

CERTIFIED MAIL

November 19, 1979

Mr. and Mrs. Leroy Willis
P. O. Box 1702
Kailua-Kona, HI 96740

Dear Mr. and Mrs. Willis:

Variance Application
Tax Map Key 2-4-04:130

The Planning Commission at it preliminary hearing on November 14, 1979, considered your application for a variance to allow the waiving of the minimum roadway requirements for a proposed 2-lot subdivision at Waiakea Homesteads, Waiakea, South Hilo, Hawaii.

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

That there are no unusual conditions applying to the subject property that do not generally apply to surrounding properties. With respect to the existing roadway there are 71 other lots located along the gravel portion of Ainalako Road. All of these properties would be faced with similar roadway improvement requirements should subdivision of the properties be requested.

Further, approval of the subject request would be contrary to the purpose and intent of the access provisions of the Subdivision Control Code, which is, in part, to provide for safe and efficient access to all lots created. The requirement to pave a 135-foot portion of Ainalako Road would be a step toward achieving this end. On the other hand, should the variance requested be approved, it would allow the development of an additional dwelling to be

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constructed on the subject property without any roadway improvements. Such an outcome, together with the potential for other similar requests along Ainalako Road, would create additional traffic and cause the existing gravel road to deteriorate more rapidly. This situation is especially serious in view of the high rainfall in the subject area. Such roadway deterioration would be contrary to the safe and efficient movement of people and goods, and would increase public expenditures for the maintenance of the roadway. Thus, the approval of the subject request would be contrary to the purpose and intent of the Subdivision Control Code, and contrary to the public safety and welfare.

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 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.

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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 Corporation Counsel
Chief Engineer, Public Works

bcc Land Use Controls Division, Plng. Dept.

PLANNING COMMISSION OF THE PLANNING DEPARTMENT

COUNTY OF HAWAII

In the Matter of the Appeal)
 of)
 LEROY WILLIS)
))
Tax Map Key 2-4-04:130)
_____)

Variance No. 601

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)	
LEROY WILLIS)	Variance No. 601
))	
Tax Map Key 2-4-04:130)	
_____)	

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND
DECISION AND ORDER

The above-entitled matter was brought on for a preliminary hearing on November 14, 1979, at the Annunciation Church Hall, Waimea, South Kohala, Hawaii, at which time, Leroy Willis 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 from the minimum roadway requirements imposed for a proposed two-lot subdivision was received on October 4, 1979.

2. The property involved is located along the east side of Ainalako Road, slightly more than one mile from the Ainalako Road-Ainaola Drive intersection, Waiakea Homesteads, Waiakea, South Hilo, Tax Map Key 2-4-04:130.

3. The petitioner proposed to subdivide the property into two (2) one-(1) acre sized lots consistent with the Agricultural-1 acre zoning. On June 20, 1979, the proposed subdivision was

granted tentative subdivision approval subject to various conditions. Concerning the improvement of Ainalako Road, the petitioner was offered two (2) alternatives to meet for final subdivision approval:

- "1) The subdivider shall provide a 14-foot wide A.C. pavement with 3-foot load bearing shoulders fronting the entire subdivision. Submit construction drawings for review and approval by all of the affected agencies.
- "2) Residents in the vicinity of the subdivision have recently submitted a petition requesting improvements to Ainalako Road. Thus, an Improvement District action may be possible for improvements to the entire length of Ainalako Road."

In lieu of meeting these requirements, the petitioner had submitted the subject variance request.

4. Ainalako Road has a variable 50 to 60-foot wide right-of-way and extends a total of approximately 2.4 miles. From the intersection with Ainaola Drive, Ainalako Road has a 20-foot wide asphalt concrete pavement extending 1,600 feet to the Sportsman Subdivision. From the end of the pavement, the road has a gravel surface varying from 10 to 18 feet wide. The condition of the gravel road is smooth near the Sportsman Subdivision and becomes increasingly rough further in from Ainaola Drive with potholes and exposed rocks.

5. Along the gravel portion of Ainalako Road, there are 72 lots in varying sizes. Given the current Agricultural-1 acre and 5 acre zoning, these 72 lots would have a development potential of approximately 175 lots. Currently, 17 houses take access off the gravel portion of Ainalako Road.

6. The subject property consists of two (2) acres of land and is currently vacant. The frontage along Ainalako Road is approximately 135 feet.

7. According to the Soil Conservation Service Soil Survey Report, dated December 1973, the soil on the subject property is Hilo silty clay loam. In representative profile this soil has a surface layer of dark-brown silty clay loam about 12 inches thick over a 48-inch thick sub-soil of silty clay loam. Permeability is rapid, runoff is slow and the erosion hazard is slight. The average rainfall is approximately 150 inches annually.

