

CERTIFIED MAIL

February 12, 1979

Mr. Brian Flagg
1454 Mailani Street
Hilo, HI 96720

Dear Mr. Flagg:

Variance Application
Tax Map Key 2-7-21:9

The Planning Commission at its preliminary hearing on February 8, 1979, considered your application for a variance request to allow the creation of a 15,360 square foot lot in lieu of the minimum building site area requirement of 20,000 square feet as stipulated within the Single Family Residential - 20,000 square foot (RS-20) zoned district at Honoli'i Pali Subdivision, Tract 2, Pauka'a, South Hilo, Hawaii.

This is to inform you that the Commission voted to deny your request based on the following findings:

While there appears to be special or unusual circumstances applying to this property, approval of this variance request would not be in the best public interest. It is readily conceded that a reduced area resulting from the current shoreline survey plus topographic constraints are factors generally considered "unusual" or "special". However, in this particular instance, they would militate against the general welfare of the public and existing and future landowner(s).

As evidenced by a field investigation of the subject property, the topography of the land is of such magnitude that its development into two (2) lots, one (1) of which would be of a non-conforming size, may not be the most feasible alternative. There is a deep stream which bisects one of the proposed lots.

During a field investigation, it was observed that the embankment on the south side of the stream is about forty (40) feet high, while the embankment on the north side is about 25-30 feet high. In view of the depth and width of the stream, the usable portion of one of the proposed lots will be further reduced to about 6,500 square feet.

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The subject property, from the end of the cul-de-sac (Poko Place) to the base of the stream, drops in elevation from 196 to 123 feet, a drop of seventy-three (73) feet. From the base of the stream to the northern property line, there is a rise in elevation of about thirty-three (33) feet. Based on the physical constraints of the subject property, the subdivision of the subject area into two (2) lots, one (1) of which would be less than the minimum building site area requirement, would be difficult.

It should be pointed out that the "shoreline" has changed over the years due to probable erosion, as evidenced during the field investigation. It is therefore quite conceivable that the land area of the subject property, as well as the proposed lots, may be further reduced. Furthermore, because of the soil make-up of the area, erosion within the proposed lots along the embankments of the stream is also very probable. From previous observations and experiences of other lots within this general area of similar soil characteristics, it is determined that the soil is rather unstable and has a great tendency for erosion and sliding. An example of this occurrence was during the 1975 earthquake where some of the lots within this area had eroded (specific example would be W. Windham's property where the land eroded and portion of the dwelling extended beyond the top of the pali).

The creation of the additional lot on the subject property would increase the buildable density of the parcel involved to an extent that the siting and location of any structure or structures may be considerably constrained. In addition to the stream, there are drainage and sewer easement which traverse through the parcel. Structural improvements over and within these easements are not permitted. These constraints are further compounded by a pali which forms the makai boundaries of both proposed lots. While each of these individual factors may not significantly reduce the useable area of the existing lot, the cumulative impact of these may effectively nullify the use of one (1) or both, of the two (2) proposed lots.

Also, because of the topographic constraints, it would seem that the construction of the proposed private roadway would be virtually impossible. Because of the topography of this portion of the land, the road would have to be constructed at a very steep grade. Furthermore, the geographical instability of the land may also make it difficult to construct the necessary roadway improvements.

Based on the above reasons, it is felt that the granting of the subject variance would not be in the best public interest; more specifically for the potential owners of both lots.

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Inasmuch as the Commission is recommending that the variance from the minimum building site area requirement be denied, the variance request from the minimum building site average width requirement becomes moot.

As your request has been denied, you may appeal the decision of the Planning Commission if you feel that the action of the Planning Commission was based on an erroneous finding of a material fact, or that the Commission has acted in an arbitrary or capricious manner, or had manifestly abused its discretion.

Should you decide to appeal the decision of the Commission in the denial of your variance request, a petition setting forth the following shall be submitted to the Board of Appeals within thirty (30) days from the date of action and accompanied by a filing fee of ten dollars (\$10.00):

1. Name, mailing address and telephone number;
2. Identification of the property and interest therein;
3. The particular provision of the Zoning Ordinance or Subdivision Ordinance or regulation in question;
4. All pertinent facts;
5. The action of the Commission; and
6. Reasons for the appeal, including a statement as to why the appellant believes that the Commission's action was based on an erroneous finding of a material fact, or that the Commission has acted in an arbitrary or capricious manner, or had manifestly abused its discretion.

Inasmuch as no public hearing will be held on this matter; we will be returning your filing fee as soon as the refund is processed.

We will be forwarding you a certified copy of the Order as soon as the document is prepared. Should you have any questions regarding the above, please feel free to contact the Planning Department at 961-8288.

