

CERTIFIED MAIL

February 25, 1987

Mr. Tracy Lewis
586 Kanoelehua Avenue
Hilo, HI 96720

Dear Mr. Lewis:

Variance Application (V86-53)
Tracy Lewis, et al.
Tax Map Key 2-4-07:23

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 6 lot subdivision with a portion of the access road being 40 and 45 foot in width in lieu of the minimum 50 foot right-of-way as required by the Subdivision Code. The subject property which consists of 27.443 acres and identified by TMK: 2-4-07:23, is located on the south corner of Malaai Street/Ainaola Drive intersection, Waiakea, South Hilo, Hawaii.

The approval is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances which apply to the subject property which exist to a degree that would otherwise be available and to a degree which obviously interferes with the best use or manner of development of the property. The present lot configuration with a 40 foot wide pole for access purposes was created via Subdivision No. 680. Final approval was granted on August 17, 1953. During this time, Ordinance No. 58, Revised Ordinance of 1947 was in effect. The minimum right-of-way for a minor street was 40 feet. The pole width met with the requirements of a minor street.

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On December 21, 1966, Ordinance No. 389 was adopted by the County Board of Supervisors. This ordinance adopted a new right-of-way requirements of 50 feet for a minor street. This minimum requirement is still in effect today for properties located within the Agricultural (A-3a) zone district. If the property was located in the Agricultural zoned district with lot size requirement of less than 3 acres, the minimum right-of-way requirement for a private road serving 6-lots would be 20 feet with a 16 foot wide pavement.

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 this property. Moreover, we have determined that there is conclusive evidence to show a deprivation of property rights which curtail or reduces existing property development rights.

ALTERNATIVES

There are no reasonable alternative the petitioner could use to resolve the difficulty that they are claiming for the proposed subdivision. As noted previously, the pole was created via Subdivision No. 680. The two adjoining parcels alongside the pole have land areas of 20,727 and 26,495 square feet. Both of these lots are considered as non-conforming lots since they do not meet with the present 3 acre minimum lot size requirement. The acquisition of a 5 foot sliver from both of these properties would further reduce these non-conforming lots. Presently located on these parcels are single family dwellings. In addition to the reduction in land area, the existing setbacks of the homes from the proposed roadway would be affected.

Although there are 6 parcels of land fronting the subject parcel, each one is developed. The petitioner has no other alternative available to secure access from the proposed subdivision to Ainaola Drive other than that which is existing.

Therefore, in consideration of these factors, the variance request from the roadway requirements are determined to be reasonable. Although it could be argued that other alternatives are available to the petitioner, the reasonableness and practical application to those alternatives have to be evaluated with respect to the application and surrounding area. 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.

INTENT AND PURPOSE

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

The proposed 40 and 45 foot right-of-way for portion of the proposed 6 lot subdivision is determined to be adequate. However, the granting of this variance shall not be construed nor used as justification for any future subdivision requests. Accordingly, in view of the existing zoning restriction and character of the area, we have determined that the proposed 40 and 45 foot right-of-way will satisfy the purpose as intended by the Subdivision Code.

Inasmuch as the proposed road will not be a through street, the granting of the variance 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 use not otherwise permitted within this Agricultural (A-3a) zoned district.

As such, in view of these findings, the approval of this variance would still be consistent with the general purpose of the zoning district, and the intent and purpose of the Subdivision Code and the General Plan.

The variance request is 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. The proposed improvements shall comply with the requirements of the Department of Public Works.
3. The construction plans shall be submitted for review and approval within one year of the date of this variance approval and shall be completed within two years thereafter.

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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,



ALBERT LONO LYMAN
Planning Director

MO:dh

cc: Dept. of Public Works

bcc: Kaoru (Subd. file)