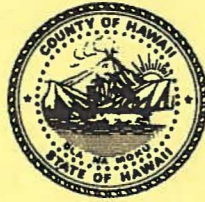


William P. Kenoi
Mayor



BJ Leithead Todd
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PLANNING DEPARTMENT

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January 10, 2012

Mr. Richard Sunden, L.P.L.S.
The Independent Hawai'i Surveyors
P. O. Box 577
Hilo, HI 96721

SUBJECT: Application: VARIANCE-VAR 11-043
Applicant: THE INDEPENDENT HAWAII SURVEYORS
Owners: MUHAMMAD YUNIS
Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required
TMK: 1-8-091:021 & 022 (SUB 07-000676)

Dear Mr. Sunden,

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 11-043 subject to variance conditions. The variance permits proposed 6-lot subdivision (SUB 07-000676) to be created without providing access and roadway improvements required by Department of Public Works Memorandum dated June 6, 2011. 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 34.17 acres, is identified as Lots 12-D and Lot 12-E, a portion of Grant 8091, situated at 'Ola'a New Tract Lots, 'Ola'a, Puna, Hawai'i.
2. **Zoning.** The subject property is zoned Agriculture -5 acres (A-5a) by the County and designated Agriculture "A" by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** The applicant submitted a subdivision application

SCANNED

JAN 11 2012

By: _____

JAN 11 2012

(SUB 07-000676) proposing to subdivide the subject property into six (6) lots, as identified on a preliminary plat map (PPM), dated February 22, 2011. A tentative approval was granted, with conditions, per letter dated June 15, 2011. The subdivision was previously granted a water variance (VAR 08-029) on March 2, 2009, given that a public water system was not present in the immediate vicinity and the proposal qualified to use individual rainwater catchment under Planning Department Rule 22.

4. **Variance Application.** The variance application and request for variance from roadway standards, to permit the proposed subdivision, was acknowledged by Planning Department letter dated September 12, 2011. This variance application includes background history, circumstances and information regarding the subdivision application along with information relative to the tentative subdivision approval's conditions.
5. **Agency Comments and Requirements:**
 - a. The State of Hawai'i Department of Health (DOH) memorandum dated September 15, 2011 (refer to DOH memo in variance file).
 - b. Hawai'i County Fire Department (HFD) memorandum dated September 20, 2011 (refer to HFD memo in variance file).
 - c. The Department of Public Works (DPW) - Engineering Division memorandum dated November 1, 2011, (refer to DPW memo in variance file).
6. **Notice to Surrounding Owners.** The applicant filed a transmittal letter with copy of the notices sent to surrounding property owners via USPS. According to USPS certificate of mailing receipts and affixed postal receipts, notices were mailed on September 2, 2011. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on September 18, 2011.
7. **Posted Sign.** The applicant submitted an affidavit, dated December 15, 2011, regarding sign posted on the subject property and photograph of the posted sign.
8. **Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or the general public were received.

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ALTERNATIVES/SPECIAL AND UNUSUAL CIRCUMSTANCES

The subdivider has been requested to construct access and roadways pursuant to an earlier DPW memorandum dated June 6, 2011, or roadway requirements pursuant to Chapter 23, Subdivisions. Such access improvements were included in a tentative approval letter dated June 15, 2011. The subject property currently has access to a public roadway (North Kulani Road) via Ihope Road. The variance request concerns deviations from typical roadway improvements over certain private common access easements serving a total of eight lots and which terminate within this proposed subdivision.

In lieu of improving or constructing roadway improvements as identified in the above, the owner contends that the existing all weather gravel private roadway is sufficient access to the proposed lots. The additional lots to be created by the proposed subdivision will create minimal additional impact. The owner is requesting a variance to not construct further roadway improvements, including 20-ft wide agricultural pavement within a minimum 50-ft width right-of-way conforming to Std. Det. R-39 within easements of A, B, C, D and F. The owner has obtained a cost estimate from Jas. W. Glover, Ltd, stating that the total cost of paving, excavating and widening of the road would be approximately \$495,275.

Considering the foregoing issues, there are circumstances applying to the subject property which exist either to a degree which deprives the applicant 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.

INTENT AND PURPOSE

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 roadway, as identified in the Department of Public Works memorandum, dated June 6, 2011, the Planning Director has concluded that a gravel all-weather road improvement is sufficient access to the proposed lots.

The request for variance from roadway standards, 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 September 12, 2011. Additional time was requested by the Planning

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Department to complete the variance background report requirements. The applicant granted an extension of time to render a decision on the variance application to January 11, 2012.

VARIANCE DECISION-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 June 6, 2011 to permit proposed 6-lot subdivision (SUB 07-000676) is hereby **approved** subject to the 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 07-000676.
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 07-00676) 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 07-000676.
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 six (6) lots arising out of SUB 07-000676 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 privately-owned access or roadway improvements within the subdivision's 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 prior to receipt of final subdivision approval of SUB 07-000676. 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 07-000676. Should the improvement district require acquisition of any privately-owned rights-of-way fronting the lots arising out of SUB 07-000676, 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

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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.

Should any of the foregoing stated conditions not be complied with, the Planning Director may proceed to declare subject Variance-VAR 11-043 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

GES:LHN:nci

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xc: DPW—Engineering Division
SUB 07-000676