Sincerely,



WILLIAM F. MIELCKE
Chairman, Planning Commission

lgv
cc Mr. Hajime Tanaka
Corporation Counsel
Chief Engineer, Public Works

FEB 15 1979

PLANNING COMMISSION OF THE PLANNING DEPARTMENT

COUNTY OF HAWAII

In the Matter of the Appeal)
 of)
 BRIAN FLAGG)
)
Tax Map Key 2-7-21:9)
_____)

Variance No. 567

FINDINGS OF FACT

CONCLUSIONS OF LAW

AND

DECISION AND ORDER

PLANNING COMMISSION OF THE PLANNING DEPARTMENT
COUNTY OF HAWAII

In the Matter of the Appeal)
 of)
 BRIAN FLAGG)
Tax Map Key 2-7-21:9)
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Variance No. 567

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND
DECISION AND ORDER

The above-entitled matter was brought on a preliminary hearing on February 8, 1979, in the Councilroom, County Building, South Hilo, Hawaii, at which time, Brian Flagg appeared before the Planning Commission.

The Planning Commission having heard the testimony and having examined the facts does hereby declare its Findings of Fact, Conclusions of Law, and Decision and Order.

FINDINGS OF FACT

1. An application for a variance to allow the creation of a 15,360 square foot lot in lieu of the minimum building site area requirement of 20,000 square feet as stipulated within the Single Family Residential - 20,000 square foot (RS-20) zoned district was received on January 5, 1979. Also requested was a variance to allow the creation of the proposed 15,360 square foot lot with a building site average width of 88 \pm feet in lieu of the minimum requirement of ninety (90) feet.

2. The property involved is located at the end of Poko Place within the Honolii Pali Subdivision, Tract 2, Pauka'a, South Hilo, Tax Map Key 2-7-21:9.

3. The entire property, consisting of 38,100 square feet, is proposed to be subdivided into two (2) lots of 20,870 and 15,360 square feet in sizes. The remaining area of 1,870 square feet will be set aside as a private roadway. The private road will be sixteen (16) feet wide.

4. In regards to the variance from the minimum building site average width requirement, this will be contingent upon the approval of the variance from the minimum building site area requirement. If the lot were to be 20,000 square feet in size, the minimum building site average width requirement would be 110 feet. The ninety (90) feet is based on a 15,000 square foot requirement.

5. The property is situated within the Special Management Area (SMA), and therefore, a SMA Use Permit is also required for the proposed subdivision and related improvements.

6. The property was originally .99 acre or 43,124 square feet in size. However, since the lot is a "Shoreline" property, in July 1978, the Chairman of the State of Hawaii Board of Land and Natural Resources certified the shoreline at the top of the pali. As such, the size of the lot was reduced by 5,024 square feet. This 5,000 \pm square foot area is at the base of the pali. There have been signs of erosion at the top of the pali.

7. The proposed 15,360 square foot lot is approximately 4,640 square feet or twenty-three (23) percent less than the minimum requirement.

8. The area in question is vacant of any structures.

9. There is a 10-foot wide private sewer easement running through the property in an east-west direction. There is also a drainage easement along the west property line which

affects five (5) feet of the subject property. A stream also traverses through the property. The embankment on the south side of the stream is about forty (40) feet high, while the embankment on the north side is about 25-30 feet high. From the end of the cul-de-sac to the middle portion of the property, there is a drop in elevation of 73 feet (196 to 123 feet). From that point to the northern property line, there is a rise in elevation of about 33 feet (123 to 156 feet).

10. According to the U. S. Department of Agriculture, Soil Conservation Service's Soil Survey Report (December 1973), the land is of the Hilo Series which consists of well-drained silty clay loams. These soils formed in a series of volcanic ash layers that give them a banded appearance. The surface layer is dark-brown silty clay loam about 12 inches thick. The subsoil is about 48 inches thick. This soil dehydrates irreversibly into fine gravel-size aggregates. Permeability is rapid, runoff is slow to medium, and the erosion hazard is slight to moderate. The area receives from 120 to 180 inches of rainfall annually.

11. Although there are several lots within the Honolii Pali Subdivision, these are non-conforming relative to size as they were created prior to the adoption of the Zoning Code.

12. Access to the subject property is via Poko Place which is a 30-foot wide cul-de-sac with a 16-foot pavement. All essential utilities and services are available to the subject area.

13. Upon review of the request, the Department of Public Works offered the following comments:

"The subject lot is largely unusable because:

"1. A stream bisects the property.

"2. The gully is 30 ft. deep and 120 ft. wide.

"3. The topography of this lot is steep.

"4. The beach property lines are roughly 15 ft. to 20 ft. oceanside from the top of the Pali.

"5. A sewer easement that is in use traverses the property.

"6. A drainage easement is located along the western property line.

"Hence the buildable area of this lot is not very large. It does not seem to be large enough to be divided. Additionally, driveways at a cul-de-sac are usually bunched too closely together. The proposed additional access will worsen the condition."

