

CERTIFIED MAIL

January 10, 1990

Mr. Edward Sumitani
2323 Ainaola Drive
Hilo, HI 96720

Dear Mr. Sumitani:

Variance Application (V89-18)
Building Site Average Width Requirement
Tax Map Key 2-4-07:47

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 permit a proposed 3-acre lot to contain less than the minimum average width required by the Zoning Code. The subject property is 3.9 acres in area, identified by tax map key 2-4-07:47 and 72, and is located on the east (makai) side of Ainaola Road, 2,100 feet south from its intersection with Malaa Street in Waiakea Homesteads, South Hilo, Hawaii.

The approval is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances applying to the subject property which deprive the applicant of substantial property rights that would otherwise be available, or which interfere with the best use or manner of development of the property.

First, the currently existing lot sizes and existing road easement were created on May 6, 1968, when the elder Jack Sumitani created the subdivision of three 15,250+ sq. ft. lots and a larger remnant 3.9 acre lot (map attached). The 3 smaller lots cannot be decreased in size due to their present Agriculture 3-acre zoning; the 3.9 acre lot can be decreased in size to a 3-acre minimum.

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Secondly, because of his advanced age, the applicant, Edward Sumitani, desires to create a more equitable physical distribution of the land involved, and specifically transfer more of his jointly held 3.9 acres to his son, Neal. The Subdivision Code's consolidation and resubdivision provision allows, generally, non-conforming lots to be rearranged and still be kept non-conforming, provided they improve the general situation and obtain Chief Engineer and Planning Director's approvals.

Third, the consolidation and resubdivision provisions of the Subdivision Code do permit a rearrangement of the non-conforming size lots provided there is no increase in the number of lots and the public welfare and safety are not jeopardized. Utilizing this provision of the code, the applicant would increase the size of Lot 5-C (son Neal's) from its present 15,234 sq. ft. to 56,612 sq. ft. while reducing his large Lot 5-D from 3.9 acres to 3.0 acres. In this case, the small non-conforming lot would be enlarged (become "less non-conforming" in size).

However, during the process of consolidating and resubdividing it was found that the code required minimum average width of the larger lot could not be accommodated. Mathematically, in order for the larger lot to obtain the requisite 160 ft. average width (lot area divided by maximum depth) the land area must attain 176,000 sq. ft., which would be almost 4 acres. This would be counter to the goal being sought (to decrease the large 3.9 acre lot). Only if the length of the pole is drastically shortened, meaning the easement portion to Lot 5-C is lengthened to about 300 ft., could the equation meet the 160 minimum average width. However, this would also mean that the entire 300 ft. of the easement would have to be paved, and this is what the applicant contends would impose an unnecessary, unreasonable and exorbitant cost to him today.

Based on the foregoing, it has been determined that there are special and unusual circumstances applying to the subject property which exist to a degree which deprive the owner of substantial property rights that would otherwise be available, or which unreasonably interfere with the best use or manner of development of the property.

ALTERNATIVES

Two alternatives exist to obtain the 160 ft. minimum average width, the equation being lot area divided by maximum depth equals minimum average width or $A \div B = C$ with C being 160 ft.:

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1. Decrease or shorten the long pole portion of the proposed large 3.0 acre lot (B in the equation). However, this would make the easement portion of the access to the proposed smaller 1.29 acre lot much longer, and the result would be a 300 ft. long easement which must be paved. The applicant is attempting to avoid this extreme.
2. Increase the proposed 3 acre land area of the rear lot (A in the equation). However, the intent of the proposal is to decrease the present 3.9 acre lot as much as possible so this alternative would be counter to the intent.

The Subdivision Code's consolidation/resubdivision provision in the meantime, also exists for the express purpose of improving non-conforming situations.

INTENT AND PURPOSE

The intent of the minimum average width code requirement is to ensure that reasonably proportional lots are formed with adequate and safe access to them being provided.

The easement portion of the flag lot pole was paved and is an 8 ft. wide asphalt driveway when the subdivision was created in 1968. It basically served Lot 5-D, Neal Sumitani's residential lot.

Since the intent is to enlarge Neal's residential lot from 15,253 sq. ft. to 56,612 sq. ft. which would still be less than the 3-acre size minimum permitted by zoning, the maximum allowable density would not increase. And, the remnant lot being reduced from 3.9 acres to 3 acres would also still not increase the allowable density. Essentially, the present day conditions would remain the same. Should the 3-acre lot be sold, as the present 3.9 acre lot with overgrown gravel access could be today, the buyer no matter how innocent, would be confronted with the same situation as he would today.

Given this situation, the access to the interior lot would not change, and any change in ownership of either or both lots would not be hampered by the action. The status quo would remain; the public would not be endangered or disadvantaged by the action.

Furthermore, the driveway's entrance at Ainaola Drive descends into the private property at a 12 to 15 percent grade, dropping about 5 ft. in elevation. The county road at this

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junction is therefore not in danger of any loose shoulder material from the private property easement being carried onto and damaging the public Ainaola Drive.

Based on the foregoing findings, the variance request 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 variance request 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. No further subdivision of the subject parcels even with zone designation changes will be allowed unless their accesses are improved to the then current subdivision standards without further variances.
3. The pole portion of the proposed 3 acre lot at its entrance at Ainaola Drive shall be improved to the extent and dimensions specified by the Chief Engineer.
4. Final plat maps and construction drawings if required by the Chief Engineer shall be submitted within one year of the effective date of this variance permit.
5. All other applicable State and County rules and regulations shall be complied with.

Should any of the foregoing conditions not be met, the Director may proceed to declare this variance null and void.

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

Sincerely,


DUANE KANUHA
Planning Director

DT:lm

cc: Imata & Assoc., Inc.
Subd. 89-53