

V500
denied

CERTIFIED MAIL

April 23, 1993

Ms. Hannah Acia
RR Box 75
Captain Cook, HI 96704

Dear Ms. Acia:

Variance Application (V 93-6)
Road and Grade Standards - Subdivision Code
Applicant: Hannah Acia
Tax Map Key: 8-7-13:15

You previously requested and received a variance from the water requirements of the subdivision code for the proposed partitioning of your "Unplanned" 70 acre parcel into four smaller lots in South Kona. The water variance was approved in 1989, but to date you have not utilized that variance permit.

Instead, you are now requesting a variance for the same lot, to waive the roadways requirements of the subdivision code. You wish to eliminate the need to construct a road to any specific standards. The singular reason you offer is that you "have not been able to resolve the grade requirements of the proposed flag lots with the Department of Public Works". Upon discussing this statement with your surveyor, Chrystal Yamasaki, we are led to understand that you are not financially able to have a safe access constructed to all the lots.

Earlier, in response to a Public Works Department request, your surveyor sent to the County Engineers a rough tracing of a 5 ft. interval contour map showing the elevations of the 'poles' of the flaglots. The engineers' comments were - "Grades along 'poles' are unacceptable. Redesign for a maximum grade of 20%, proper widths, curves, tangents, etc . . . larger scale with minimum 2 ft. intervals may be necessary for further review." The engineer, Mr. Yanagihara says that to date, no further discussion has been attempted by the applicant or her consultants.

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The applicant wishes to utilize existing, meandering, non surveyed jeep trails as the access to each lot, none of which meet any County standards for roads or driveways.

One letter listing eight (8) of the family members and one telephone call are on record opposing the request because of poor access situations which exist now.

FINDINGS AND RECOMMENDATIONS

Having reviewed the subject variance request, the Planning Director has concluded that the variance request to waive the roadway standards of the subdivision code applied to the proposed flaglot subdivision, be denied. The reasons for the denial are as follows:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are no special or unusual circumstances applying to 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 to a degree which obviously interferes with the best use or manner of development of that property.

The property is over 1 mile long (deep, highway to the ocean) and 1/10 mile wide (frontage) and is one of many typical exceedingly steep parcels in South Kona. A 5-ft. contour interval map already shows 100-ft. lengths of 'pole' to contain 30% and 40% slopes. Permitting roadway grades of this magnitude to serve County-approved subdivided lots would be dangerous. On the other hand, permitting the existing unimproved meandering jeep trails to serve as the legal access to county-approved subdivided lots would also be equally dangerous.

ALTERNATIVES

There are alternatives to keeping property in the family although some would include exchanging of land for smaller but more readily developable or subdividable land. All land is not inherently subdividable; its zoning density denotes lot size minimums only if proper access, utilities and buildable area are either present or are developed. One of the main purposes of the subdivision code is to ensure that the parcelization of land into smaller lots includes the basic requirement of safe and adequate vehicular access to buildable lots.

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INTENT AND PURPOSE

The intent and purpose of the subdivision code's access and utilities requirements is to ensure that all lots subdivided in the county have proper, adequate and safe access to them and are provided with the basic utility, water. To maintain any control in the subdivision of land, certain road standards must apply to all subdivisions. The criteria for granting a variance cannot be the degree of compassion by the agency or the "affordability" by the applicant. The public safety where these grade conditions exist should be of primary concern.

Therefore, the variance request to delete the road and grade standards of the subdivision code for this proposed partitioning is denied, as it is found that granting the variance would be contrary to the intent of the subdivision ordinance, and the general plan and would be detrimental to the public welfare.

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 (10) 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.

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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 Donald Tong of this office at 961-8288.

Sincerely,



VIRGINIA GOLDSTEIN
Planning Director

DT:mjs
8676D

xc: Subdivision No. 89-9
Engineering
West Hawaii Office