

CERTIFIED MAIL

April 5, 1984

Mr. James R. Judge
P. O. Box 1268
Wailuku, HI 96793

Dear Mr. Judge:

Variance Application (V84-3)
Variance from Minimum Building Site Average Width Requirement
Tax Map Key 8-7-13:35

After reviewing your application and the information submitted in behalf of it, the Planning Director by this letter hereby certifies the approval of your variance request to allow the creation of a 4-lot subdivision with minimum building site average widths of 200 feet, 216.67 feet, 233.33 feet, and 250 feet in lieu of the minimum building site average width of 280 feet as required in the Unplanned (U) zoned district in Kolo, South Kona, Hawaii.

The approval is based on the following:

Variance Criteria No. 1

The subject property is part of a 17-lot subdivision that was partitioned and recorded with the State Bureau of Conveyances in 1955. This action was legitimate in that Ordinance No. 58 (Subdivision Ordinance), which was the County of Hawaii's subdivision ordinance in force at that time, did not require approvals for subdivisions of lots over 20 acres in size. As such, the partitioning action is considered to be a pre-existing or grandfathered subdivision. There also were no requirements for minimum building site average widths by Ordinance No. 58 or Ordinance No. 45 (Zoning Code) in 1955.

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In September of 1966, the County of Hawaii adopted Ordinance No. 63 (Zoning Ordinance) which contained minimum requirements for building site average widths for subdivision purposes. The minimum building site area requirement for the Unplanned zone was determined to be 5 acres, along with permitted uses to be similar to those allowed in the Agricultural zones, with certain exceptions. A similar parallel can be drawn with the Agricultural 5-acre zoned district in terms of the land area requirement. However, the Agricultural 5-acre zoned district minimum building site average width requirement was determined to be 200 feet, while the Unplanned requirement was 280 feet.

In 1967, the County of Hawaii adopted zoning for the South Kona district which designated the subject property within the Unplanned zoned district. This new zoning designation increased the density of the subject property from 1 lot to possibly 5 lots. The petitioner thus is proposing to create only 4 lots and meet the minimum 200 feet average width which is commensurate with the Agricultural 5-acre minimum requirement.

As such, these foregoing factors are considered to be special or unusual circumstances applying to the subject real property which exist either to a degree which interferes with the best use or manner of development of that property.

Variance Criteria No. 2

There are no other alternatives which the petitioner could use to resolve the difficulty that they are claiming for the proposed subdivision. The width of the subject property is 250 feet. This is 30 feet below the minimum 280 feet average width requirement for the Unplanned (U) zoned district.

The Unplanned zoned district "Purposes and Applicability" section states that "The Unplanned district applies to areas not subjected to sufficient studies to adopt specific district classification." The permitted uses within the Unplanned district is similar to the Agricultural zoned district with some exceptions. The minimum building site area requirement in the Unplanned zone is 5 acres which is similar to that of the Agricultural 5-acre zoned district. For comparative purposes, the minimum building site average width requirement for the Agricultural-5 acre zoned district is 200 feet, while the same lot size in the Unplanned zone requires 280 feet. The petitioner has also exhausted alternatives relative to the purchase of adjacent lands to enable him to meet with the minimum requirements.

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Therefore, in consideration of these factors, the variance request for the 200 to 250 foot average widths are determined to be reasonable for the proposed 4-lot subdivision. Although it could be argued that other alternatives are available to the petitioner, the reasonableness and practical application of those alternatives have to be evaluated with respect to the land characteristics. In this particular case, the imposition of the other alternatives in this situation, is considered to be excessive when a more reasonable solution is available.

Variance Criteria No. 3

The purpose of the minimum building site average width requirements is to ensure that subdivision of land will have an adequate width to allow for access, building development, drainage, setbacks, etc. This requirement is very critical especially as the lots increase in size.

An example is the partitioning action which was done for the subject property in 1955. At that time, the subdivision action resulted in not allowing any further subdivision of the property. As such, the zoning and subdivision requirements were adequate with the rules at that time. However, when the land was zoned for a higher density in 1967, it created a problem in that the zoning permitted the petitioner additional property rights above and beyond what was acceptable prior to 1966. Although the Zoning Code requires that the minimum building site average width for the Unplanned zone be 280 feet, it was a zone which was created because of insufficient studies to declare one.

On the other hand, the minimum building site average width for the Agricultural 5-acre zone is 200 feet. As such, although there is an 80-foot deviation between the two zone districts in terms of this requirement, there is some basis for considering the 200-foot width requirement for grandfathered lots which cannot meet with the 280-foot requirement. We have thus determined that the request will satisfy the purposes as intended by the Zoning Code.

This variance request is also consistent with the general purpose of the Unplanned zoned district as no zoning changes are being sought. The granting of this variance application will not be materially detrimental to the public welfare nor cause any substantial adverse impact to the area's character or to adjoining properties. Further, this variance application does not apply to density limitations nor introduces a use not otherwise permitted within this zone district.

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Based on the foregoing findings, this variance would be consistent with the general purpose of the zoning district, and the intent and purpose of the Subdivision Code and the General Plan.

Based on the foregoing, the Planning Director has concluded that this request be approved subject to the following conditions:

1. The petitioner, its assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. Tentative approval of the subject subdivision be secured within one year from the effective date of receipt of approval of this variance permit.
3. The construction of the improvements in compliance with the Department of Public Works' requirements shall commence within one year from the date of receipt of final approval of the construction plans and be completed within two years thereafter.
4. All other applicable Federal, State, and County rules and regulations shall be complied with.

Should any of the foregoing conditions not be complied with, this variance shall automatically be voided.

If you have any questions on this matter, please feel free to contact us.

Sincerely,



SIDNEY M. FUCE
Planning Director

RHY:gs

Enc: Background Report

cc: Planning Commission
Austin, Tsutsumi & Associates

bcc: Kaoru (Subd. 83-180)