

William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

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County of Hawai'i
PLANNING DEPARTMENT

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CERTIFIED MAIL
7011 1570 0001 5772 7887

November 20, 2012

Anne Abrams & Jeff Hurst
P.O. Box 96
Hakalau, HI 96710

Dear Ms. Abrams & Mr. Hurst:

SUBJECT: VARIANCE DECISION VAR-12-000102
Applicants: ANNE ABRAMS AND JEFF HURST
Owners: ANNE ABRAMS AND JEFF HURST
Request: Variance from Chapter 23, Subdivision, Section 23-88 Nondedicable Street; Private Dead-End Street
Tax Map Key: 2-8-014:103 (SUB 6374)

Upon review of the variance application, the Planning Director certifies the **denial** of Variance VAR-12-000102. The variance application seeks approval to permit a ninth lot to access a non-dedicable private dead end street. The variance request is from Hawai'i County Code, Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-88, Nondedicable street; private dead-end street.

The Planning Director has concluded that the variance from the above-referenced subdivision standards be **denied** based on the following findings:

BACKGROUND

1. **Location.** The subject property, comprising approximately 22,530 sq.ft., being Lot 7 of the Honomū Ocean View Estates subdivision, Honomū Village, being also Portions of Grants 899 and 39. The property is situated at Honomū, South Hilo, Hawai'i.

The RS-10 and CV-10 zoned property is located in an urbanized area with public infrastructure available. Subdivision No. 6374 created the seven (7) lots of the Honomū Ocean View Estates with a variance (No. 502) having been granted to allow the 16-ft. wide nondedicable paving within the 20-ft. wide right-of-way

to provide access to seven (7) lots which included parcel 2-8-014:093 and Lots 1 through 6 of the Honomū Ocean View Estates. The reality in this particular situation is that an 8th lot, TMK 2-8-014:092, also accesses this roadway.

2. **Land Use Designations.** The subject property is zoned Residential Single-Family ten thousand (10,000) square feet minimum building site area (RS-10) and Village Commercial ten thousand (10,000) square feet minimum building site area (CV-10) by the County and designated as Urban ("U") by the State Land Use Commission (LUC).
3. **Variance Application.** The request for a variance from nondedicable street; private dead-end street, to permit the subject property to access Kokoke Kai Place as the ninth (9th) lot in lieu of the maximum 6 lots allowed by Chapter 23 was acknowledged by Planning Department letter dated October 17, 2012. This variance application includes background history, circumstances and information regarding the request.
4. **Agency Comments and Requirements:**
 - a. The State of Hawai'i Department of Health (DOH): See attached memorandum dated October 22, 2012.
 - b. The Hawai'i Fire Department (HFD): See attached memorandum dated October 29, 2012.
 - c. The Department of Public Works (DPW): The DPW did not respond to this application as of this date.

Public Notice. The applicants filed a transmittal letter dated October 25, 2012 and attached mailing receipts indicating notice was sent to surrounding property owner(s) within 300 feet of the subject property. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on October 24, 2012. The applicants submitted an affidavit, dated October 25, 2012, regarding sign posted on the subject property and photograph of the posted sign.

Comments from Surrounding Property Owners or Public. No other agency comments were solicited and none were received. Written objection to the variance application was received from Mr. Henry Bempechat, Mr. Harold D. Lung and Ed & Edythe Kim, neighboring property owners. See attached letters (subdivision legal descriptions and Honomū Ocean View Estates Declaration of Covenants not attached).

REVIEW CRITERIA

Section 23-14 of the County Code provides the Director with the general authority to grant variances. Said section states the following:

"Variances from the provisions of this chapter may be granted; provided, that a variance shall not allow the introduction of a use not otherwise permitted within the district; and provided further that a variance shall not primarily effectuate relief from applicable density limitations.

Section 23-15 states that no variance will be granted unless it is found that:

- a. There are special or unusual circumstances applying to the subject real property which exist either to a degree which deprives the owner or applicant of substantial property rights that would otherwise be available, or to a degree which obviously interferes with the best use or manner of development of that property; and
- b. There are no other reasonable alternatives that would resolve the difficulty; and
- c. The variance is consistent with the general purpose of the district, the intent and purpose of this chapter, and the general plan, and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or to adjoining properties.

ALTERNATIVES/SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicants contend that topographical and other physical factors place limitations on access to the property from the Old Māmalahoa Highway. The alternative to allowing access for Lot 7 directly from the Old Māmalahoa Highway is to remove the access restriction on the lot fronting Kokoke Kai Place.

