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County of Hawai'i
PLANNING DEPARTMENT

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September 9, 2020

Zendo Kern
Planning Consultant, LLC
194 Wiwoole Street
Hilo, HI 96720

Dear Mr. Kern:

SUBJECT: VARIANCE DECISION - VAR-20-000591
Applicant: ZENDO KERN, PLANNING CONSULTANT, LLC
Owner: HILO ONE, INCORPORATED
Request: Variance from Article 6, Division 2, Nondedicable Private Dead-End Street, Sections 23-88, Maximum Number of Lots
Tax Map Key: (3) 2-4-039:026 (SUB-19-001924)

Upon review of your variance application, the Planning Director certifies the **approval** of Variance VAR-20-000591 **subject to variance conditions**. The variance grants partial relief for subdivision SUB-19-001924 from constructing minor street or cul-de-sac roadway improvements as required by Hawai'i County Code (HCC), Chapter 23 (Subdivisions).

The variance is from the proposed subdivision's minimum requirements pursuant to HCC, Chapter 23 (Subdivisions), Article 6, Division 2, Improvements Required, Sections 23-88, Nondedicable Private Dead-End Street, Maximum Number of Lots.

BACKGROUND

1. **Location.** The referenced property, Lot 1-B-1, Being Also a Portion of Grant 11,642, containing approximately 12.792 acres, is situated in Waiākea Homesteads, South Hilo, Hawai'i.
2. **County Zoning.** Residential, 15,000 sq. ft. (RS-15).
3. **State Land Use.** Urban (U).

4. **General Plan.** Land Use Pattern Allocation Guide (LUPAG) map designates the property as Low Density Urban (ldu).
5. **Subdivision Code Requirements.** The subdivision code requires that this particular subdivision roadway serving in excess of six (6) lots, have minimum right-of-way (r-o-w) and paving widths of 50-feet and 20-feet, respectively, in compliance with the Department of Public Works (DPW) Standard Detail (Std. Det.) R-18, 2017 Edition. The subdivision is located in an area with a mix of residential and agricultural lots in a largely Urban land use.
6. **Subdivision Request/PPM.** Subdivision application SUB-19-001924 was submitted to subdivide the subject TMK property into 30 lots, with 7 of those lots served by a non-code compliant r-o-w. Further action on the subdivision application has been deferred pursuant to this variance application which is in response to roadway improvement conditions imposed in our letter of Tentative Approval (TA) dated January 10, 2020.
7. **Variance Application.** The variance request from maximum lots served by the road improvements for the seven (7) lots was acknowledged by Planning Department letter dated July 24, 2020. This variance application includes background history and circumstances and information regarding the pending subdivision application.
8. **Agency Comments and Requirements.**
 - a. Department of Public Works (DPW): See attached memorandum dated August 17, 2020. **(Exhibit A)**
 - b. No other agency comments were solicited, and none were received.
9. **Notice to Surrounding Owners/Posted Sign.** The applicant submitted evidence, dated July 23, 2020, regarding the posting of a public notification sign on the subject property pursuant to Section 23-17(c) of the Hawai'i County Code (HCC). A picture of the posted sign was also submitted. The evidence also indicates that a notice of the application was sent to the surrounding property owners as required by Section 23-17(a).
10. **Comments from Surrounding Property Owners or Public.** There were no comments received from any neighbors or the public.

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 that property.

The Variance application meets criterion (a) for the following reasons(s):

There is no practical way to further widen the Lehuakea Place r-o-w. This would require the elimination of one or more of the proposed lots, inflating the cost of all remaining lots in this 30-lot development.

The code requires a minimum r-o-w of 50 feet with 20-foot wide paving and paved shoulders and swales to serve more than 6 lots, the proposed street design exceeds the allowable standards for a maximum of 6 lots, by only the one additional lot.

The County Council, in Condition F of the Change of Zone Ordinance No. 19 016 (REZ-18-000228) sanctioned the subject roadway thus **“Restrictive covenants in the deeds of all proposed lots fronting the 30-foot wide private road shall require the homeowners of said lots to maintain the one private cul-de-sac road.”**

The above special and unusual circumstances would deprive the applicant from developing this property and interferes with the best use of this property.

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

The Variance application meets criterion (b) for the following reasons(s):

There is no practical way to allocate additional right-of-way without sacrificing maximum housing opportunities. The 20-foot wide paved travel way with paved shoulders on this low-use road, which is in excess of that required for 6 lots, should be adequate for the purposes of this low-density subdivision.

