

CERTIFIED MAIL

May 15, 1979

Mr. Erbin De Ponte, Sr.
P. O. Box 1013
Kea'au, HI 96749

Dear Mr. De Ponte:

Variance Application
Tax Map Key 1-7-24:60

The Planning Commission at its preliminary hearing on May 10, 1979, considered your application for a variance from the minimum roadway requirements for a proposed 2-lot subdivision within the Kukui Heights Lots Subdivision, slightly less than one (1) mile northwest of the Volcano Highway, Olaa, Puna, Hawaii.

This is to inform you that the Commission voted to deny your request to waive the improvement requirements for the private subdivision road based on the following findings:

Presently the private subdivision road is in poor condition. Although the 12-foot wide gravel road is easily passable in the level sections, the large existing pothole and the erosion on the steeper portions of the road make passage difficult. Further, as much of the road lacks adequate shoulders the presence of cars going in opposite directions creates hazardous situations.

Currently there are nine (9) dwellings that take access off the private subdivision road. Should all the lots which would take access of this road have dwellings placed on them there would be a total of 18 houses using

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by wife, Elizabeth
CH # 26958

the private road. This increase in usage, together with the average rainfall of 150 inches per year would further accelerate the deterioration of the gravel road.

In view of these circumstances to grant the requested variance would be contrary to the intent of the Subdivision Control Code.

The access provisions of the Subdivision Control Code are intended, in part, to assure that all lots created have readily passable access. To this end the Subdivision Control Code specifies both minimum road construction design and pavement widths. The existing private road is below these standards and physically does not provide for the safe and easy passage of vehicles nor for two-way traffic. Thus, as the petitioner proposes no improvements to the existing private road, to grant the subject variance request would be contrary to the purpose and intent of the access provisions of the Subdivision Control Code.

That there are no unusual conditions or circumstances applying to the subject property which do not generally apply to surrounding properties. Of the 51 existing lots within the Kukui Heights Subdivision 43 take access off the private subdivision roads. Further, of the potential 71 lots that could exist within the subdivision, 59 would take access off these same roads. Should the subject variance request be approved, it would put other properties within the subdivision in a position to request similar exemption from roadway improvements. The net result of such a snowballing effect would be the accelerated deterioration of the gravel roads making access even more difficult and hazardous to the existing lots and the lots subsequently created.

In addition to the Kukui Heights Subdivision there are many other subdivisions which are non-conforming with respect to roadway improvements. Should the subject request be approved property owners in these other non-conforming subdivisions would also be in a position to request similar exemptions from the roadway improvement requirements.

Based on the poor condition of the existing private subdivision road and other considerations mentioned previously, the Commission recommends that the subject variance request be denied.

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.

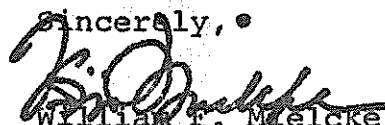
Pursuant to your request made at the Planning Commission meeting on May 10, 1979, your request to waive the improvement requirements for the Kukui Camp Road and to amend Variance Permit No. 411 to allow the retention of a piggery on a proposed 1.654 acre lot and with a setback of approximately 58 feet is hereby withdrawn.

Your pending subdivision application is being processed as a separate item from your variance requests. Should you wish to withdraw your subdivision application please so notify us in writing and we will return to you all extra copies of the maps. We will save one (1) for our records.

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

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cc: Corporation Counsel
Chief Engineer, Public Works

MAY 21 1979

PLANNING COMMISSION OF THE PLANNING DEPARTMENT
COUNTY OF HAWAII

In the Matter of the Appeal)
 of)
 ERBIN DE PONTE, SR.)
)
Tax Map Key 1-7-24:60)
_____)

Variance No. 575

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND
DECISION AND ORDER

COUNTY OF HAWAII

Variance No. 575

The above-entitled matter was brought on a preliminary hearing on May 10, 1979, in the Seven Seas Luau House, South Hilo, Hawaii, at which time, Erbin De Ponte, Sr. 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.

