

CERTIFIED MAIL

January 10, 1985

Mr. Moichi Sato  
c/o Paul Imaino  
87 Manulele Street  
Hilo, HI 96720

Dear Mr. Sato:

Variance Application (V84-40)  
Variance from Minimum Roadway Improvements  
Tax Map Key 2-7-12:40

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 Puueopaku Tract subdivision was created in the 1920's.

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 1920's and first assessed in 1944.

The subject properties, which consist of 81,788 square feet, are situated within the Single Family Residential (RS-10) zoned district. The Zoning Code would allow a density of 10 single family dwellings on the properties with the issuance of the properly approved building permits. As such, although the petitioners would not be able to partition the property as requested, property rights are not curtailed to the extent that existing property development rights are being further reduced as a result of the new subdivision code requirements.

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

JAN 14 1985

Mr. Moichi Sato  
Page 2  
January 10, 1985 -

The petitioner also has not shown by the evidence in his application that there exists any special or unusual circumstances related to the land which would warrant or necessitate the narrower 10-foot wide pavement to service the proposed subdivision.

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 the established criteria for the granting of a variance and not solely on the reasonableness of the alternatives in trying to resolve the difficulty.

In the evaluation of this application, it was found that the imposition of present subdivision requirements may result in extensive costs to the petitioners. Improvements costs, however, are borne by all subdividers of land. In situations where existing improvements are sub-standard, such as the petitioners, improvement costs are always expected to be higher. Economic considerations cannot be the sole basis for the granting of a variance, when other alternatives are available. Since this is a private roadway owned by 8 separate owners, one of whom is the petitioner, the potential of these other land owners seeking relief for their own subdivision needs cannot be overlooked for the sake of one landowner. Since the roadway is privately owned by 8 different parties, they have a common interest which affects the use of their lands. As such, a participatory program is possible for the improvement of the roadway to the minimum standards. While acquisition of additional land to widen the right-of-way may be difficult, improvements could be provided within the existing right-of-way.

Another possible alternative for the petitioner is to sell the subject property. Although this may not be viewed as a reasonable alternative by the petitioner, it is viewed as a viable one in terms of the lack of any unique or special topographical or land configuration characteristics for this property.

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.

This property is situated within the Puueopaku Tract subdivision which consists of approximately 38 lots in the RS-10 zone district. Lots in this subdivision range from .26 to 3.41 acres in size and total approximately 38.19 acres of land. A potential density of 101 lots could be added under the existing zoning.

The access to the subject property is from the 30 foot wide private road easement which has approximately 10 feet of pavement. The distance of the drive from the Hawaii Belt Road intersection to the subject property is approximately 750 feet in length. This is a substantial length of roadway to serve two-way traffic to the subject subdivision. Although the petitioner cites that the proposed subdivision will create only one more lot which should not create any major impact on the existing roadway, the additional density which would be permitted by Ohana legislation and existing zoning has to be taken into consideration. While it may be true that the petitioner has the right to apply and secure building permits to construct additional dwellings allowed by the existing zoning and Ohana legislation, the liability question with regard to the adequacy of the existing roadway cannot be ignored. In 1967, the County of Hawaii acknowledged that substandard areas existed and one major factor in the adoption of the new subdivision ordinance was to ensure that substandard land use development would not occur in the future. As such, with the adoption of the Subdivision Ordinance, a new direction was developed to ensure that the public would not needlessly be burdened by substandard or unimproved accesses to subdivided properties in the County of Hawaii.

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. Such a planning practice would debilitate the implementation of the standards set forth in the subdivision code as well as violate the spirit and intent of the law.

Mr. Moichi Sato  
Page 4  
January 10, 1985

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.

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 25-27.2 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.

Mr. Moichi Sato  
Page 5  
January 10, 1985.

Should you have any questions, please feel free to contact us.

Sincerely,

/s/ Ilima Piianaia

for ALBERT LONO LYMAN  
Planning Director

RHY:wkm

Enc: Background Report

cc: Planning Commission (w/enc.)

bcc: Kaoru (84-117) w/att.