

CERTIFIED MAIL

February 21, 1984

Mr. Roy Nakamoto
Attorney at Law
187 Kapiolani Street
Hilo, HI 96720

Dear Mr. Nakamoto:

Variance Application (V 84-1)
Variance From Minimum Roadway Improvement Requirements
Tax Map Key 1-9-09:194

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:

Special and Unusual Circumstances

The Kalaninonua Tract Subdivision was created in the 1940's without any roadway improvements.

The first subdivision ordinance for the County of Hawaii was approved in the form of Ordinance No. 136 on November 22, 1944. According to the County Tax Office, the subject property was partitioned in the early 1940's and first assessed in 1944.

The subject property which consists of 1.45 acres is situated within the Single Family Residential (RS-10) zoned district and will allow under the present Zoning Code, a density of 6 single family dwellings with the issuance of the properly approved building permits. As such, although the petitioners would not be able to partition the property as requested, the deprivation of property rights has not been curtailed to the extent that existing property development rights are being further reduced as a result of the new subdivision code requirements.

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The passage of time and third party circumstances cannot automatically be viewed as special or unusual circumstances for the approval of a variance.

Based on these findings, there are no special or unusual circumstances applying to the subject 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.

Alternatives

The petitioner has limited alternatives in resolving this matter. However, the question of reasonableness has to be viewed against all of the established criteria for the granting of a variance and not solely on the reasonableness of the alternative in trying to resolve the difficulty.

In the evaluation of this application, the imposition of present subdivision requirements may result in extensive costs to the petitioners. Improvements costs, however, are borne by all subdividers of land. Under sub-standard situations such as the petitioners', improvement costs are always expected to be higher. Although the petitioners claim that the Improvement District is not a viable option for them, it is nevertheless considered as a reasonable alternative to pursue in this situation. While acquisition of additional right-of-way may be difficult, improvements could be provided within the existing right-of-way.

Another possible alternative for the petitioners is to sell the subject property with an equal division of the monies between the petitioners. Although this may not be viewed as a reasonable alternative by the petitioners, it is viewed as a viable one in terms of all other alternatives that could resolve the petitioners difficulties.

Intent and Purposes

The purpose of the minimum roadway requirements is to ensure that minimum safety standards relative to traffic and drainage, etc. are provided for.

The access to the subject property is from Haunani Road which is a two-lane roadway with approximately 16 to 18 feet of pavement. Kilauea Road and the west side of Anuheia Circle Drive is a one-lane road with approximately 8 feet of pavement.

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Anuheia Circle Drive on the east is a one-lane road and is a gravel road approximately 8 feet in width. Maile Avenue which fronts the subject property is also a one-lane road with approximately 10-12 feet of a compacted gravel surface. The distance of the drive from Haunani Road - Mamalahoa Highway intersection to the subject property is approximately 5,600 feet in length. The one lane road section of Kilauea Road and Anuheia Circle Drive length towards the subject property is approximately 4,100 feet in length. This is a substantial length of unimproved roadway to serve two-way traffic to the subject subdivision.

This property is situated within the Kalaninonua Tract Subdivision which consist of approximately 148 lots in the RS-10 zoned district. Lots in this subdivision average 9,000 square feet in size. The surrounding land uses include Kilauea Settlement Lots Subdivision which is in the RS-20 zoned district, and the Haunani Tract Subdivision which is in the RS-10 zoned district to the east of the subject property. The Anuheia Volcano Summer Lots Subdivision, which consists of approximately fifty-nine 9,000 square foot lots, is situated to the south and west of the subject property. The Anuheia Volcano House Lots which is also in the RS-10 zoned district lies to the north.

The allowable density of this area under the present zoning is of major concern because of the potential infrastructural demands and impacts that will result from the development of these existing properties, if roadways are not brought up to higher standards. Furthermore, the approval of such variance requests in an area of existing substandard infrastructure would not be in the public interest and welfare of the County of Hawaii. A favorable action would only be materially detrimental to the public safety and would cause substantial long term adverse impacts to the surrounding community and adjoining properties. This kind of planning practice would debilitate the implementation of the standards set forth in the subdivision code as well violate the spirit and intent of the law for which it was originally created for.

Based on the foregoing findings, 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.

As such, 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 thirty 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); 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 thirty days after notice of action, the applicant or an interested party as defined in Section 23.31(a) 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, please feel free to contact us.

Sincerely,



SIDNEY M. FUCE
Planning Director

RHY:gs

Enc: Background Report

cc: Planning Commission (w/enc.)