8. Upon review of the subject request, the Department of Public Works stated the following:

"We feel that this application should not be approved. Ainalako Road is in poor shape and until the County or a developer improves it, there should not be any further subdivision off of this road. See the attached petition."

9. The petition referred to was signed by 82 persons and submitted to the County Council. The petition stated the following:

"We the undersigned interested individuals believed that the County of Hawaii should pave another mile of Ainalako Road and should also oil the remaining segment of the said road for the following reasons:

"1. Many of the residence on Ainalako Road depend entirely on our water catchment (water collected from house roof) for our domestic usages.

It takes three days of sunny weather to create dust which settles on our roof tops which in turn are washed into our water tanks.

This water is extremely dirty at times and incapacious for domestic usage.

- "2. The dust created by vehicles traveling on the road filters through the homes causing another health hazard. Many times we find ourselves coughing and choking from the dust.
- "3. The chuck holes in the road have caused our repair to rise (worned tires, cars rattle faster, etc.)
- "4. Dust creeping into cars while driving causing another health hazard.

"We believe that the said reasons should necessitate immediate action from Mr. Matayoshi and the County Council to solve the problems created by the County Road.

"We sincerely appreciate all the help you could give us."

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

11. In support of the subject request, the petitioner had stated the following:

"Asking a small subdivider to put a paved street in front of their property that has less than 135 foot frontage can be quite a road hazard and a liability for your department and the County of Hawaii. In a heavy rain, traveling fast on the dirt road, the sharp edges of sudden pavement, hit at even normal speed could cut the tires and cause an accident. Or, in rains, to suddenly hit slick pavement unexpectedly after traveling on gravel, could put a car out of control and cause an accident. This short stretch of pavement of under 135 feet would be a great attraction to any children along this long country gravel road to use that area for bike racing, roller skating, and skate boarding. This could cause a continual collecting place for children, creating accidents and possible deaths, especially since this property is located on a curve. Any of this could result in legal action against all those requiring this hazard if even one serious accident or death is caused by it.

"The other condition is to wait for Improved District Action. Since the need is so small to improve that road area, it may be many years before that action is taken. There are about 11 homes before my property, all with electricity, phone, and hooked up to water. If more properties were allowed to divide and improve, the tax revenue would help with road improvements. These roads should be installed in large stretches by the county, not short unexpected areas of pavement in the country which would not solve any problems, just create road hazards.

"My reason for dividing into 2 lots is so we may build two homes, one for ourselves and one for my daughter, her husband and child. We are retired and they are young and just starting out. Money is a problem to us both, and to have to also improve the road area in front of the property would mean we are financially unable to divide and develop as two individual properties. We purchased this property in March 1975, and intend to keep it."

12. At the preliminary hearing on November 14, 1979, the Planning Department recommended denial of the application based on the following findings:

"That there are no unusual conditions applying to the subject property that do not generally apply to surrounding properties. With respect to the existing roadway there are 71 other lots located along the gravel portion of Ainalako Road. All of these properties would be faced with similar roadway improvement requirements should subdivision of the properties be requested.

"Further, approval of the subject request would be contrary to the purpose and intent of the access provisions of the Subdivision Control Code, which is, in part, to provide for safe and efficient access to all lots created. The requirement to pave a 135-foot portion of Ainalako Road would be a step toward achieving this end. On the other hand, should the variance request be approved, it would allow the development of an additional dwelling to be constructed on the subject property without any roadway improvements. Such an outcome, together with the potential for other similar requests along Ainalako Road, would create additional traffic and cause the existing gravel road to deteriorate more rapidly. This situation is especially serious in view of the high rainfall in the subject area. Such roadway deterioration would be contrary to the safe and efficient movement of people and goods, and would increase public expenditures for the maintenance of the roadway. Thus, the approval of the subject request would be contrary to the purpose and intent of the Subdivision Control Code, and contrary to the public safety and welfare."

13. After review of the Planning Department's background and recommendation and the petitioner's testimony, the Planning Commission voted to deny the request for the reasons as presented by the Department. The vote was recorded as five (5) ayes and three (3) noes.

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 requirement of Chapter 9 (Subdivision Control Code), Article 2, Section 4, pertaining to the minimum roadway standard for a proposed subdivision of Tax Map Key 2-4-04:130 located at Waiakea, South Hilo, Hawaii, be and is hereby denied.

Dated at Hilo, Hawaii, this 10th day of April, 1980.

APPROVED AS TO FORM
AND LEGALITY:

R. Ben Tuhazaki
DEPUTY Corporation Counsel
County of Hawaii

Date: 4 April 80

for: William F. Mielcke Jr.
WILLIAM F. MIELCKE, CHAIRMAN
Planning Commission