

CERTIFIED MAIL

May 20, 1983

Ms. Alfie Fujitani  
P. O. Box 1524  
Kailua-Kona, HI 96740

Dear Ms. Fujitani:

Variance Application (V83-8)  
Variance From Minimum Roadway Requirements  
Tax Map Key 7-5-12:44

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.

In the immediate area, there are approximately 1,062 acres of land which could be subdivided or consolidated and resubdivided. These include lands on the mauka side of the North Kona Belt Road and the lands on the north and south side of the subject property. According to the County Tax Office, most of these subdivisions were created prior to 1948 and are considered to be "grandfathered" or non-conforming subdivisions. The Hualalai Farm Lots subdivision which was approved in June of 1980 is evidence that subdivision actions on a large scale can be developed in this rural area. As such, from an overall planning perspective, these situations cannot be

MAY 20 1983

Ms. Alfie Fujitani  
Page 2  
May 20, 1983

overlooked. More importantly, the land use implications and impacts of smaller scale subdivisions must be viewed from a cumulative standpoint.

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 Subdivision Control Code which administers the minimum roadway requirements views subdivision not only from a site specific perspective, but also from an overall traffic circulation standpoint. Thus, it is with these anticipations in mind, that the minimum roadways standards for subdivisions were developed. The traffic circulation of an area, is usually dictated by the existing circulatory patterns and from a planning perspective, the implementation of such future planning is done with minimum roadway standards as has been established in the Subdivision Code. This is more so, especially in dealing with an area which is overburdened with non-conforming land division, accesses, drainage facilities, etc.

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 proposed 40 foot right-of-way and 12 foot pavement are clearly inadequate and to waive the minimum 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 that the petitioner is claiming for the subdivision. The petitioner could subdivide the property on an

Ms. Alfie Fujitani  
Page 3  
May 20, 1983

incremental basis subject to their economic ability to provide the minimum improvements as required by the Subdivision Code. 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.

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 subdivision of the subject parcel with incremental improvements commensurate with anticipated levels of impact from proposed developments is one alternative to upgrading substandard roadways. This approach will also ensure that the minimum roadway standards are being provided so as to assure participation by future developments as a means of ensuring access to all properties being subdivided in the subject area.

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

Ms. Alfie Fujitani

Page 4

May 20, 1983

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.

Based on the foregoing issues, the Planning Director concludes that the evidence presented and the facts shown do not warrant the approval of this variance request.

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.

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.

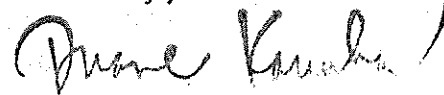
All actions of the Planning Commission are final except that, within ten (10) working days after notice of action, the applicant or an interested party as defined in Section 7.05 of this article in the proceeding before the Planning Commission may appeal such action to the Board of Appeals in accordance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


Ms. Alfie Fujitani  
Page 5  
May 20, 1983

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:lgv

cc: Planning Commission