hawai`i, County and State of Hawai`i:

The Subdivider, its assigns, or successors or assigns agrees and accepts the fact that the owners of lots created by the subdivision of Tax Map Key: (3) 1-6-141:024 (SUB 10-000986):

1. The applicant and/or owner(s) shall indemnify and defend the State of Hawai`i or County of Hawai`i from any and all liability arising out of vehicular access to and from the proposed subdivision utilizing a privately-owned 20+foot wide paved road, commonly referred to as the "Slaughter House Road, within a 50+ foot right-of-way and another privately-owned 18+ foot wide paved road within a 50-foot right-of-way abutting the subject property.

2. Upon written demand of the County of Hawai`i, 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 10-000986. Should the improvement district require acquisition of any privately owned rights-of-way, 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.

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

4. In the event 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.

IN WITNESS WHEREOF, the undersigned has read and agrees to such provisions which shall run with the and has executed this instrument on the day and year first above written.

HAWAII BREWERY DEVELOPMENT CO., INC.

By Marcus Bender
MARCUS BENDER

Its President

On this 30 day of MARCH, 2011, before me personally appeared MARCUS BENDER, known to me the person described in and executed this instrument, and acknowledged that he executed the same by signing, and delivering the same.

Duane A. Komine
Notary Public, State of Hawai'i
My commission expires: 2.13.2012
Duane A. Komine