In review of the application materials and other information available, the *Department finds no special or unusual circumstances justifying the variance. There are also other reasonable alternatives that would resolve the difficulty.*

INTENT AND PURPOSE

The intent of limiting the number of lots allowed access over the nondedicable, private dead-end street is to minimize the conflicting traffic movements and reduce speeds. The Subdivision Code requires, for similar subdivisions of more than 6 lots, minimum 20-ft. wide dedicable paving within a minimum 50-ft. wide right-of-way with, at a minimum, paved shoulders and swales.

Based on the information within this variance analysis, the variance for relief from the maximum number of lots accessing this road would not 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.

VARIANCE DECISION

The variance application, VAR-12-000102, concerning the applicant's request to allow the proposed access to the subject property over the existing sub-standard private dead-end road is hereby **denied**.

Through the evidence presented to the department, the Planning Director does not find that there are

significant topographical or structural impediments that would interfere with the applicants' best use or manner of development of the property. Further, it is found that the danger presented by allowing 50% more lots to access Kokoke Kai Place than allowed by the Subdivision Code would be materially detrimental to the public welfare and cause substantial, adverse impact to the area's character and to adjoining properties.

In accordance with Ordinance No. 99-112, you may appeal the director's decision as follows:

- (a) Any person aggrieved by the decision of the director in the administration or application of this chapter, may, within thirty days after the date of the director's written decision, appeal the decision to the board of appeals.
- (b) A person is aggrieved by a decision of the director if:
 - (1) The person has an interest in the subject matter of the decision that is so directly and immediately affected, that the person's interest is clearly distinguishable from that of the general public: and
 - (2) The person is or will be adversely affected by the decision.
- (c) An appeal shall be in writing, in the form prescribed by the board of appeals and shall specify the person's interest in the subject matter of the appeal and the grounds of the appeal. A filing fee of \$250 shall accompany any such appeal. The person appealing a decision of the director shall provide a copy of the appeal to the director and to the owners of the affected property and shall provide the board of appeals with the proof of service.
- (d) The appellant, the owners of the affected property, and the director shall be parties to an appeal. Other persons may be admitted as parties to an appeal. Other persons may be admitted as parties to an appeal, as permitted by the board of appeals.

The board of appeals may affirm the decision of the director, or it may reverse or modify the decision, or it may remand the decision with appropriate instructions if based upon the preponderance of evidence the board finds that:

- (1) The director erred in its decision; or
- (2) The decision violated this chapter or other applicable law; or
- (3) The decision was arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

Anne Abrams & Jeff Hurst
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November 20, 2012

In view of the above and for your reference, we have enclosed the GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR form.

Sincerely,



BJ LEITHEAD TODD
Planning Director

JRH: nci

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Encl.: Agency Comments
Three (3) Objection Letters
GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR form

xc: Director, DPW
Gilbert Bailado, GIS (via email)
SUB 6374; VAR 502; TMK File

Henry Bempechat
P.O. Box 57
Honomū, HI 96728

Harold D. Lung
P.O. Box 33
Honomū, HI 96728

Ed & Edythe Kim
P.O. Box 101
Honomū, HI 96728

9. Additional traffic will result in higher Insurance rates for our association, especially if it is used commercially.
10. Additional traffic and/or changes in subdivision will result in more liability for association.
11. With the present sharp turning radius, homeowners and or children playing on the road would be at risk of injury. Members have complained in the past of almost hitting children.
12. It will affect property values as the present subdivision was not designed to accommodate vehicular access for lot 7 and owners may plan to build or subdivide and sell the back portion of property that affects surrounding homeowners.
13. Subdivision requirements that would allow lot 7 access would be to widen the road, as a lot owner I am not willing to give up a portion of my property.
14. Kokoke Kai St. has too much vehicular traffic at the present time, adding another driveway that would allow vehicle access will only add to the congestion, noise and pollution. My present residence sits on the commercial portion of lot #1, we access our home from Kokoke Kai St. Our front door is only a few feet away from this private road. My bedroom is a few feet away from this road, additional vehicle traffic will adversely affect the limited peace and quiet we have now. Numerous times cars speed by nearly hitting our son, visiting friends, relatives, visiting children as well as our pets. By allowing more vehicle access will only worsen the situation, or lead to someone getting seriously hurt or even killed.
- ✕ (see attached photos) ✕
15. If this variance was approved will the county accept the liability that could result?
16. We also need to mention and the county needs to consider, that our private lane sees on a daily bases numerous tourist vehicles driving into our lane to turn around. They do this in my driveway and my neighbors driveway which adds to the congestion. When the public street parking is filled up with tourist cars, the tourist naturally decide to park their vehicles in our private lane making for more vehicular traffic. It's been documented that Akaka Falls sees millions of tourist a year, just take a portion of these tourist driving into our lane to turn around and you can see we cannot allow more vehicle access, with the potential of additional residence and or commercial use.
17. Access to the back of the property can be done from the commercial portion of property. The expense of excavating a driveway to the back is not out of reach or unreasonable, and could be equivalent to constructing this proposed driveway.
18. The owners are not deprived of their property rights. A rejection of variance will not interfere with the best use or manner of development of their property. There are reasonable alternatives that would resolve their issue.

