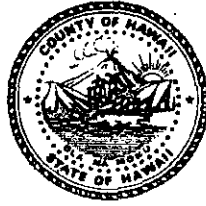


William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563

County of Hawai'i
PLANNING DEPARTMENT

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

March 31, 2014

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

Dear Mr. Fuke:

SUBJECT: Application: VARIANCE – VAR-14-000187
Applicant: SIDNEY M. FUKU, PLANNING CONSULTANT
Owners: KONA COUNTRY CLUB, INC.
Request: Variance from Chapter 25, Zoning, Article 4, Division 1,
Section 25-4-8 (a), Temporary Real Estate Offices and Model
Homes.
TMK: 7-8-010:101, Lot 2

After reviewing your variance application, the Planning Director certifies the **approval** of VAR-14-000187, subject to variance conditions. The variance will allow for a model home/sales office to be constructed on the subject site prior to final subdivision approval. This exception is in lieu of the Hawaii County Code, Chapter 25, Zoning, Section 25-4-8 (a), Temporary real estate offices and model homes.

BACKGROUND AND FINDINGS

1. **Location.** The subject property, consists of approximately 50.058 acres of land and is located in the Keauhou resort community, situated at Kahalu'u-Keauhou 1st, North Kona, Hawai'i.
2. **Zoning.** Multiple Residential – 30,000 square feet (RM-30).
3. **State Land Use.** Urban (U).
4. **Required Setback.** 20-foot front and rear yard; 8-feet for a one-story building, plus an additional two feet for each additional buildings.
5. **Variance Application-Site Plan.** The applicant submitted the variance application,

attachments, and filing fee on January 23, 2014, and other submittals related to the variance application. The variance application's site plan map is drawn to scale and the map denotes the location of the proposed model home.

The owner/applicant submitted the variance application to allow for a model home/sales office to be constructed on the subject site prior to final subdivision approval.

Section 25-4-8(a) of the county Zoning Code requires final subdivision approval before a model home can be constructed. In this particular case, subdivision approval is not required for RM zoned lands as multiple structures are allowed. Further, the applicant states they propose to CPR the parcel.

6. **Special Management Area.** The subject property is located within the Special Management Area (SMA). Special Management Area Use Permit (SMA 09-000034) was issued on August 28, 2009, for the development of 60 residential units, which may include a mix of multiple family and single family residential units and related improvements.
7. **Plan Approval:** Final Plan Approval (PLA-12-000869) issued on August 28, 2012, for 29 residential units plus related amenities (clubhouse/swimming pool, etc.)
8. **County Building Records.** None. (Vacant Land)
9. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum, dated March 7, 2014. (See attached memorandum)
 - b. Department of Public Works–Engineering Division, memorandum, dated February 6, 2014. (See attached memorandum.)
10. **Notice to Surrounding Property Owners.** The applicant submitted a copy of notice mailed to surrounding property owners (including affidavits) by U.S.P.S. According to these submittals, the first and second notice(s) were mailed on January 23, 2014 and February 6, 2014, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on February 12, 2014.
11. **Time Extension.** The applicant's variance application was received on January 31, 2014 and additional time to review the application was required. The applicant granted the Planning Director an extension of time to issue a decision on the Variance Application until April 7, 2014.
12. **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.

ANALYSIS OF GROUNDS FOR VARIANCE

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 the property.*

The variance application meets criteria (a) for the following reasons:

The owner/applicant submitted the variance application to allow for a model home/sales office to be constructed on the subject site prior to receipt of final subdivision approval.

The applicant has not applied for a subdivision at this time for several reasons; these reasons create the special and unusual circumstances that interfere with the best use and/or development of the subject property.

The applicant has stated in its background report that; *“One of the more unique circumstances surrounding the need for this variance is the topography of the property. The topography is such that it does not readily lend itself to a conventional lot subdivision. It is relatively steep and full of undulations as well as has archaeological features that need to be preserved.*

The applicant would like to nestle the dwellings and other structures into the existing environment while respecting the archaeological features by having a 75-foot instead of the conventional 20-foot buffers. In so doing, the project could retain much of the natural environment while respecting the archaeological features that need to be preserved.

Additionally, because the project is intended to be developed where homeowners would also assume ownership of the infrastructure and amenities, there is a possibility that the ownership would be secured through the CPR as opposed to the conventional lot subdivision approach.

These two factors combined have affected the decision not to apply for a subdivision at this time. It should also be noted that this marketing approach is no different than a standard multiple-family condominium development, where only a few units are constructed first.”

Further, in this situation, the current RM zoning allows for multiple structures to be developed on the property through the CPR process without submitting an application for subdivision.

Based on the above mentioned reasons and since the property is zoned RM, applicant has the option to develop the subject property through the CPR process. This is one reason as to why the owner/applicant has not applied to subdivide at this time.

In accordance with Section 25-4-8, temporary real estate offices and model homes may be established provided final subdivision approval of the development and final plan approval for

the use has been granted by the director. The approval of the variance request would allow the developer to establish the model home/sales office with the option of pursuing a CPR of the property rather than subdivide. Plan Approval would still be required prior to securing a building permit for the sales office/model home.

