

May 21, 1980

Mr. Mitsunari Ogata
856 U'ilani Place
Hilo, Hawaii 96720

Dear Mr. Ogata:

Appeal from Planning Director's Denial Action
on Variance Application - Minimum Building
Site Area Requirement
TMK: 2-4-17:88

This is to inform you that at its meeting on May 8, 1980, the Planning Commission voted to sustain your petition for appeal from the Planning Director's denial action on the variance request to allow the creation of a 13,277 square foot sized lot in lieu of the minimum building site area requirement. Based on this decision, your variance application is hereby declared approved.

The Planning Commission's reasons are as follows:

1. There are special and unusual circumstances applying to the subject property. All one-acre parcels such as the subject property located in this RS-15 zone are special circumstances because they were created prior to the existing subdivision zoning code. Many of these one-acre parcels were granted approval for 3-lot subdivisions via the variance route.
2. The applicant is hereby deprived of substantial property rights which are ordinarily available. By virtue of the fact that many property owners subdivided their one-acre lands into three lots under the same subdivision code in the past twelve years, it is believed that the applicant is not being treated equitably.

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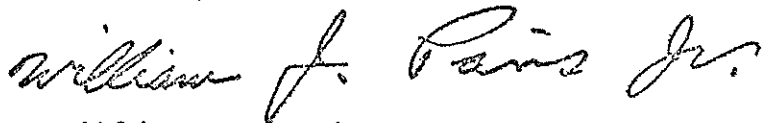
3. Granting of the variance will not constitute a grant of special privileges. We perceive the granting of this variance as to lot size as being consistent with the past decisions made by the Commission on similar one-acre lots under identical district classifications.

Additionally, adjoining areas are already built up of small lots sizes ranging from 7,000 square feet to 10,000 square feet; therefore, granting this variance will have no detrimental effect nor will it set a precedent in this immediate neighborhood.

We apologize for the delay in making a decision on your appeal. However, we believe that the outcome of the Planning Commission's action is of satisfaction to you.

Should you have any questions, please feel free to contact the Planning Department.

Sincerely,



William J. Paris, Jr.
Chairman, Planning Commission

NH/lgv

cc: Corporation Counsel
Mr. Philip Yoshimura

bcc: Masa, et al (Subd. file)

CERTIFIED MAIL

February 21, 1980

Mr. Mitsunari Ogata
856 U'ilani Place
Hilo, HI 96720

Dear Mr. Ogata:

Variance Application
Minimum Lot Size and Maximum
Number of Lots for a Cul-de-sac
Tax Map Key: 2-4-17:08

After review of your application and the information presented at the administrative public hearing on February 7, 1980, the Planning Director is hereby certifying the approval of your variance request to exceed the maximum allowable number of lots for a cul-de-sac. Approval of this request is based on the following findings:

1. That there are special and unusual circumstances applying to the subject property which do not generally apply to surrounding property in the same district. Access to the subject property is provided by U'ilani Place which is a cul-de-sac with a 40-foot wide right-of-way and a 20-foot wide pavement. U'ilani Place is currently serving 29 parcels, exceeding the subdivision design standard which stipulates that cul-de-sacs shall not serve more than eighteen lots. However, the existing U'ilani Place was designed and constructed under County supervision via the improvement assessment procedure in 1971. At the time of construction, existing U'ilani Place was to serve some 27 lots. Therefore, government was at least partially responsible for creating this substandard roadway situation even before it was completed. In addition, no provisions were made to limit the number of lots that could be served by U'ilani Place.
2. That the strict interpretation of the subdivision design standard stipulating that cul-de-sacs shall not serve more than eighteen lots, will deprive the applicant of substantial property rights which would otherwise be available. The subject property as well as other properties taking access off of U'ilani Place are within

the Single Family Residential-15,000 square foot (RS-15) zoned district. The property in question has an area of 43,277 square feet and could be legally subdivided into two parcels given the present zoning. The only developmental restriction standing in the way of creating a two lot subdivision on the subject property is the substandard road situation. Since the government was at least partially responsible for creating this substandard roadway situation, a strict interpretation of the 18-lot standard would be inconsistent with the government's own actions. Therefore, this interpretation would unfairly deprive the applicant of substantial property rights.

