

CERTIFIED MAIL

July 15, 1988

Mr. Marc E. Duncan
President/Project Manager
Environs Pacific
P.O. Box 2045
Kamuela, HI 96743

Dear Mr. Duncan:

Variance Application (V88-9)
Cul-de-sac Capacity and Length
Tax Map Key 6-2-01:68

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:

FINDINGS AND RECOMMENDATIONS

Having reviewed the subject variance request, the Planning Director has concluded that the variance request to allow a proposed subdivision in an RS-15 zone: a) 22 lots in lieu of the maximum 18 allowed by the Subdivision Code to be served by a County dedicable cul-de-sac; b) 27 lots in lieu of the maximum 18 allowed by the Subdivision code to be served by a County dedicable cul-de-sac; and c) the cul-de-sac for the 27 lots to be 910 feet in length in lieu of the 600 feet maximum permitted by the Subdivision Code, and in lieu of a through street, be denied.

However, the request for the Road A cul-de-sac to contain 22 lots (21 lots per applicant count) is approved. The denial for Road C (cul-de-sac length) and its number of lots is addressed first.

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SPECIAL AND UNUSUAL CIRCUMSTANCES

There are not found to be sufficient 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.

The land is typical of the area, undulating with occasional dry streambeds, and gradually sloping towards the ocean, approximating the slope of the Kawaihae Road. The road pattern from the early increments of the subdivision which proceeded in their development from east to west, was approved with road extensions, to each increment's westernmost boundaries in anticipation that Mahua Street would be a through street. Were that not to be the case from its inception, an entirely different road network would have been imposed. For example, more road accesses to the north property (Hawaiian Home Lands) would probably have been required.

A variance (from the Subdivision Code) is by definition the state of being variant--a deviation from a standard exhibiting a slight difference. In the subject case, the request is to obtain almost double the length and about 50% in density (number of lots allowed off a cul-de-sac). This quantity is not "a slight difference." In this case also, the terrain does not differ widely from surrounding lands and thus the main criteria for a variance from the County Code which requires that there be a "special and unusual circumstance applying to the land which exists to a degree which deprives the owner of substantial property rights that would otherwise be available," is not existent in this case. In other words, there is little or no basis upon which to found the request. Furthermore, the differences being requested, almost 100% in length and 50% in density, are far from being "slight," which a variant by definition should be.

More compelling than the degree of variation, is the concept of a through street which would give a continuous, connecting traffic route to the general public and public services.

The reason advanced by the applicant in support of this request for the 27 or 26 lots, and 1100+-ft. long cul-de-sac is it "provides residents a better neighborhood"; "there is little reason for other people to be driving through the area"; "it would be of greater advantage to residents to make Mahua Street a cul-de-sac."

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Using the applicant's rationale, the owner is in a large sense actually expressing the desire for private roads where their use is concerned but for which he is requesting the County to maintain and be responsible for (such as liability).

A public street, which a County must accept if it is built to dedicable standards and offered, is intended to serve the general public also, and not just the fronting homeowner. One cannot have restricted (private) use of a street and at the same time leave its repair, maintenance liability and responsibility to the County (the public).

With the advent of the drainage easement planned for construction along the north boundary of the mauka lots, there is no special or unusual circumstance applying to the land which exists to a degree which deprives the owner of substantial property rights. Public Works engineers have also described the resultant drainage situation to be characterized by perhaps occasional 6 inches of sheet flow.

ALTERNATIVES

The alternative to the especially long cul-de-sac being proposed by this application, is to revert to the original plan which is basically--continue with a through street, as planned, connecting the two segments of Mahua Street, shown as Road B and Road C (on the map issued April 21, 1988). As stated earlier, if the overall development did not intend to have Mahua Street connect as a through street, the road alignments which are currently in place would not have been approved. It is true that the through street concept may result in one less house lot to sell, but the converse rationale should prevail--the through street should not be sacrificed just to allow the extra lot when the entire premise of the overall subdivision's street layout was based on the through street known as Mahua Street.