Based on the above information, we object to the variance application.



November 1, 2012

Ed & Edythe Kim
P.O. Box 101
Honolulu, 96728

Subject: Variance application for TMK # 2-8-014: 103

We are the property owners for TMK # 2-8-14-13. We are against this variance for the following reasons:

1. It will be materially detrimental to public welfare and cause substantial, adverse impact to the area's character and adjoining properties.
2. Property is subject to the Conditions, Covenants, and Restrictions (CC&R) of Honoumuli Ocean View Estates (HOVE). (full copy of covenants may be provided upon request)
3. When subdivision was originally developed, Parcel 7 was subject to no vehicular access. Section 23-88 (a) Hawaii county code Road access The street shall provide access to six lots or less conforming to the minimum area requirements set forth in this chapter. Minimum pavement width and right of way. 4 to 6 lots, pavement 16 feet, and right of way 20 feet. The road presently meets these requirements for only the maximum of 6 lots. Adding vehicular access for lot 7 will be detrimental to public safety and welfare and cause substantial adverse impact to the area's intended use and character.
4. The owners mentioned that they want to subdivide. In order to subdivide, they would need access to the back of the property. This would result in increased vehicular traffic. Under the requirements of HOVE's CC&R's, no residential building could be built for the following reasons. Residential buildings must be built 50 feet from the front road and 30 feet from the sides. Only the back half of property is subject to these restrictions. The size of this lot would make it impossible to meet these requirements. No commercial activities are allowed on the residential area of subdivision.
5. This will not be in the best interest of the County of Hawaii as no additional property tax would be generated from a potential residential residence on the residential portion of property.
6. Based on the amount of vehicular traffic that exists now, allowing another lot access will generate more traffic. Kokokekai Street was not originally designed to accommodate lot #7 (see exhibit) Parcel 7 easement P-1 no vehicular access
7. Lot 7 is zoned for commercial use. Commercial activities, deliveries and parking could occur on Kokokekai Street which we object to.
8. The sharp turning radius may result in vehicles driving onto my property for example, emergency responders, contractors, UPS, and Fed Ex deliveries.

061974



Neighbors House a few feet away

← Blind corner



My Front Door is steps A few feet away from Road



November 5, 2012

Planning Director
101 Pauahi St. Suite 3
Hilo, HI 96720

Subject: Variance Application Chapter 23-17(b) (VAR 12-000102)
For TMK #2-8-014:103

Dear Planning Director:

As owner and full-time residents of a house on Honomu Ocean View Estates Parcel 5, TMK #2-8-014-101, street address 28-716 Kokoke Kai Place my wife and I oppose this variance application and ask you, as Planning Director, to reject it for the following reasons.


In the survey filed in Land Court, Regulator Systems TG: 329729, TGE: 94362064300040, Matt H. Takata for Honomu Ocean View Estates, Easement P-1 specifically states "110-feet wide for no vehicular access and planting screen purposes." A copy of the survey Alan Z. Inaba is attached. Approval of a variance allowing a driveway would be inconsistent with this easement.

The portion of TMK #2-8-014:103 accessible by the driveway is too narrow to allow construction of a residence in accordance with Covenants of Honomu Ocean View Estates. These covenants specifically prohibit commercial use of the lots, with the exception of the commercially zoned portions of Parcels 1 and 7 that adjoin the Old Mamalahoa Highway, and limit use of the residential zoned areas to "single family residential purposes and for purposes incidental thereto." I and other residents in the subdivision have recently started legal action to remedy other clear violations of the Honomu Ocean View Estate Covenants.

The requested variance fails to meet the Grounds for variances in Section 23-15 of the County Code. Specially, there are "no special or unusual circumstances" applying to this property if the property easement and Honomu Ocean View Estates Covenants are obeyed (23-15(a)). There are reasonable alternatives (23-15(b)) - the lot is currently being accessed from the private road for landscaping maintenance. Furthermore, a grant of this variance will be "cause substantial adverse impact" to this area's character and to the adjoining properties (23-15(c)). The driveway requested by this variance would be near a blind curve in the road and thus create a new hazard to anyone using the private road.

We and other residents on this private road have already noticed an increase in traffic associated with the construction of vacation rental cabins in violation of the Honomu Ocean View Estates Covenants on the lot adjoining TMK #2-8-014:103. The wishes of the property owners who reside in Honomu Ocean View Estates to limit traffic and non-compliant commercial activity on our dead-end street in our small sub-division should be respected by rejecting Variance Application Chapter 23-17(b) (VAR 12-000102).

