

CERTIFIED MAIL

September 29, 1987

Mr. Don Sodergren
45-020-B Malulani Street
Kaneohe, HI 96744

Dear Mr. Sodergren:

Variance Application (V87-38)
Roadway Access Improvements
Tax Map Key 7-4-03:9

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

There are no special and unusual circumstances applying to the subject property which deprive the petitioner of substantial property rights that would otherwise be available, or which interfere with the best use or manner of development of the property.

Instead, the circumstance offered by the applicant is ". . . the improvements will lie dormant and in essence be premature to the use of the property and will cause an expenditure of funds which are currently not available and must be borrowed, therefore, causing additional hardship for the property owners." This is a situation which is basic to most all developing properties where minimum improvements are sought by the developer, and the basic requirements are stipulated by a government agency charged with the duty of regulating subdivisions. Most funds are borrowed for capital improvements, and the dormancy of improvements will be certainly even more guaranteed if they are not at all built. As a matter of fact, the absence of an improved roadway access itself would deprive the interior lot owners of a reasonable expectation of a roadway entrance for even agricultural pursuits.

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ALTERNATIVES

There is the alternative of obtaining a bond covering the cost of the improvements which is available as an option to the immediate construction of the roadway. It allows the deferment of construction for a limited time while also assuring the County (essentially the new lot buyer) that funds would be available to construct the roadway should it not be built within the specified time. The Department of Public Works would confirm the amount of the bond. While not for an indefinite period, it allows a reasonable deferment time.

INTENT AND PURPOSE

The intent and purpose of the roadway construction improvement requirements is to ensure that all new legally created lots have a certain standard of access provided them when they are finally subdivided, or that the necessary funds for its construction are guaranteed by a bond. An indefinite delay as is being requested would be contrary to one of the main tenets of the Subdivision Code.

Subdivided lots are not given final approval by the County unless conditions stipulated in the tentative approval letter are complied with and completed. Deferring in lieu of actually building the roadway (or water line, drainage, sidewalk, etc.) is an option only if a bond in favor of the County is obtained by the developer. This procedure is normally used when construction of, say, a road would take a long period to complete and the developer desires to begin selling the lots prior to its construction and completion. But, without such a money-backed guarantee (the bond), there is no assurance that the developer will actually install the roads or other improvements. The developer could otherwise sell out immediately upon obtaining final approval of the subdivision (which had often been done in the past) and leave the new lot owners with no roads to their lots and no funds with which to build them, if there were no financial guarantee covering the full cost of construction. To waive or delay this requirement indefinitely without financial assurances would seriously compromise the County's regulation of subdivision control.

No special or unusual circumstances attributable to the land are found in this case. The request is viewed as being inconsistent with the general purpose of the subdivision ordinance and it does not meet the criteria test of land or regulation hardship which deprive the owners of substantial property rights.

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Based on the foregoing, the Planning Director has concluded that this variance request 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.

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

Sincerely,


ALBERT LONOLYMAN
Planning Director

DT:lv
Enc. - Background Report

cc: Planning Commission w/enc.
Chrystal T. Yamasaki, Wes Thomas & Assoc., Inc.
Subdivision No. 85-59