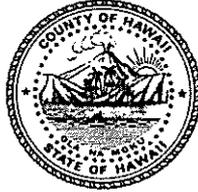


Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Russell Kokubun
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-8742

CERTIFIED MAIL
Z 095 323 318

August 18, 1998

Mr. William V. Brilhante, Et al.
1342 Kilauea Avenue
Hilo, Hawaii 96720

Dear Mr. Brilhante:

Variance Permit No. 946 (VAR 98-39)
Applicants: WILLIAM V. BRILHANTE, ET AL.
Owner: WILLIAM V. BRILHANTE, ET AL.
Request: Variance From Chapter 23, Subdivisions, Article 3,
Division 4, Street Design, Section 23-48, Cul-de-sacs
Tax Map Key: 2-2-045:004, 060, and 163 thru 189

After reviewing your variance application and the information submitted, the Planning Director certifies the approval of your variance from Chapter 23, Subdivisions, Article 3, Division 4, Street Design, Section 23-48, Cul-de-sacs, to allow one of the proposed lots of a pending ten (10) lot subdivision application to have access from an existing cul-de-sac.

The Planning Director has concluded that the variance from the minimum subdivision street design be approved based on the following findings.

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Special and Unusual Circumstances

There are special and unusual circumstances that exist which would warrant consideration of and necessitate a variance from the minimum street design requirements for the proposed ten (10) lot subdivision.

1. The subject property is a portion of 227,616 square foot subdivision application submitted to the Planning Department under application number (SUB 98-048). The affected lot is within the Hilo Ho'onani Subdivision, Being Portions of Lot 15, Block 701, Grant 12161, Waiakea Homesteads, First Series, Waiakea, South Hilo, Hawaii.
2. The affected lot and surrounding property is zoned Single-Family Residential (RS-10) by the County and is designated Urban "U" by the State Land Use Commission (LUC).
3. The owners have submitted a subdivision application (SUB 98-048) which includes a preliminary plat map dated April 16, 1998, to subdivide property containing 227,616 square feet into ten (10) lots. Further action on the proposed 10-lot subdivision application has been deferred pending consideration of the subject variance application.
4. The Department of Finance-Real Property Tax memorandum dated May 1, 1998, and received on June 30, 1998, states in part:

"There are no comments at this time"

"Current Real Property taxes have been paid for all parcels through 6/30/9" (sic).
5. The State Department of Health (DOH) memorandum dated June 23, 1998, states:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."

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6. The Department of Water Supply (DWS) memorandum dated July 28, 1998, states in part:

"We have reviewed the subject variance application and we have no objections to it. We will be able to provide water to Lot 18-B regardless of where it takes access."

8. Notification of mailing of notices to the surrounding property owners was received on June 26, 1998. No objections were received from the surrounding property owners.

Therefore, considering the above facts, information submitted by the applicants, and agency comments, the Planning Director has determined that there are special or unusual circumstances applying to the subject property which exist either to a degree which deprive the owners 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 the subject property.

Alternatives

There are no other reasonable alternatives in resolving the difficulty of the applicant. The first alternative requires the applicant to provide an access via Kawaihāni Street. However, permission to allow an access via Kawaihāni Street must be secured from the Department of Public Works (DPW), the existing mature mango and breadfruit trees may be required to be removed, and the driveway location would be near the existing public intersection. The second alternative would be to allow an additional access via the existing cul-de-sac in accordance with DPW standards.

As such, the imposition of requiring access via Kawaihāni Street for the proposed lot within the subdivision may necessitate the removal of both trees and would be putting excessive demands upon the applicants when a more reasonable alternative is available.

Intent and Purpose- Street Design

The intent and purpose of requiring access to the proposed lot or lots within the subdivision is to assure that safe and perpetual access to the lots is available. The existing property is affected by a future road widening setback line and no vehicular access planting screen easement to be taken from the existing front property line along Kawaihāni Street.

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The proposed lot identified on the preliminary subdivision plan is a corner lot with approximately 45' of available frontage along Kawaihine Street and 150' of frontage along Ho'onani Place.

The analysis of existing the rights-of-way available to the proposed lot, existing road and built infrastructure conditions within county owned rights-of-way, existing property topography and analysis of the existing transition between property and level of the street pavement within Ho'onani Place appear to indicate that an access from Ho'onani Place may be safer and could be allowed via Ho'onani Place, provided the proposed driveway's location and driveway improvements between the proposed lot and existing street pavement are approved by the affected government agencies.

Additional provisions for the proper location and construction of a driveway access to the proposed lot and relocation of access to an adjacent existing lot will be subject to approval by the DPW and addressed by the applicant and all affected lot owners.

DETERMINATION-VARIANCE CONDITIONS

The subject variance application was deemed complete by the Planning Department by certified letter dated June 19, 1998. However, due to the existing access limitations and topography, additional time to review previously approved subdivision construction plans and comments from the affected agencies was required by the Planning Department. Furthermore, the site plan submitted with the variance application does not include detailed topographical information, the location of an existing fire hydrant and other infrastructure information within the existing rights-of-way, nor identify the location and size of the mature mango and breadfruit trees growing on a portion of the proposed lot near the existing road intersection. Therefore, additional time until August 18, 1998, to further study and evaluate the potential driveway location to the proposed lot from the existing cul-de-sac and to understand existing topography and elevation changes between the existing cul-de-sac's road shoulders and the affected property was required.

Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district and the intents and purposes of the Zoning Code, Subdivision Code and the County General Plan. Furthermore, the variance requested will not be materially detrimental to the public's welfare and will not cause substantial adverse impact to the area's character and to adjoining properties.

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The variance requested to allow an additional access from the existing cul-de-sac is approved subject to the following conditions:

1. The owners, their assigns, or successors shall be responsible for complying with all conditions of Variance Permit No. 946, effective August 18, 1998.
2. **ACCESS LIMITATION:** The owners, their assigns, or successors shall file a written agreement or approved written document with the Planning Department within one (1) year from the issuance of tentative subdivision approval and prior to receipt of final subdivision approval of SUB 98-048. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions which includes the future road widening and access limitations affecting the proposed lot arising from the approval of pending subdivision application and shall be duly recorded at the Bureau of Conveyances of the State of Hawaii by the Planning Department at the cost and expense of the owners:
 - a. The owners agree and accept the fact that the proposed location and driveway to the affected additional lot utilizing the existing cul-de-sac shall be approved by the DPW and any other appropriate government agencies.
 - b. The owners agree and accept the fact that the County will not allow access to the affected lot from the Kawaiilani Street right-of-way.
 - e. In the event that there are any amendments or changes to the subdivision after the agreement is signed, the applicant shall be responsible for informing the County Planning Department of such amendments or changes so that the agreement can be amended. Further, the written or recorded agreement shall be binding upon the owner(s), their successors or assigns and shall be incorporated as an exhibit and made part of each agreement of sale, deed, lease, or similar documents affecting the title or ownership of the proposed lot arising out of SUB 98-048.

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3. The owners, their assigns or successors shall comply with all other applicable State and County rules and regulations pertaining to subdivisions and land use.

Should any of the foregoing stated conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Thank you for your understanding and patience during our review.

Sincerely,



 VIRGINIA GOLDSTEIN
Planning Director

WRY/RK:cjf

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xc: DPW, Engineering Division
SUB 98-048