

CERTIFIED MAIL

October 18, 1982

Mr. Yet Sun Chang
249 Iiwipolena Road
Hilo, HI 96720

Dear Mr. Chang:

Variance Application (V82-23) - Yet Sun Chang
Variance from Minimum Road Right-of-Way Requirements
Tax Map Key 2-5-60:8

We regret to inform you that after reviewing your application and the information presented in its behalf, the Planning Director is hereby denying your variance request. The reasons for the denial are as follows:

1. There has been no evidence either submitted or found that there are special or unusual circumstances that apply to the land which deprives the owner or applicant of substantial property rights that would otherwise be available. The applicant is still afforded the opportunity to subdivide the property and not be deprived of any substantial property rights than that of the adjoining properties. There are no topographical difficulties or other problems which would inhibit a subdivision that could meet the minimum access requirements.

Furthermore, these considerations also show that there are no special or unusual circumstances which interferes with the best use or manner of development of the property. The applicant is still able to subdivide the property and meet the minimum access requirements. In the immediate area, there are approximately 41 acres of lands which could be subdivided. The impact of the potential density and the need for providing adequate access and vehicular circulatory patterns for this area further requires that the variance be denied. This fact further justifies that

the imposition of the anything less than the minimum required roadway improvements for this proposed fifteen (15) lot subdivision would have a negative effect or impact thus further substantiate the denial of the request. There are no topographical constraints which would make it necessary for the applicant to deviate from providing the minimum roadway requirements as dictated by the Subdivision Code.

2. There are no other reasonable alternatives that would resolve the difficulty that the petitioner is claiming for the subdivision. The applicant has the necessary land area which affords the opportunity for a multiplicity of design solutions for the subdivision of the property.

The only substantive reason given by the applicant in not being able to meet the minimum fifty (50) foot right-of-way requirement is that "...it would eliminate two to three of the lots." The reasons for subdividing properties by securing relief from minimum standards simply for economic purposes is a consideration but should not be the sole basis in the matter for considering any deviation from the Subdivision Code. The minimum code requirements were established to insure adequate and safe subdivisions for the public's welfare as stated in goals, policies and courses of actions in the General Plan. Thus, the minimum standards were to function so that all future subdivisions in the County of Hawaii, if possible, were to be ensured adequate access, water, etc. and to eliminate the kinds of land partitioning that occurred prior to the adoption of the Subdivision Code.

There is no evidence related to any topographical, inundation or other property constraints which require special consideration in a design solution of a subdivision of the property. It has been determined that there are other design alternatives available which would enable the applicant to subdivide the property and still meet with the minimum roadway requirements of the Subdivision Code.

3. Based on the foregoing findings, the variance is viewed not to be consistent against the criteria test for a variance and thus would not be consistent with the general purpose of the zoning district, and the intent and purpose of the Subdivision Code and the General Plan. The purpose of the minimum roadway requirements was to ensure that minimum safety standards relative to traffic and drainage were to be provided for. In addition, these minimum standards were

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designed to provide for other concerns including accommodation for adequate sight distance for on-street parking, adequate space for emergency vehicles to maneuver and positioning when required, to ensure services such as mail delivery, street addresses, road maintenance, etc. The applicants contention that keeping the road in private ownership would eliminate any burden to the County. This is not so, as the liability issue still would rest with the County if the variance was granted and the request could not stand up against the variance criteria. Any approval of the variance would make the County a party to a traffic accident liability suit that could be made against or by the applicant, or against or by a future landowner in the subdivision.

Thus, it could be further concluded that the granting of the variance would be materially detrimental to the public welfare or cause substantial adverse impact to an area's character or to adjoining properties. The future buyers for these lots would be deprived of the above considerations and thus a further burden would be placed on them. This burden will be materially detrimental in that the public welfare's assumption is always that new subdivision have complied with and will be provided with all the services and improvements as stated for in the Subdivision Code and General Plan. Furthermore, the granting of the variance without any substantiation in conjunction with the criteria test for variances as established in the Subdivision Code would be setting precedences for the other lands within the immediate area to request for the same type of relief from these standards. Though it may be construed that the impact of allowing this relief to this particular application may be minor, the cumulative impact of what could happen as a result of subsequent subdivision applications and the total vehicular circulation pattern for this area has to override any one particular property's solutions in subdividing a parcel.

The Director's decision is final, except that within ten (10) 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); and
2. Ten (10) copies of a statement of the specific grounds for the appeal.

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Should you decide to appeal, the Planning Commission shall conduct a public hearing within a period of ninety (90) days from the date of receipt of a properly filed appeal. 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 Director's action. A decision to affirm, modify or reverse the Director's action shall require a majority vote of the total membership of the Planning Commission. A decision to defer action on the appeal shall require a majority vote of the Planning Commission members present at the time of the motion for deferral. If the Planning Commission fails to render a decision to affirm, modify, or reverse the Director's action within the prescribed period, the Director's action shall be considered as having been affirmed.

All actions of the Planning Commission are final except that, within ten (10) working days after notice of action, the applicant or an interested party as defined in Section 7.05 of this article in the proceeding before the Planning Commission may appeal such action to the Board of Appeals in accordance with its rules.

All actions of the Board of Appeals are final except that they are appealable to the Third Circuit Court in accordance with Chapter 91 of the Hawaii Revised Statutes.

Should you have any questions on this matter, please feel free to contact our office at 961-8288.

Sincerely,



SIDNEY M. FUCE
Planning Director

RHY:gs/ds

cc: Planning Commission
Imata & Associates, Inc.