INTENT AND PURPOSES

The intent and purpose of the cul-de-sac is to allow, in certain situations, limited length, short dead-end streets off a main residential street serving a limited number of lots. The restricted lengths and density are imposed to keep them relatively small. Allowing them to become unlimited in length and capacity inhibits the general public's use, prevents general traffic circulation and impedes response by emergency services and any evacuation which might be necessitated, such as by brush or range fire, etc.

One suggestion, belatedly offered by the Department of Public Works in their memo of May 12, 1988, conjures an

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"emergency alternative all-weather access for Road 'C'" (connecting Road B). Such a privately-owned connection would place the County in a position where it would have to accept this kind of alternative in lieu of a standard connecting or through road, inasmuch as the criteria for a variance, a physical hardship attributable to the land, does not prevail in this situation. The gaining of one or two additional lots at the expense of a through road is insufficient reason for granting a variance from the County codes.

Furthermore, suggestions such as the connecting "all-weather access for Road C" alternative should be only for situations where no other reasonable alternative is available. In this case, it is the applicant who is creating the issue; the clear and uncomplicated alternative is to continue with the originally planned through road.

The Departments of Fire, Police and State Highways Division have all stated that the through road should be imposed. The Department of Public works even in its infirm suggestion of a private connecting "all-weather access for Road C" still concludes that a through connection is needed. The spectre of a private "all-weather access" as a future county substitute for a standard through road, is an irresolute option fraught with future complications including liability, when the through road option is available.

Prudence and judiciousness at this planning stage dictate that the through street connection, as originally planned and committed to in its master plan and subsequent phases of development, continue.

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.

FINDINGS AND RECOMMENDATIONS
ROAD A

Road A, on the other hand, where the proposal is to have a 22 lot cul-de-sac, does have a special and unusual circumstance. The property boundaries, north and south, converge into a triangle onto the highway, and Puahina St., would not be amenable to being a street required to extend to the boundary. Any further extension of the road (Puahina), would create more numerous and sharper triangular shaped lots at the west end of the property, which shape would render them difficult to utilize as houselots in a reasonable manner.

The number of lots being requested, 22 in lieu of the 18 allowed by the Subdivision Code is considered a slight enough variation from the standard, given the sharp triangular shape of the property.

ALTERNATIVES

There are no reasonable alternatives beyond turning and extending Road A, and that would entail a major sized culvert rather than the minor one which the proposed flag lots could utilize, and would still result in odd-shaped lots being created because of the converging north and south property lines. The variance alternative to allow 22 lots is deemed acceptable and not overly excessive (such as 50% or 100%) given the shape of the property, and the vast Hawaiian Home Lands to which the development is adjacent.

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Based on the foregoing findings, the variance request for Road A would be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning Code and the County General Plan; will not be materially detrimental to the public's welfare; and will not cause substantial adverse impact to the area's character and adjoining properties.

Therefore, the Planning Director has concluded that this request, Road A to be a cul-de-sac with 22 lots as shown on the maps issued April 22, 1988, by Okahara and Associates, be approved subject to the following conditions:

1. The applicant, his assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. Subdivision plans showing Road A and its lots shall be as basically depicted on the preliminary map issued April 21, 1988, by Okahara and Associates; Road C and B shall connect as a through road as indicated in the development's master plan, with resultant lot configurations meeting County standards.
3. Revised subdivision plats incorporating Condition 2 above, shall be submitted within one year of the effective date of this variance.
4. All other applicable State and County rules and regulations shall be complied with.

Should any of the foregoing conditions not be met, the variance shall be deemed null and void.

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

Sincerely,



ALBERT LONO LYMAN
Planning Director

DT:lv
Enc. - Background Report

cc: Planning Commission w/enc.
Okahara and Associates, Inc.
Subd. 87-161