

VAR 566

COPY

CERTIFIED MAIL

January 26, 1994

Ms. Kikuno Sato
P.O. Box 86
Capt. Cook, HI 96704

Dear Ms. Sato

Variance Application (VAR 93-65)
Petitioners: KIKUNO SATO ETAL
VARIANCE FROM MINIMUM SUBDIVISION WATER AND ROADWAY REQUIREMENTS
TMK: 8-2-10: 5

After reviewing your variance application and the information submitted in behalf of it, the Planning Director hereby certifies the DENIAL of the variance requests to allow the creation of a 4 lot subdivision without meeting the minimum water and roadway requirements as required by Chapter 23 (Subdivision Code), Article 6 (Improvements), Division 2 (Improvements Required), SECTION 23-84 (1)(Water supply) and Article 3 (Design Standards), Division 4 (Street Design), SECTION 23-41 (a) (Minimum right-of-way and pavement widths). The reasons for the denial are as follows:

The subject property which consists of 5.23 acres is located on the mauka side of Mamalahoa Highway approximately 3/4 mile south of the Manago Hotel, Kalamakumu & Kalamakowali, South Kona, Hawaii, TMK: 8-2-10: 5.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The approval of the request would be contrary to the purpose and intent of the access and water provisions of the Subdivision Control Code. The purpose and intent of the access provisions of the Subdivision Control Code is to provide for the safer and efficient movement of people and goods. The purpose and intent of the water provisions of the Subdivision Control Code is to provide water for domestic and fire fighting purposes.

In the case of this subdivision application, areas zoned for one (1) acre lots or less the Subdivision Control Code requires a twenty (20) foot wide right-of-way with a sixteen (16) foot wide pavement

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and a water system to service the 4 lot subdivision. These provisions requiring a twenty (20) foot right-of-way are intended to insure that adequate right-of-way widths will exist in the event that land use intensities increase in the future. Essentially, these provisions treat agricultural subdivisions as larger lot developments where future development of the parcels is possible. Should these provisions not be met the County and land developers shall be faced with increasing needs for development in areas where adequate road rights-of-way do not exist. To acquire in the future added land to make these rights-of-way adequate may be impossible for a private developer and would be an unnecessary financial burden for the County to assume. Additionally, the petitioner in this situation has secured water commitments for the proposed subdivision as County water is available to the subject subdivision.

Based on these considerations it is determined that the approval of the subject request would be contrary to the purpose and intent of the Subdivision Control Code.

ALTERNATIVES

Further, while the subject request is for a proposed four (4) lot subdivision, the roadway in question is an easement which will serve the four lots. If the roadway is not improved, the existing access is not adequate to provide for reasonable access to all of the lots, especially for fire fighting purposes. Should the petitioner improve the roadway within his property to dedicable standards his problems in this regard would be eliminated. In addition, the petitioner already has secured water commitments for the proposed subdivision from the Department of Water Supply. To grant a variance in an area where County water is available and can be provided for would be contrary to the spirit and intent of the water requirements of the Subdivision Code. Therefore, the alternatives in meeting with the minimum requirements of the Subdivision Code are available to the petitioner without the necessity of a variance.

PURPOSE AND INTENT

The approval of the subject request would be contrary to the purpose and intent of the variance provisions of the Subdivision Control Code. It is the purpose and intent of the variance provisions to allow reasonable relief from the Code requirements in those cases where through no fault of the petitioner the strict and literal enforcement of the Code provisions would entail undue hardships.

In this particular case the criteria for granting of a variance from the roadway standards cannot be the degree of compassion by the agency or the affordability by the petitioner. In addition, since

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the petitioners on their own behalf, secured the necessary water commitments, there are no valid reasons for the granting of the variance from the water requirements.

Based on the above findings, the granting of these variance requests would not be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning and Subdivision Codes, and the County General Plan and will be materially detrimental to the public welfare and cause substantial, adverse impact to the area's character and to adjoining properties.

Therefore, both of these variance requests from the roadway and water requirements are denied.

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 be 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.

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Should you have any questions, please feel free to contact Royden Yamasato of our office at 329-4878.

Sincerely,

VIRGINIA GOLDSTEIN
Planning Director

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xc: Ed Cheplic, Sub No. 93-20
West Hawaii Office

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Should you have any questions, please feel free to contact Royden Yamasato of our office at 329-4878.

Sincerely,


VIRGINIA GOLDSTEIN
Planning Director

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