Therefore, based on the above, special and unusual circumstances exist to an extent that they deprive the owner of substantial property rights that would otherwise be available, or which unreasonably, would interfere with the best use or manner of development of the subject property.

(b) There are no other reasonable alternatives that would resolve the difficulty.

The variance application meets criterion *(b)* for the following reasons:

The applicant could go through a CPR route to convey the dwelling. However, the Zoning Code does not recognize or address such an approach with regards to a model homes or sales offices. Section 25-4-8 states; *“Temporary real estate offices for new developments shall be permitted in all districts except for the A, 1A, and O districts, and model homes for new developments shall be permitted in all districts except for the A, 1A, MCX, ML, MG and O districts, provided that final subdivision approval of the development has been granted by the director and plan approval for any temporary real estate office and/or model home is secured prior to the establishment of such use.”* The subject property is zoned RM-30, and a model home/sales office is a permitted use.

There are no other reasonable alternatives in resolving the difficulty of the applicant. As explained earlier, the applicant is considering going through the CPR route as the topography of the property does not lend itself to a conventional subdivision. To submit a subdivision application just to meet the zoning code requirement would not be a practical alternative.

Further, all utilities and potable water is readily available to the property. A private wastewater system will be made to the model home/sales office.

(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’s welfare or cause substantial, adverse impact to an area’s character or to adjoining properties.

The variance application meets criteria *(c)* for the following reasons:

The intent and purpose of requiring final subdivision approval prior to the construction of a model home/sales office are to ensure that all amenities such water and wastewater treatment system approved the State Department of Health are available. This requirement also ensures that all structural setbacks, front, rear and side setbacks are met. Should the applicant decide to subdivide the land, all requirements will be met.

The applicant has stated that all utilities are readily available and that County water system, electricity, and a private wastewater system will all be provided to the model home/sales office by the applicant prior to the issuance of an occupancy permit.

Based on the foregoing findings and unusual circumstances, the applicant's request for a variance would be consistent with the general purpose of the zoning district and the intent and purpose of the Zoning Code, Subdivision Code and the County General Plan.

Furthermore, the variance request 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. This can be substantiated, to some degree, by the fact that the State Department of Health and the County of Hawai'i, Department of Public Works – Engineering Division had no objection to this variance application.

Based on the above findings, granting of the variance would be consistent with the criteria and intent of approving a variance.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

This variance request is **approved** subject to the following conditions:

1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property damage, personal injury, or death arising out of any act or omission of the applicants/owners, their successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.
3. Plan Approval for the real estate office and/or model homes shall be secured from the director prior to the establishment of such use. Applicant shall also submit proposed development concept indicating either a CPR or Subdivision, including the total number of units to be developed.
4. Should the owner/applicant submit for subdivision of the subject parcel, no further development shall occur until Final Subdivision Approval is granted by the director.
5. Future or new building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and occupancy.

Sidney M. Fuke, Planning Consultant
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Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance VAR-14-000187 null and void.

Sincerely,

A handwritten signature in black ink, appearing to read 'Duane Kanuha', written in a cursive style.

DUANE KANUHA
Planning Director

LHN:nci

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xc: Planning Department (Kona)
Real Property Tax Division (Kona)
Gilbert Bailado, Planning GIS


Sidney M. Fuke, Planning Consultant
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March 31, 2014

PLANNING DEPARTMENT
COUNTY OF HAWAII
DEPARTMENT OF PUBLIC WORKS
COUNTY OF HAWAII 2014 FEB -6 AM 10: 03
HILO, HAWAII

DATE: February 6, 2014

Memorandum

TO : Duane Kanuha, Planning Director
Planning Department

FROM : Ben Ishii, Division Chief 
Engineering Division

SUBJECT : Variance Application (VAR 13-000187)
Applicant: Sidney M. Fuke, Planning Consultant
Owner: Kona Country Club, Inc.
Location: Keauhou, Kona, HI
TMK: 3/ 7-8-010: 101 Lot 2

We reviewed the subject application and have no comments on or objections to the request.

Should there be any questions concerning this matter, please feel free to contact Kiran Emler of our Kona Engineering Division office at 323-4851.

KE

copy: ENG-HILO/KONA

NEIL ABERCROMBIE
GOVERNOR



DIRECTOR OF HEALTH

2014 MAR 10 AM 2:10

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 916
HILO, HAWAII 96721-0916

MEMORANDUM

DATE: March 7, 2014

TO: Duane Kanuha
Planning Director, County of Hawaii

FROM: Newton Inouye *rd*
District Environmental Health Program Chief

SUBJECT: Application: Variance VAR-14-000187
Applicant: SIDNEY M. FUKU, PLANNING CONSULTANT
Owner: KONA COUNTRY CLUB, INC.
Request: Variance from Chapter 25, Zoning, Article 4, Division 1,
Section 25-4-8(a) Temporary real estate offices and model
Homes.
Tax Map Key: 7-8-010:101, Lot 2

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