1. An application for a variance to waive the roadway improvement requirements for a proposed 2-lot subdivision was received on March 28, 1979. These roadway improvement requirements were: (1) improve the existing Kukui Camp Road to have a 16-foot wide asphalt concrete pavement with 3-foot wide shoulders; and (2) improve the 40-foot wide private subdivision right-of-way to have a 50-foot right-of-way with a 20-foot wide asphalt concrete pavement from the proposed subdivision to the Kukui Camp Road. Also requested was an amendment to Variance Permit No. 411 to allow

the retention of a piggery on a proposed 1.654 acre lot and with a setback of approximately 58 feet in lieu of the 2.2-acre lot size and 60-foot setback approved by Variance Permit No. 411.

2. The property involved is located within the Kukui Heights Subdivision, slightly less than one (1) mile northwest of the Volcano Highway, Olaa, Puna (TMK: 1-7-24:60).

3. The Kukui Heights Subdivision was created in 1948 and consists of 51 lots. These lots, which range in size from one-half (1/2) acre to approximately 3.5 acres, currently have 15 single family dwellings, greenhouses and other agricultural structures developed on them.

4. The Kukui Heights Subdivision is within the State Land Use Rural District and is zoned by the County of Hawaii as Residential-Agricultural with a minimum lot size of one-half acre (RA-.5a). Within this zoned district one (1) single family dwelling per lot is permitted. Based on the minimum lot size requirements and the existing lot configurations the maximum development potential for this subdivision is 71 lots.

5. The subdivision is approximately 5,000 feet from Volcano Highway off the Kukui Camp Road which has a right-of-way width of 30 feet with a 10-foot A.C. pavement. There is a 6-inch County waterline situated within this right-of-way. Within the subdivision, access is provided by private roadways which have 40-foot wide right-of-ways.

6. The subject property contains 2.294 acres of land. According to the U.S. Department of Agriculture, Soil Conservation Service Soil Survey Report, dated December 1973, the soils on the subject property are Keaukaha extremely rocky muck which consists of well-drained thin organic soils overlying pahoehoe lava bedrock. Rock outcrops occupy approximately 25 percent of this soil type. The soil above the pahoehoe is rapidly permeable. The pahoehoe lava

is very slowly permeable although water moves rapidly through the cracks. Runoff is medium and the erosion hazard is slight. The average rainfall in this area is approximately 150 inches per year.

7. The property involved is located approximately 400 feet from the intersection of Kukui Camp Road and the 40-foot private subdivision road. The private subdivision road has an approximately 12-foot wide gravel surface. On the steeper sections the gravel road has been eroded to the extent that passage over it is difficult. In the flatter portions the road surface is much less eroded.

8. The petitioner proposed to subdivide the 2.294 acre lot into two (2) lots with land areas of 1.654 acres and 0.640 acres respectively. There is an existing single family dwelling and a piggery on the property which would be located in the proposed 1.654 acre lot.

9. Tentative approval of the subdivision request was granted on March 21, 1979, subject to various conditions. Two (2) of these conditions are to (1) improve the Kukui Camp Road to have a 16-foot A.C. pavement with 3-foot shoulders and (2) improve the 40-foot private subdivision road to have a 50-foot right-of-way with a 20-foot wide A.C. pavement from the subject property to Kukui Camp Road. In lieu of meeting these requirements the petitioner requested the subject variance.

10. Also requested was an amendment to Variance Permit No. 411. Variance Permit 411 was granted by the Planning Commission on July 17, 1974 and allowed the establishment of a piggery on 2.2 acres of land in lieu of the minimum requirement of three (3) acres as stipulated within the Residential-Agricultural zoned district. The petitioner has since constructed a 702 square foot piggery on the existing 2.294 acre lot. This lot is proposed to be subdivided with the piggery on a resultant 1.654 acre lot. As the use of the piggery

is proposed on a lot smaller than 2.2 acres as approved by Variance Permit No. 411, the subject amendment was necessary. Further, based on representations made by the petitioner, the existing piggery would be situated approximately 58 feet from the proposed 0.640 acre lot, as compared with the minimum setback requirement of 60 feet for a piggery as stipulated within the Residential-Agricultural zoned district. The portion of the 0.640 acre lot closest to the piggery is a proposed 18-foot wide access easement.