14. All other cooperating agencies had no comments on or objections to the subject request.

15. In requesting the variance, the petitioner has stated the following:

"Lot 38-B of the proposed subdivision cannot meet the minimum 20,000 sq. ft. lot requirement. Since, although the tax map designated Lot 38 to be .99 acre or 43,124 sq. ft., it has been determined that the seaward property line is the top of the pali. As such, the area is approximately 38,040 \pm sq. ft. Granting of the variance will not create an unusual circumstances nor be inconsistent because there are existing lots within the vicinity which are less than 20,000 sq. ft. in area."

16. At the preliminary hearing on February 8, 1979, the staff recommended denial of the application based on the following findings:

While there appears to be special or unusual circumstances applying to this property, approval of this variance request would not be in the best public

interest. It is readily conceded that a reduced area resulting from the current shoreline survey plus topographic constraints are factor generally considered "unusual" or "special." However, in this particular instance, they would militate against the general welfare of the public and existing and future landowner(s).

As evidenced by a field investigation of the subject property, the topography of the land is of such magnitude that its development into two (2) lots, one (1) of which would be of a non-conforming size, may not be the most feasible alternative. There is a deep stream which bisects one of the proposed lots. During a field investigation, it was observed that the embankment on the south side of the stream is about forty (40) feet high, while the embankment on the north side is about 25-30 feet high. In view of the depth and width of the stream, the usable portion of one of the proposed lots will be further reduced to about 6,500 square feet.

The subject property, from the end of the cul-de-sac (Poko Place) to the base of the stream, drops in elevation from 196 to 123 feet, a drop of seventy-three (73) feet. From the base of the stream to the northern property line, there is a rise in elevation of about thirty-three (33) feet. Based on the physical constraints of the subject property, the subdivision of the subject area into two (2) lots, one (1) of which would be less than the minimum building site area requirement, would be difficult.

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as well as the proposed lots, may be further reduced. Furthermore, because of the soil make-up of the area, erosion within the proposed lots along the embankments of the stream is also very probable. From previous observations and experiences of other lots within this general area of similar soil characteristics, it is determined that the soil is rather unstable and has a great tendency for erosion and sliding. An example of this occurrence was during the 1975 earthquake where some of the lots within this area had eroded (specific example would be W. Windhams property where the land eroded and portion of the dwelling extended beyond the top of the pali).

The creation of the additional lot on the subject property would increase the buildable density of the parcel involved to an extent that the siting and location of any structure or structures may be considerably constrained. In addition to the stream, there are drainage and sewer easements which traverse through the parcel. Structural improvements over and within these easements are not permitted. These constraints are further compounded by a pali which forms the makai boundaries of both proposed lots. While each of these individual factors may not significantly reduce the useable area of the existing lot, the cumulative impact of these may effectively nullify the use of one (1), or both, of the two (2) proposed lots.

Also, because of the topographical constraints, it would seem that the construction of the proposed private roadway would be virtually impossible. Because

of the topography of this portion of the land, the road would have to be constructed at a very steep grade. Furthermore, the geographical instability of the land may also make it difficult to construct the necessary roadway improvements.

Based on the above reasons, it is felt that the granting of the subject variance would not be in the best public interest; more specifically for the potential owners of both lots.

Inasmuch as staff is recommending that the variance from the minimum building site area requirement be denied, the variance request from the minimum building site average width requirement becomes moot.

17. After hearing the staff's background and recommendation and hearing from the petitioner, the Planning Commission called a recess and conducted an on-site inspection of the property.

18. After the meeting resumed, the Planning Commission voted to deny the request for the reasons as presented by the staff. The vote was unanimous with five (5) ayes.

CONCLUSIONS OF LAW

1. Pursuant to Section 5-4.3 (g) of the Hawaii County Charter, the Planning Commission has jurisdiction to hear and determine appeals requesting variances from the Subdivision and Zoning Codes.

2. All procedural requirements as prescribed by law have been complied with.


3. Under Section 5-4.3 (g) of the Hawaii County Charter, a variance may not be granted unless there are special or unusual circumstances applying to the subject property which would result

in unnecessary hardship if the ordinance were literally enforced, and the granting of the variance would not be contrary to the public interest.

DECISION AND ORDER


Based upon the testimony and exhibits introduced at the preliminary hearing and the foregoing Findings of Fact and Conclusions of Law, it is the decision of the Planning Commission and it is hereby ordered that a variance from the requirements of Chapter 8 (Zoning Code), Article 3, Sections 5 and 6 pertaining to the minimum building site area and average width requirements, respectively, for Tax Map Key 2-7-21:9 located at Pauka'a, South Hilo, Hawaii, be and is hereby denied.

Dated at Hilo, Hawaii, this 8th day of March, 1979.



WILLIAM F. MIELCKE, CHAIRMAN
Planning Commission

APPROVED AS TO FORM
AND LEGALITY:



DEPUTY Corporation Counsel
County of Hawaii

Date: MAR 7 1979