

PLANNING DEPARTMENT
County of Hawaii
Hilo, Hawaii

APPLICATION FOR ADMINISTRATIVE VARIANCE)
by)
STATE OF HAWAII,)
DEPARTMENT OF AGRICULTURE) ADMINISTRATIVE
from) VARIANCE NO. 7
MINIMUM BUILDING SITE AREA REQUIREMENT)
in)
KALAOA, NORTH KONA, HAWAII)
_____)

ADMINISTRATIVE VARIANCE PERMIT

An administrative public hearing was held by the Planning Director of the County of Hawaii Planning Department on March 6, 1980, on the application of the STATE OF HAWAII, DEPARTMENT OF AGRICULTURE for a variance from the minimum building site area requirement, more specifically, to allow the creation of the 4.5, 4.7, and 4.7-acre lots in lieu of the minimum building site area requirement of five (5) acres at Kalaoa, North Kona, Hawaii, Tax Map Key 7-3-10:portion of 33.

After hearing the case, the Planning Director has found:

It is found that there are special and unusual circumstances applying to the subject property which do not generally apply to surrounding properties and/or improvements in the same zoned district.

The petitioner's original subdivision plan showed that the affected lots were more than five (5) acres in size. Proposed lot no. 2 was proposed to be 5.1 acres including a 20-foot wide drainage easement. Proposed lot nos. 8 and 11 were originally 5.3 acres in sizes which included 15-foot wide drainage easements. Technically, the drainage easements are permitted to be used as part of the lot calculation in terms of land area. However, after discussing the proposed subdivision layout relative to the drainage easements with the Department of Public Works, that department required that the easements be increased to a 50-foot width and that they be made as a separate lot. The drainage improvements have already been constructed within the proposed drainage lot. As stated earlier, the drainage easements can legally be made a part of lot no. 2, 8 and 11. In doing so, these lots would meet the minimum building site area requirement of five (5) acres. However, as a result of the imposition of the Department of Public Works, it is felt that special or unusual circumstances do exist to a degree which deprive the petitioner of substantial property rights which would otherwise be available and to a degree which obviously interferes with the best use or manner of development of the subject property.

As stated earlier, since the drainage easements can be legally used in calculating the land area for the proposed; and thereby making the lots more than five (5) acres in size, it is felt that the granting of this particular variance will not be inconsistent with the general purpose of the district; and with the intent and purpose of the Subdivision Control and Zoning Codes, will not militate against the General Plan; and will not materially be detrimental to the public welfare nor be injurious to improvements or property rights related to properties in the near vicinity. It is also determined that the granting of this particular variance will not constitute a grant of personal or special privilege inconsistent with the limitations placed upon other properties under identical district classification.

Therefore, the Planning Director hereby grants to the applicant a variance to allow the creation of the 4.5, 4.7, and 4.7-acre lots in lieu of the minimum building site area requirement of five (5) acres at Kalaoa, North Kona, Hawaii, TMK: 7-3-10:portion of 33, pursuant to the authority vested in him by the County Charter, subject to the following conditions:

1. That the Variance Permit not be in effect until the pending change of zone application affecting the subject property be adopted.
2. That the petitioner or its authorized representative secure tentative subdivision approval for Phase I of the proposed Ke-ahole Agricultural Park Subdivision, which includes the subject lots, within one (1) year from the effective date of the pending change of zone. The petitioner/representative shall also secure final subdivision approval within one (1) year thereafter.
3. That no other variances, including the minimum setback requirements, shall be requested for the affected lots.
4. That all other applicable rules, regulations, and requirements be complied with.

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

The effective date of this permit shall be from March 12, 1980.

Dated at Hilo, Hawaii, this 26th day of August, 1980.



SYDNEY M. FUKE, Director
Planning Department

APPROVED AS TO FORM AND LEGALITY:



Deputy Corporation Counsel
County of Hawaii

Date: 18 August 80

March 12, 1980

Mr. John Farias, Jr.
State of Hawaii
Department of Agriculture
1428 South King Street
Honolulu, Hawaii 96814

Dear Mr. Farias:

Variance Application
Minimum Building Site Area Requirement
Tax Map Key 7-3-10:portion of 33

After review of your application and the information presented at the administrative public hearing on March 6, 1980, the Planning Director is hereby certifying the approval of your variance request to allow the creation of the 4.5, 4.7 and 4.7-acre lots in lieu of the minimum building site area requirement of five (5) acres. Approval of the request is based on the following findings:

It is found that there are special and unusual circumstances applying to the subject property which do not generally apply to surrounding properties and/or improvements in the same zoned district.

