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CERTIFIED MAIL

December 6, 1989

Mr. Keola Childs
Executive Vice President
Maryl Development, Inc.
Territorial Center, Suite 203
75-5751 Kuakini Highway
Kailua-Kona, HI 96740

Dear Mr. Childs:

Variance Application (V89-20)
Maryl Development, Inc.
Tax Map Key 7-6-12:11 to 14

After reviewing your application and the information submitted in behalf of it, the Planning Director by this letter hereby certifies the partial approval of your variance request 1) To allow the existing County street, 'Io Place, to be extended as a private dead-end street with roadway improvements terminating approximately 260 feet from the makai (west) property line; 2) To allow the private dead-end street to serve thirty (30) planned lots in lieu of the maximum six (6) lots; and 3) To allow the private street to contain grassed shoulders and swales, drainage basins, and desired street light design and/or no street lights in lieu of complying with the standards on file with the Public Works Department and the Subdivision Code.

The partial approval/denial is based on the following:

FINDINGS AND RECOMMENDATIONS

Upon reviewing the request and the information submitted in its behalf, the Planning Director has determined that the variance request to allow 'Io Place to be extended as a private dead-end street terminating approximately 260 feet from the makai (west) property line and to allow 30 planned lots to access off of the dead-end street be approved; and the request to vary from the minimum roadway requirements on file with the Public Works Department and the Subdivision Code be denied.

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are no special or unusual circumstances applying to most of the subject real property which exist either to a degree which deprives the owner or applicant of substantial property rights that would otherwise be available or interfere with the best use or manner of development of the property. The applicant is still afforded the opportunity to subdivide the property and not be deprived of any substantial property rights than that of the adjoining properties. There are proposed developments in the immediate area which will provide the minimum subdivision standards that the variance is being requested from. Lands to the south of the property are being proposed for 83 lots having minimum half acre lot sizes; to the southwest are proposed development for 215 single family residential lots having minimum 15,00 square feet lot sizes; and on the makai side of the property, there are proposals to develop approximately 190 multiple family residential units. All proposed developments will be constructed with County dedicable right-of-ways. These facts further justify that the imposition of anything less than the minimum required roadway improvements for this proposed 32-lot subdivision would indicate that a special or unusual situation exists when it does not.

There is, to a degree, a topographical condition which affects only a portion of the property closest to the makai property line which lies at an approximately 28% grade. The subdivision contour map also shows that the natural terrain along the proposed makai 20-foot interior road easement within the proposed subdivision area approaches a 25% grade; however, the subdivider has indicated that the required maximum 20% grade will be attained. With the exception of the lower 260 feet of roadway improvements, there are no other constraints which would support a deviation from providing the minimum roadway requirements as dictated by the Subdivision Code.

The subject property would take and continue roadway access from the end of 'Io Place, a 60-foot right-of-way with 20-foot pavement constructed to County standards. 'Io Place was subsequently dedicated to and accepted by the County in 1971. While 'Io Place has unpaved shoulders, undefined swales and no drywells, that level of improvements were adequate for the number of lots (7) that the roadway was designed to serve at that time. Further, the subject properties were originally created through a consolidation/resubdivision action in 1976, at which time access to 'Io Place was to be limited to parcel 14 only. All other lots were required access from either the Kailua-Holualoa Road or the railroad right-of-way unless a fully improved alternate access was proposed. Therefore, while 'Io Place was not envisioned as the primary access to service the full development of these properties, if it is to be utilized as such, full roadway and related improvements were expected through prior parcel reconfiguration approvals.

The special conditions pointed out by the applicant for the granting of the variance are not peculiar just to the subject property, but may also extend to other properties in the area as well. Further, the applicant's circumstances of location and surrounding substandard access are applicable to many surrounding properties; hence the requested relief cannot be considered unusual in terms of justification for granting this variance.

The Subdivision Control Code which administers the minimum roadway requirements views subdivision not only from a site specific perspective, but also from an overall traffic circulation standpoint. Thus, it is with these anticipations in mind that the minimum roadway standards for subdivisions were developed. The traffic circulation of an area is dictated by the existing and circulatory patterns, the implementation of which is done through minimum roadway standards as established in the Subdivision Code. This is more so, especially in dealing with an area which is with substandard accesses, drainage facilities, etc.

The above findings show that no substantial property rights would be deprived of, nor would the best manner of developing the subject property be interfered with by the denial of this variance application with regard to roadway improvement requirements.

ALTERNATIVES

There are other reasonable alternatives that would resolve the difficulty that the applicant is claiming for the subdivision.

The applicant could realign the access right-of-way easement over the southwestern portion of the property which has a lesser grade and extend the street improvements to the makai property line in that manner. The applicant could also phase down the proposed development which could potentially lessen the level of required roadway improvements. Both alternatives, however, would mean a re-configuration of the proposed subdivisions and a reduction in the total number of lots.

