

CERTIFIED MAIL

November 19, 1979

Mr. William Crockett, General Partner  
Kaaihue Ranch  
P. O. Box 1778  
Kailua-Kona, HI 96740

Dear Mr. Crockett:

Variance Applications  
Tax Map Key 7-6-02:20 and 23

The Planning Commission at its preliminary hearing on November 14, 1979 considered your application for a variance to allow the waiving of the minimum roadway improvement requirements for a proposed 3-lot subdivision. Also requested is a variance to allow the creation of the three 5-acre lots with average building site widths of 185+ feet in lieu of the minimum requirement of 200 feet at Holua'loa, North Kona, Hawaii.

This is to inform you that the Commission voted to deny your request for a variance to allow the waiving of the minimum roadway improvement requirements for a proposed 3-lot subdivision based on the following findings:

That the approval of the request would be contrary to the purpose and intent of the access provisions of the Subdivision Control Code. The purpose and intent of the access provisions of the Subdivision Control Code is to provide for the safer and efficient movement of people and goods. In the case of areas zoned for three (3) acre lots or larger the Subdivision Control Code requires a fifty (50) foot wide right-of-way with a twenty (20) foot wide pavement or oil-treated surface. As compared to residential private road subdivision standards there is no provision for reducing right-of-way and pavement width for private roads. The only difference is the treatment of the gravel surface, that is, paved or oil-treated. These

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provisions requiring a fifty (50) foot right-of-way are intended to insure that adequate right-of-way widths will exist in the event that land use intensities increase in the future. Essentially, these provisions treat agricultural subdivisions as larger lot developments where further development of the parcels is possible. Should these provisions not be met the County and land developers may be faced with increasing needs for development in areas where adequate road rights-of-way do not exist. To acquire in the future added land to make these rights-of-way adequate may be impossible for a private developer and would be an unnecessary financial burden for the County to assume. Based on these considerations it is determined that the approval of the subject request would be contrary to the purpose and intent of the Subdivision Control Code.

Further, while the subject request is for a proposed three (3) lot subdivision, the roadway in question physically serves 14 lots in the adjoining Holualoa Partition Lots Mauka Section. The roadway in question was extended to these lots without securing the necessary approval prior to construction and does not meet County roadway standards. Should the petitioner improve the roadway within his property to dedicable standards his problems in this regard would be eliminated.

That the approval of the subject request would be contrary to the purpose and intent of the variance provisions of the Subdivision Control Code. It is the purpose and intent of the variance provisions to allow reasonable relief from the Code requirements in those cases where through no fault of the petitioner the strict and literal enforcement of the Code provisions would entail undue hardships. In this particular case the hardships involved have been created by the petitioner. Prior to the approval of the original consolidation and resubdivision action the petitioner was notified that subsequent subdivision of the Agricultural - 5 acre (A-5a) zoned lot would require a 50-foot wide right-of-way. In spite of this the petitioner choose to retain the 20-foot wide access. Thus, the petitioner has an opportunity to avoid this problem but did not utilize it.

Further, while the creation of a 50-foot right-of-way would make the Agricultural - 1 acre (A-1a) zoned lots

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narrower, it would not change the net buildable area of these lots. The subdivision approved creating these lots indicates a 30-foot roadway setback line from which all building setbacks will be measured. Should the right-of-way be increased from 20 feet to 50 feet the building setbacks will still be measured from the same point.

Also, in view of the above denial your request for a variance to allow the creation of the three 5-acre lots with average building site widths of 185+ feet in lieu of the minimum requirement of 200 feet has become moot as declared by Corporation Counsel.

As your requests have 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 receipt of this letter 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 fees as soon as the refund is processed.

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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,

*for J. Whitmarsh*  
WILLIAM F. MIELCKE  
CHAIRMAN  
PLANNING COMMISSION

lgv

cc Corporation Counsel  
Chief Engineer, Public Works  
Kona Services Office

bcc Land Use Controls Division, Plng. Dept.