The petitioner's original subdivision plan showed that the affected lots were more than five (5) acres in size. Proposed lot no. 2 was proposed to be 5.1 acres including a 20-foot wide drainage easement. Proposed lot nos. 8 and 11 were originally 5.3 acres in sizes which included 15-foot wide drainage easements. Technically, the drainage easements are permitted to be used as part of the lot calculation in terms of land area. However, after discussing the proposed subdivision layout relative to the drainage easements with the Department of Public Works, that department required that the easements be increased to a 50-foot width and that they be made as a separate lot. The drainage improvements have already been constructed within the proposed drainage lot. As stated earlier, the drainage easements can legally be made a part of lot no. 2, 8 and 11. In doing so, these lots would meet the minimum building site area requirement of five (5) acres. However, as a result of the imposition of the Department of Public Works, it is felt that

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special or unusual circumstances do exist to a degree which deprive the petitioner of substantial property rights which would otherwise be available and to a degree which obviously interferes with the best use or manner of development of the subject property.

As stated earlier, since the drainage easements can be legally used in calculating the land area for the proposed; and thereby making the lots more than five (5) acres in size, it is felt that the granting of this particular variance will not be inconsistent with the general purpose of the district; and with the intent and purpose of the Subdivision Control and Zoning Codes, will not militate against the General Plan; and will not materially be detrimental to the public welfare nor be injurious to improvements or property rights related to properties in the near vicinity. It is also determined that the granting of this particular variance will not constitute a grant of personal or special privilege inconsistent with the limitations placed upon other properties under identical district classification.

The request is being approved subject to the following conditions:

1. That the Variance Permit not be in effect until the pending change of zone application affecting the subject property be adopted.
2. That the petitioner or its authorized representative secure tentative subdivision approval for Phase I of the proposed Ke-ahole Agricultural Park Subdivision, which includes the subject lots, within one (1) year from the effective date of the pending change of zone. The petitioner/representative shall also secure final subdivision approval within one (1) year thereafter.
3. That no other variances, including the minimum setback requirements, shall be requested for the affected lots.
4. That all other applicable rules, regulations, and requirements 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 allow the creation of the 2.2-acre lot is being denied based on the following findings:

Unlike the circumstances surrounding proposed lot nos. 2, 8 and 11, it is felt that there are no special or unusual circumstances applying to the creation of the 2.2-acre lot. The mere fact that the proposed lot may eventually be used for agriculture-related support facilities is not a substantive

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reason for the granting of the variance. In fact, the use of the lot for the proposed activities may not even materialize. The lot is being set aside at this time in anticipation that the proposed activities would be needed in the future. Therefore, should the request be granted, and that it is later determined that the proposed activities are not warranted, it is quite possible that the lot would also be leased for other types of agricultural uses.

It is therefore determined that no special or unusual circumstances exist which would deprive the petitioner of substantial property rights which would otherwise be available or to a degree which obviously interferes with the best use or manner of development of the subject property. The petitioner does have reasonable alternatives in providing a lot for the proposed use. In fact, the petitioner has substantial landholding in this area to create a 5-acre lot to provide any future agriculture-related facility(ies). Since the petitioner intends to develop the Ke-ahole Agricultural Park into two (2) phases, an area could still be provided in the second phase since the proposed use is undetermined at this time. Further, the petitioner could even set aside one (1) of the proposed 5+-acre lots within the first phase for the proposed use.

Based on the above, it is determined that the granting of this particular request would violate the spirit and intent of the minimum building site area requirement as stipulated within the Zoning Code. It is also felt that the granting of this request would constitute a grant of personal or special privilege inconsistent with the limitations placed upon other properties under identical zoned district since other lots would be required to comply with the minimum building site area requirement.

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:

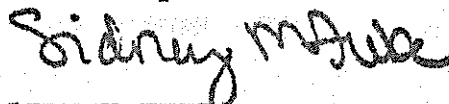
1. Non-refundable filing fee of one hundred dollars (\$100.00);
2. Ten (10) copies of a statement that clearly sets forth the legal and substantive bases for the appeal and that specifies the grounds which would support a finding that the Director's decision was in error; and
3. Any other plans or information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

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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 FUKU
Planning Director

NH:ak

cc: Planning Commission
George Asato

bcc: Subdivision Section