Respectfully submitted,


Harold D. Lung
P. O. Box 33
Honolulu, HI 96728
(808)895-4991
dlung@honolulu.net

November 4, 2012

Mrs Bobby Jean Leithead Todd
Planning Director
101 Pauahi St. Suite 3
Hilo, HI 96720

Subject: Variance Application Chapter 23-17(b) (VAR 12-000102) For TMK #2-8-014:103.

Dear Planning Director:

As owner and full time occupants of a house on Honomu Ocean View Estates Parcel 4, TMK #2-8-014-100, street address 28-722 Kokoke Kai Place my wife and I oppose this variance application and ask you, as Planning Director, to reject it for the following reasons.

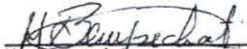
In the survey filed in Land Court, Regulator Systems TG: 329729, TGE: 94362064300040, Matt H. Takata for Honomu Ocean View Estates, Easement P-1 specifically states "110-feet wide for no vehicular access and planting screen purposes." A copy of the survey by Alan Z. Inaba is attached. Approval of a variance allowing a driveway would be inconsistent with this easement.

The portion of TMK #2-8-014:103 accessible by the driveway is too narrow to allow construction of a residence in accordance with Covenants of Honomu Ocean View Estates. These covenants also specifically prohibit commercial use of the lots, with the exception of the commercially zoned portions of Parcels 1 and 7 that adjoin the Old Mamalahoa Highway, for commercial purposes and limit use of the residential zoned areas to "single family residential purposes and for purposes incidental thereto." I and other residents in the subdivision have recently started legal action to remedy other clear violations of the Honomu Ocean View Estate Covenants.

The requested variance fails to meet the Grounds for variances in Section 23-15 of the County Code. Specially, there are "no special or unusual circumstances" applying to this property if the property easement and Honomu Ocean View Estates Covenants are obeyed (23-15(a)). There are reasonable alternatives (23-15(b)) - the lot is currently being accessed from the private road for landscaping maintenance. Furthermore, a grant of this variance will "cause substantial adverse impact" to this area's character and to the adjoining properties (23-15(c)).

We and other residents on this private road have already noticed an increase in traffic associated with the construction of vacation rental cabins in violation of the Honomu Ocean View Estates Covenants on the lot adjoining TMK #2-8-014:103. The wishes of the property owners who reside in Honomu Ocean View Estates to limit traffic and non-compliant commercial activity on our dead-end street in our small sub-division should be respected by rejecting Variance Application Chapter 23-17(b) (VAR 12-000102).

Respectfully submitted,


Henry Bempechat
PO Box 57
Honolulu, HI 96728
(808) 963-6932

082009

081973

COUNTY OF HAWAII
BOARD OF APPEALS

GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR

(Type or legibly print the requested information)

APPELLANT: _____

APPELLANT'S SIGNATURE: _____ DATE: _____

ADDRESS: _____

TELEPHONE: (Bus.) _____ (Home) _____

APPELLANT'S INTEREST IN THE PROPERTY: _____

APPELLANT'S NATURE OF APPEAL AND REQUEST: _____

LAND OWNER: _____

TAX MAP KEY: (land in question) _____ AREA OF PROPERTY: _____

STATE LAND USE DESIGNATION: _____ COUNTY ZONING: _____

STREET ADDRESS OF PROPERTY: _____

APPELLANT'S REPRESENTATIVE: _____

REPRESENTATIVE'S SIGNATURE: _____ DATE: _____

REPRESENTATIVE'S ADDRESS: _____

TITLE: _____ TELEPHONE: (Bus.) _____

THIS PETITION MUST BE ACCOMPANIED BY A FILING FEE OF TWO HUNDRED FIFTY DOLLARS (\$250) PAYABLE TO THE COUNTY DIRECTOR OF FINANCE AND:

1. The Original and ten (10) copies of this completed petition with the following:
 - a. A description of the property involved in the appeal in sufficient detail for the public to precisely locate the property.
 - b. A statement explaining the nature of the appeal and the relief requested.
 - c. A statement explaining:
 - (i) How the decision appealed from violates the law; or
 - (ii) How the decision appealed from is clearly erroneous; or
 - (iii) How the decision appealed from was arbitrary or capricious, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.
 - d. A clear and concise statement of any other relevant facts.
2. Proof of Service by the Appellant on the Planning Director for an appeal from the Planning Director's decision relating to the Zoning Code.
3. A list of the names, address and tax map keys of all owners of property within boundaries established by Section 8-11(d) of the Board of Appeals Rules of Practice and Procedure.