

CERTIFIED MAIL

February 2, 1983

Mr. John McClure  
P. O. Box 424  
Captain Cook, HI 96704

Dear Mr. McClure:

Variance Application (V82-52)  
Variance From Minimum Roadway Requirements  
Tax Map Key 8-3-13:79

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:

Variance Criteria No. 1

There are no special or unusual circumstances applying to the subject real property which exist either to a degree which deprives the owner or applicant of substantial property rights that would otherwise be available or interfere with the best use or manner of development of that property.

The existing forty (40) foot wide right-of-way has approximately ten (10) feet of pavement and two (2) feet unimproved shoulders. An "S" curve at the beginning of the roadway also has blind spots which contribute to inadequate sight distances for two-way traffic circulation. The narrowness of the existing pavement, marginal shoulder area, and the hazardous road alignment at the "S" curve portion of the roadway renders this access inadequate in terms of safe two-way traffic circulation for this area. Additionally, the petitioner is not proposing any physical improvements within the "flag" portion of the proposed lots.

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In the immediate area, there are approximately 624 acres of land which could be subdivided or consolidated and resubdivided. These include only lands mauka of the Hawaii Belt Road and are the Keel 1st and 2nd subdivisions, as well as other lands surrounding the subject property. According to the County Tax Office, these subdivisions were created prior to 1948 and are considered to be "grandfathered" or non-conforming subdivisions.

The subject property is part of these non-conforming subdivisions with inadequate road accesses, road alignment, drainage facilities, sight distance, etc. The special conditions pointed out by the petitioner for the granting of the variance are not peculiar just to the subject property, but may also extend to other properties in the area. Further, the petitioner's circumstances of location, surrounding non-conforming lots and substandard access are applicable to many surrounding properties; hence the requested relief cannot be considered unusual in terms of justification for granting this variance. Finally, there are no topographical constraints which would make it necessary for the petitioner to deviate from providing the minimum roadway requirements as dictated by the Subdivision Code.

The above findings show that no substantial property rights would be deprived of, nor would the best manner of developing the subject property be interfered with by the denial of this roadway variance application. Further, the existing substandard access conditions are clearly inadequate and to waive all pavement and right-of-way requirements would frustrate the intent and purpose of the Subdivision Control Code.

#### Variance Criteria No. 2

There are other reasonable alternatives that would resolve the difficulty.

There are other reasonable alternatives that would resolve the difficulty that the petitioner is claiming for the subdivision. The concept of an "Improvement District" or other cooperative means of financing of improvements are available to the petitioner. The question of reasonableness in these alternatives, has to be viewed in terms of its possibilities and application. In this situation, these alternatives are considered to be reasonable ones which the petitioner should pursue.

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In terms of property rights, the recently passed legislation concerning "Ohana Zoning" may permit the petitioner to construct an additional single family dwelling on the subject property. The petitioner may also be permitted to construct additional "farm dwellings" under certain "Agricultural" conditions and with the Planning Director's approval. More importantly, incremental improvement commensurate with anticipated levels of impact from proposed developments is one alternative to upgrading substandard roadways. The petitioner could provide some level of improvement or propose other methods of roadway improvement participation to assure that in conjunction with future developments in the subject area, the required roadway and related right-of-way would be ultimately available.

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

#### Variance Criteria No. 3

Based on the foregoing findings, this variance 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 is to ensure that minimum safety standards relative to traffic and drainage are provided for. In addition, these minimum standards were designed to provide for other concerns including accommodation for adequate space for emergency vehicles to maneuver and positioning when required, and to ensure services such as mail delivery, street addresses, road maintenance, etc.

It is further concluded that the granting of the variance would be materially detrimental to the public welfare and may cause substantial adverse impact to adjoining properties since no improvements would perpetuate the existing, substandard roadway condition. Although the impact of allowing relief to this particular application may be minor, the cumulative impact of subsequent subdivision applications and potential density increases under the Ohana Zoning concept would adversely affect the total vehicular circulation pattern for this area.

The Director's decision is final, except that within ten (10) working days after receipt of this letter, you may appeal the

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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.


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. DUKE  
Planning Director

RHY:ds

cc: Planning Commission

Don McIntosh - P.O. Box 2902, Kailua-Kona, HI 96740

Richard Maeda - P. O. Box 176, Capt. Cook, HI 96704