The improvements to Lehuakea Place in this low-density neighborhood, are proposed to exceed the nondedicable dead end road standards of the code. Considering the one additional lot served beyond allowances of Section 23-88 of the code, the loss of one or more lots to widen the r-o-w to the requirements of Section 23-41, Street Design, Minimum r-o-w and pavement widths, Minor Street, would cause increased prices for the remainder of the lots in this 30-lot project.

Given the projected low volume, low speed of traffic within this low-density cul-de-sac the 20-foot wide paving and paved shoulders swales within a 30-foot wide r-o-w should be sufficient.

(c) The variance will be consistent with the general purpose of the district, the intent and purpose of this chapter, and the County 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.

The Variance application meets criterion (c) for the following reasons(s):

The roadway variance authorizing use of a nondedicable, privately owned road, will not be detrimental to public welfare or burden County resources. The subdividers' plans are consistent with the existing land uses and, as herein conditioned, will not have any adverse impact on the area's character or on neighboring properties.

The proposed lots meet the minimum lot size for the RS-15 zoning. The project is consistent with the intent and purpose of the Zoning and Subdivision Codes. The project is designed with lots for additional residential use in keeping with the zoning. The owners' plans are consistent with these designations.

DETERMINATION-VARIANCE CONDITIONS

The variance to permit the proposed 7-lots of the subdivision of the subject TMK property without providing code compliant roadway improvements meeting DPW standards, 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. 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 owners, their assigns, or successors shall file a written agreement document with the Planning Department within one (1) year from the issuance of tentative subdivision approval. This written agreement shall contain deed language, being covenants, conditions, and restrictions affecting the seven (7) lots created by the proposed subdivision utilizing the subject roadway which are not serviced by a dedicable roadway system. The agreement shall specify that if a Homeowners' or Maintenance Association is created for purposes of upkeep of, and required repairs to the roadway improvements, that the owners of the seven (7) subdivided lots shall participate in said association.

The agreement shall be duly recorded at the State of Hawai'i Bureau of Conveyances by and at the cost and expense of the owners. A copy of the recorded document shall be supplied to the Planning Department for our files.

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 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 of the existing property or approved subdivided lots.

4. The subdivider and all grantees, successors, and assigns acknowledge that the parcels were created by a variance, from the normal subdivision requirements of Hawai'i County, and that there are no longer any special or unusual circumstances applying to the property, and hence, no grounds exist or will exist for another variance, from the Subdivision Code to permit further subdivision of the properties, unless County code compliant roadway system requirements and other requirements of HCC Chapter 23, Subdivisions, are met.

It is also understood that they will use and maintain the privately-owned roadway on their own without any expectation of governmental assistance to maintain the improvements. They shall also 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 properties utilizing the private r-o-w.

5. 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 lots. Should the improvement district require acquisition of any privately owned right-of-ways fronting the lots, such right-of-ways 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).
6. No condominium property regime will be allowed, nor will an 'Ohana Dwelling Unit be permitted or allowed.
7. The pending subdivision application's (SUB-19-001924) final plat map shall meet all the requirements of the Hawai'i County Zoning Code and the Subdivision Code that are not covered by this variance.
8. 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, land use and the public's health, safety and welfare.

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

Sincerely,



MICHAEL YEE
Planning Director

JRH:jaa

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Enclosure: Agency Comment, Exhibit A

xc: DPW-Engineering Division
SUB-19-001924

Alan Z. Inaba, LPLS
Inaba Engineering, Inc.
273 Waiānuenu Avenue
Hilo, HI 96720

xc w/encls: G. Bailado, GIS Section (via email)

Hilo One, Incorporated
32 Poko Place
Hilo, HI 96720

DEPARTMENT OF PUBLIC WORKS
COUNTY OF HAWAII
HILO, HAWAII

DATE: August 17, 2020

Memorandum

COH PLANNING DEPT
AUG 17 2020 PM 2:26

REC'D HAND DELIVERED

TO: PLANNING DEPARTMENT

FROM: DEPARTMENT OF PUBLIC WORKS *MD*

SUBJECT : VARIANCE APPLICATION (VAR 20-591)
Applicant: ZENDO KERN, PLANNING CONSULTANT, LLC
Owners: HILO ONE, INCORPORATED
TMK: 2-4-039:026
Reference: SUB 19-1924; Fldr. No.: 24754

We have reviewed the subject application received on July 24, 2020 and offer the following comment:

We believe the minimum road improvement requirements codified within Chapter 23 of the Hawaii County Code provide public welfare and safety.

However, should the Planning Director determine that Section 23-15 is applicable, we defer to the director's authority.

Should there be any questions concerning this matter, please contact Melanie DeMello in our Engineering Division at Ext. 8927.

MD

EXHIBIT
A

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