The question of reasonableness in these alternatives has to be viewed in terms of its possibilities and practicalities. While both are possible, financial disadvantages may make them impractical. Financial considerations, however, are not among the primary factors in the decision making process for variances especially when the perpetual access easement was also created for the benefit of other properties makai of the subject property as well.

It therefore concluded that other alternatives exist for the applicant's consideration which would enable the applicant to pursue the subdivision of this property in accordance with requirements of the Subdivision Code.

CONSISTENT WITH COUNTY PLANS

Based on the foregoing findings, the variance would not be consistent with the general purpose of the zoning district, and the intent and purpose of the Subdivision Code and the General Plan.

The minimum code requirements were established to insure adequate and safe subdivisions for the public's welfare as stated in the goals, policies and courses of action in the General Plan. Thus, the minimum standards were to function so that all future subdivision in the County of Hawaii, if possible, were to be ensured adequate access, water, etc. and to eliminate the kinds of land partitioning that occurred prior to the adoption of the Subdivision Code.

The purpose of the minimum roadway requirements is to ensure that minimum safety standards relative to traffic and drainage are provided for. In addition, these minimum standards were designed to provide for other concerns including accommodation for adequate sight distance for on-street parking, adequate space for emergency vehicles to maneuver and positioning when required, to ensure services such as mail delivery, street addresses, road maintenance, etc..

The applicant contends that keeping this portion of the road in private ownership would eliminate any burden to the County. While this may be so, the liability issue would be complex because 'Io Place was dedicated to and accepted by the County in 1971. Since the proposal is to extend 'Io Place with less than dedicable improvements, any approval of the variance would make the County a party to any liability suit that could be made against, by or among the applicant(s), or against or by a future landowner in the subdivision.

Furthermore, the proposal of joint ownership and separate maintenance responsibilities for a single roadway (i.e. County dedicable and private ownership) is problematic and not conducive to sound planning principles.

Thus, it could be further concluded that the granting of the variance from the minimum roadway improvement standards would be materially detrimental to the public welfare or cause substantial adverse impact to the affected and adjoining properties. The future buyers for these lots would be deprived of the above considerations and thus a further burden would be placed on them. This burden will be materially detrimental in that the public welfare's assumption is always that new subdivision have complied with and will be provided with all the services and improvements as stated for in the Subdivision Code and General Plan. Furthermore, the granting of the variance without any substantiation in conjunction with the criteria test for variances as established in the Subdivision Code would be setting precedences for the other lands within the immediate area to request for the same type of relief from these standards. Though it

may be construed that the impact of allowing the requested relief to this particular subdivision application may be minor, the cumulative impact of density increases off of an existing County roadway and the level of subdivision standards imposed on the adjacent planned developments would not be in keeping with the intent and purpose of the Subdivision Code.

Based on the foregoing issues, the Planning Director concludes that the evidence presented and the facts shown only warrant a partial approval of this variance request. Therefore, the variance request to allow the extension of 'Io Place with grassed shoulders and swales, drainage basins, and substandard street light/no street light improvements in lieu of complying with the standards on file with the Public Works Department and the Subdivision Code be denied.

The Planning Director further finds that the imposition of fully dedicable standard roadway improvements for the entire length of the roadway easement would constitute a special circumstance until or unless interior traffic circulation networks within adjacent developments are anticipated. More specifically, the grade for the roadway easement in the area just pass the two proposed lower cul-de-sacs is approximately 28%; thus approximately 260 feet of roadway from this point to the makai (west) property line would be constructed at an excessively steep grade in terms of normal roadway grade standards.

Given the consideration for topographical and proposed roadway systems within the surrounding properties, the Planning Director concludes that this portion of the variance request - to allow termination of roadway improvements as shown on tentatively approved subdivision maps for the affected subdivisions and to allow the 'Io Place extension to serve thirty (30) lots in lieu of the maximum six (6) lots permitted by the code - be approved.

The variance request is approved, subject to the following conditions:

1. The petitioner, his assigns or successors, shall be responsible for complying with all stated conditions of this partial approval.
2. The roadway easement shall be designated as a future roadway extension to the makai (west) property line on the final subdivision plat maps.
3. Prior to or in conjunction with final subdivision approval, the petitioner, his assigns or successors shall enter into an agreement with the Planning Department and the Department of Public Works to construct or cause to construct the remaining roadway improvements to County dedicable standards if the properties abutting the makai (west) property line develop in a manner that requires 'Io Place to function as a collector street.

4. All other applicable State and County rules and regulations shall be complied with.

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

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

Sincerely,



DUANE KANUHA
Planning Director

AK:aeb

cc: DPW

bcc: Ed - Subd. 87-110 (Kline)
Subd. 87-125 (Kurashige)
Subd. 89-34 (Garewal)