3. That the granting of the variance will not constitute a grant of personal or special privilege inconsistent with the limitations upon other properties under identical district classification. As stated above, there are special and unusual circumstances applying to the subject property which will deprive the applicant of substantial property rights which would otherwise be available. Other properties taking access off of U'ilani Place will be afforded the same opportunity as long as all conditions remain the same.
4. That the granting of the variance is not inconsistent with the general purpose of the district or the intent and purpose of the Subdivision Control Code as interpreted by the previous action of government in approving the design and construction of U'ilani Place. Furthermore, the granting of the variance will not militate against the General Plan and will not be materially detrimental to the public welfare or injurious to improvements or property rights related to property in the near vicinity. Under existing conditions, the owners of the subject property have the right to build two homes on the property. The granting of the variance will not increase the number of homes that could be built on the property. The variance will merely allow the applicants to subdivide the property into two lots. Therefore, whether the variance is granted or not, the traffic impact on U'ilani Place will remain the same.

The conditions of approval are as follows:

1. That the applicant or his authorized representative shall secure tentative subdivision approval within one (1) year from the effective date of the Variance Permit. The applicant/representative shall be responsible for securing final subdivision approval within one (1) year from the date of receipt of tentative subdivision approval.

2. That all applicable rules, regulations and requirements shall be complied with.

Should any of the foregoing conditions not be met, the Variance Permit may be deemed null and void.

We regret to inform you, however, that the variance request to create a 13,277 square foot sized lot in lieu of the minimum building site area requirement of 15,000 square feet is being denied based on the following findings:

1. That there are no special or unusual circumstances applying to the subject property which do not generally apply to surrounding property or improvements in the same district. Given the County's Single Family Residential - 15,000 square foot (RS-15) zoning, the maximum number of lots that can be created from a 43,277 square foot parcel is two (2) lots. Although the subject property is only 1,723 square feet short of creating three 15,000 square foot parcels, this situation, in and of itself, does not constitute a special or unusual circumstance. There are several other parcels in the surrounding area with similar situations.
2. That the applicant has not been deprived of substantial property rights which would ordinarily be available. The applicant is seeking to increase the rights related to the property above and beyond the limitations of the zoning and subdivision codes. As indicated above, there are no special or unusual circumstances applying to the subject property which would justify the exceptions requested by the variance application.
3. That the granting of the variance will constitute a grant of special privilege inconsistent with the limitations upon other properties under identical district classification. As stated above, there are several other parcels in the surrounding area which are faced with similar developmental restrictions. If we are to treat other properties under identical district classification consistently, this variance request must be denied.
4. That the proposed subdivision plan indicates that a roadway easement is also included in the lot size calculations for two of the three parcels. Given the department's administrative policy not to use road easements as part of lot size calculations, two of the proposed lots will have less than the minimum 15,000 square feet required in the Single Family Residential -15,000 square foot (RS-15) zoned district. The granting of a variance under these circumstances would, therefore, violate the spirit and intent of the minimum building site area requirements as stipulated within the Zoning Code.

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For these reasons, it is determined that the variance request to create a 13,277 square foot sized lot in lieu of the minimum building area requirement of 15,000 square feet should be denied.

Please be further informed that the official Variance Permit and the Final Denial Order will be forthcoming under separate cover.

The Director's decision is final, except that within ten working days after receipt of this letter, you may appeal the decision in writing to the Planning Commission in accordance with the following procedures:

1. Non-refundable filing fee of one hundred dollars (\$100.00);
2. Ten (10) copies of a statement that clearly sets forth the legal and substantive bases for the appeal and that specifies the grounds which would support a finding that the Director's decision was in error; and
3. Any other plans or information required by the Planning Commission.

Upon receipt of the appeal, the Planning Commission shall conduct a public hearing within a period of ninety (90) calendar days, unless the time is waived by the appellant. Within sixty (60) days after the close of the public hearing or within such longer period as may be agreed to by the appellant, the Planning Commission shall affirm, modify or reverse the action from which the appeal was taken.

Should you have any questions in the meantime, please feel free to contact us.

Sincerely,



Sidney M. Fuke
Planning Director

BN:gs

cc: Mr. Philip I. Yoshimura
Planning Commission