

CERTIFIED MAIL

March 21, 1983

Mr. Sueki Mitsunaga
3572 Nipo Street
Honolulu, HI 96822

Dear Mr. Mitsunaga:

Variance Application (V83-2)
Variance From Minimum Lot Size Requirement
Tax Map Key 2-5-27:1

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 from the minimum building site area requirement for Lot 12. The reasons for the denial are as follows:

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 to a degree which obviously interferes with the best use or manner of development of the subject property.

On July 17, 1975, a density variance was granted to the petitioner to allow the construction of eight single family dwellings in lieu of the maximum density of seven single family dwellings as was permitted in the Single Family Residential 15,000 (RS-15) zoned district. The Variance procedure at that time permitted density variances to be processed.

However, Ordinance No. 762, approved by the County Council on March 15, 1982, revised the requirements from which variances could be requested.

Ordinance No. 762 states in Section 7 (Variances) "Variances from the provisions of this Chapter may be granted; provided that a variance shall not allow the introduction of a use not otherwise permitted within the district; and provided further that a variance shall not primarily effectuate relief from applicable density limitations."

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The subject property which consists of 2.75 acres or 119,790 square feet will permit under the RS-10 zoning a maximum of eleven units. Thus, the twelve lots being requested will effectuate relief from the applicable density limitations. This would be contrary to the new variance provisions of the Zoning Code.

Additionally, if the variance would be approved, the petitioner would be accruing additional property rights above and beyond that of the surrounding properties with the identical zoning classification without any special or unusual circumstances related to the subject property.

There are other reasonable alternatives that would resolve the difficulty for this variance request.

There are other design alternatives in resolving the design solution in the partitioning of the land for eleven units, even with the existing eleven single family dwellings on the property. An alternative is to relocate the east side property line of lots 10, 11 and 12 to have each lot have a minimum of 10,000 square feet for each lot. This would then have the proposed subdivision also meet with the maximum density of 11 units allowed for this property.

The Variance request would not be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning and Subdivision Codes, and the County General Plan and will be materially detrimental to the public's welfare and cause substantial adverse impact to the area's character and to adjoining properties.

The maximum density permitted by the Single Family Residential 10,000 square feet zoning is 11 units. The General Plan Land Use Pattern Allocation Guide Map designation for this area is "Low Density." Low Density as defined in the General Plan is no more than 4 units per acre. The use of the variance procedure to increase a property's density would thus, be also violative of the General Plan. The use of this procedure to enhance a property's density potential would also be considered to have a materially detrimental impact as well as an adverse impact to the area and adjoining properties. The increase of an area's density beyond what is given will certainly have a negative cumulative impact with respect to circulation and infrastructural land use requirements.

Based on the foregoing, the Planning Director further concludes that the Variance application should be denied.

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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; and
2. Ten 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 days from the date of receipt of a properly filed appeal. Within sixty 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 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,


for SIDNEY M. FUKU
Planning Director

RHY:gs
cc: Planning Commission
Clyde Matsunaga, Imata & Assoc.