

CERTIFIED MAIL

January 8, 1990

Ms. Marianne Champlin  
P. O. Box 653  
Kailua-Kona, HI 96745

Dear Ms. Champlin:

Variance Application (V89-35)  
Tax Map Key 7-7-03:31

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 one additional lot to be served by a cul-de-sac where the Subdivision Code only allows a maximum of 18 lots. The subject property is 1.05 acres in area, identified by tax map key 7-7-03:31 and is located at the east (mauka) junction of Pelenike and Kali-Iki Streets off Ono Road in the Holualoa Estates Subdivision (Kona Sunshine Estates) in Holualoa 3rd, North Kona.

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 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 subject lot was platted in 1966 at the junction of a then minor street and a cul-de-sac, both private roads. In 1974, the minor private street, Pelenike, was converted through development of the adjacent mauka property (Kalamauka Subdivision). As a result of the conversion, further subdivision of the subject property cannot be accomplished because cul-de-sacs can only serve a maximum of 18 lots according to the Subdivision Code. Minor streets, on the other hand, have no limit as to the maximum number of lots they may contain except as dictated by the street's length and the lot's dimensions.

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The new parcel to be created would access onto Pelenike which was the original through street, while the applicant's dwelling takes its access off Kali Iki, the existing cul-de-sac.

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

There are no reasonable alternatives. Had Pelenike not been transformed into a cul-de-sac, the proposed subdivision would not have been limited by the 18-lot access requirement of the Subdivision Code. With the development of intervening lots between this cul-de-sac and Kalamauka, the opportunity to extend Pelenike as a through street has for all intents and purposes been irretrievably lost.

#### INTENT AND PURPOSE

The intent and purpose of the 18-lot maximum for cul-de-sacs is to limit the number of dwelling units utilizing a dead end, one exit/access street, for safety, service and emergency vehicle purposes. It is also limited in order to encourage "through street" patterns for ease of access and egress by the inhabitants of the area as well as for visitors and service vehicles. In this case, the original intent was to provide through street and one small cul-de-sac. The transformation of the through street into a cul-de-sac was not caused by the applicant although the conversion significantly impacted upon the developable potential of the subject property.

Were it not for this access conversion, and the subsequent more stringent requirements of the Subdivision Code, the Zoning Code would otherwise have permitted the lot to be subdivided as proposed. Therefore, sufficient grounds exist to find that the variance 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:

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1. The applicant, its assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. The applicant, its assigns or successors, shall file a written agreement with the Planning Department prior to receipt of final subdivision approval containing the following stipulations and covenants:
  - a. No ohana dwellings will be permitted on either lot.
  - b. No portion of the subject properties may be further subdivided.
  - c. The written agreement shall be duly recorded at the Bureau of Conveyances of the State of Hawaii at the cost and expense of the subdivider.
3. In the event that there are any amendments or changes to the subdivision after the agreement is signed, the subdivider shall be responsible for informing the Department of the amendments or changes so that the agreement can reflect the amendments or changes; further, the written agreement shall be considered as a condition and covenant running with the land and shall be binding upon the subdivider or owner, his heirs, executors, administrators or assigns and its successors and assigns and shall be incorporated as an exhibit and made part of each agreement of sale, deed, lease or other similar documents affecting the title or ownership of each subdivided lot.
4. Comply with all other State and County codes, rules and regulations.
5. In the event that the access to either lot converts to a minor street, the above covenants for these lots will no longer be in effect.

Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this permit 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: William Thompson  
Subd. 88-23