11. In requesting the subject amendment, the petitioner had stated that he does not intend to operate the piggery on a commercial basis. Rather the use of the piggery would be limited to family use with a maximum of six (6) pigs at any time.

12. In support of the subject request the petitioner had stated, in part, the following:

"My reason for asking this relief is the cost of the pavement on this road. Also the fact that I am being asked to bear this cost. Since others are going to use this paved road I contend that it is unfair to me and for me to bear the cost by myself is to put it mildly prohibitive."

13. Concerning the roadway improvements, the Department of Public Works commented:

"This area is uneconomical to subdivide, but it is the developers prerogative to do so if he meets the minimum roadway requirements. We suggest that the Planning Commission conduct an on-site inspection of the existing roads to help them in their decision."

14. The Fire Department commented that:

"The Fire Department recommends applicant should adhere to the County of Hawaii Subdivision Ordinance."

15. None of the other cooperating agencies had any comments on or objections to the subject request.

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

Presently the private subdivision road is in poor condition. Although the 12-foot wide gravel road is easily passable in the level sections, the large existing pothole and the erosion on the steeper portions of the road make passage difficult. Further, as much of the road lacks adequate shoulders the presence of cars going in opposite directions creates hazardous situations.

Currently there are nine (9) dwellings that take access off the private subdivision road. Should all the lots which would take access of this road have dwellings placed on them there would be a total of 18 houses using the private road. This increase in usage, together with the average rainfall of 150 inches per year would further accelerate the deterioration of the gravel road.

In view of these circumstances, to grant the requested variance would be contrary to the intent of the Subdivision Control Code.

The access provisions of the Subdivision Control Code are intended, in part, to assure that all lots created have readily passable access. To this end the Subdivision Control Code specifies both minimum road construction design and pavement widths. The existing private road is below these standards and physically does not provide for the safe and easy passage of vehicles nor for two-way traffic. Thus, as the petitioner proposes no improvements to the existing private road, to grant the subject variance request would be contrary

to the purpose and intent of the access provisions of the Subdivision Control Code.

That there are no unusual conditions or circumstances applying to the subject property which do not generally apply to surrounding properties. Of the 51 existing lots within the Kukui Heights Subdivision, 43 take access off the private subdivision roads. Further, of the potential 71 lots that could exist within the subdivision, 59 would take access off these same roads. Should the subject variance request be approved, it would put other properties within the subdivision in a position to request similar exemption from roadway improvements. The net result of such a snowballing effect would be the accelerated deterioration of the gravel roads making access even more difficult and hazardous to the existing lots and the lots subsequently created.

In addition to the Kukui Heights Subdivision there are many other subdivisions which are non-conforming with respect to roadway improvements. Should the subject request be approved, property owners in these other non-conforming subdivisions would also be in a position to request similar exemptions from the roadway improvement requirements.

Based on the poor condition of the existing private subdivision road and other considerations mentioned previously, staff recommended that the subject variance request be denied.

17. After hearing the staff's background and recommendation and hearing from the petitioner, the Planning Commission voted to deny the request to waive the improvement requirement for the 40-foot wide private subdivision road right-of-way for the reasons as presented by the staff. The vote was unanimous with eight (8) ayes.

18. Following the Planning Commission's denial of the request to waive the improvement requirement for the 40-foot wide private subdivision road right-of-way, the petitioner withdrew his requests to waive the required improvement of the Kukui Camp Road and the requested amendments to Variance Permit No. 411.

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 9 (Subdivision Control Code), Article 2, Section 4 pertaining to the minimum roadway standards for a proposed subdivision of Tax Map Key 1-7-24:60 located at Olaa, Puna, Hawaii, be and is hereby denied.

Dated at Hilo, Hawaii, this 31st day of June,
1979.



WILLIAM F. MIELCKE, CHAIRMAN
Planning Commission

APPROVED AS TO FORM
AND LEGALITY:



Deputy Corporation Counsel
County of Hawaii

Date: JUN 20 1979