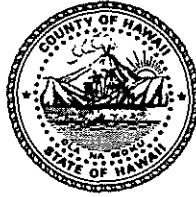


Stephen K. Yamashiro  
Mayor



Virginia Goldstein  
Director

Russell Kokubun  
Deputy Director

## County of Hawaii

### CERTIFIED MAIL

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### PLANNING DEPARTMENT

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

December 7, 1999

Mr. Klaus D. Conventz  
P.O. Box 2308  
Kailua-Kona, Hawaii 96745-2308

Dear Mr. Conventz:

Variance Application WH(VAR 99-47)

Variance No. 1072

Applicant: KLAUS D. CONVENTZ

Owner: CLINTON C. AND IRMA J. HINCHCLIFF

Request: Variance From Planting Screen Easement Requirements of Subdivision Code

Tax Map Key: 7-4-007: 085

After reviewing your application and the additional information submitted, the Planning Director by this letter hereby denies your variance request to allow access through an existing planting screen easement as required by Chapter 23 (Subdivision Code), Article 3 (Design Standards), Division 3 (Lots), SECTION 23-36 (b)(Through Lots; Planting Screen Easement).

The subject property is located at Grant 3022, Lot 7, Apana 2 to Elepaio, at Honokohau 2nd, North Kona, Hawaii, Tax Map Key: 7-4-007:085.

The Planning Director has concluded that the variance request from planting screen easement be denied based on the following findings:

### SPECIAL AND UNUSUAL CIRCUMSTANCES

There are no special and unusual circumstances that exist which would warrant or necessitate a waiver from the minimum requirements to allow access through an existing planting screen easement.

Chronology-Subdivision No. 6079

1. October 8, 1991: Final Subdivision approval was granted by the Planning Director for a 13-lot subdivision with average lot sizes of 1.000 acre.
2. Subdivision No. 6079 was approved with the following conditions:

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Department of Public Works, Engineering Division memo dated November 15, 1989 states:

"We have reviewed the subject application and our comments are as follows:

- "1. Indicate:
  - a. Adjacent property owners
  - b. Name/address of subdivider/owner.
  - c. Zoning within and adjacent to subdivision.
  - d. Date of plat map.
  - e. Any areas that may be subject to inundation by a 100 year storm.
- "2. Submit contour map at 5' intervals along the proposed private roadways and poles to lots 1, 2, 12 and 13.
- "3. Private roadway easement shall be a minimum of 20' wide with a minimum 16' wide pavement.
- "4. Private cul-de-sacs shall contain a minimum radius pavement at a maximum 5% cross slope.
- "5. Extend Kiwi Street to the north boundary. Provide 20' wide dedicable pavement with paved shoulders and swales, within a minimum 50' wide right-of-way.
- "6. Finalize lot dimensions.
- "7. Private roadway shall meet Kiwi Street at right angles with minimum 20' radius returns.
- "8. Provide a 10' wide 'no access' easement along the frontage of the private roadway through lot #7. A maximum of 6 lots shall take access off a private roadway.
- "9. Provide street lights as required.
- "10. Final plat map shall be prepared by a licensed surveyor.

- "11. Indicate Q before and after subdivision development. No additional storm run-off to adjacent properties or roadways due to subdivision development will be allowed. All generated storm flow shall be disposed of within the subdivision. Indicate how this will be accomplished.

Subdivider shall be informed that if drywells are included in the subject subdivision improvements, Chapter 23, Underground Injection Control (UIC), Administrative Rules, Department of Health, prohibit any person from operating, constructing or modifying an injection well (drywell) unless authorized by a permit issued by the Director of Health, State of Hawaii. Furthermore, should dedication of roadways including drywells be contemplated, the Department of Public Works will not approve dedication roadways prior to compliance with Chapter 23, UIC, Administrative Rules.

- "12. Submit construction plans for review and comment. Indicate the available and required sight distance at the private roadway intersections. Required sight distance, based on the posted speed on Kiwi Street plus 5 MPH, shall be provided.

Section 23-36 (Through lots; planting screen easement) states:

- "(a) Through lots shall be avoided except where essential to:
- (1) Provide separation of residential development from major traffic arteries or adjacent nonresidential activities; or
  - 2) Overcome specific disadvantages of topography or orientation.
- "(b) A planting screen easement of at least ten feet, across which there shall be no right of access, may be required along through lot lines abutting a traffic artery or other disadvantageous use. A through lot with planting screens shall have a minimum average depth of one hundred twenty-five feet."

Although the applicant did not request a variance from Section 23-88 (Nondedicable street; private dead-end street), there is reference within the application which states: "In this case, although the provision that no more than 6 lots should have access on a private road is only exceeded by one (1).

Section 23-88 (Nondedicable street; private dead-end street) states:

"(a) A private dead-end street may be established upon approval of the director. The street shall provide access to six lots or less conforming to the minimum area requirements set forth in this chapter and shall be restricted only to residential lots and those agricultural lots zoned for less than three acres. The following shall be the minimum pavement width and right-of-way:

"Road Access	Pavement	Right-of-Way
1 lot	8 feet	12 feet
2 lots	12 feet	16 feet
3 lots	14 feet	18 feet
4 to 6 lots	16 feet	20 feet

"(b) A private street shall be constructed in conformance with standards on file at the department of public works.

"(c) A private street meeting only the minimum requirements of this section shall not be dedicable."

Section 23-41 (Minimum right-of-way and pavement widths) states:

"(a) Unless otherwise indicated on the County general plan, the width of a street in feet shall not be less than the minimums shown in the following table:

"Minimum Type of Street	Right-of-Way	Pavement
"Cul-de-sac & dead-end streets	50 feet	20 feet (urban) 20 feet (rural) 20 feet (agricultural)"

The standards for the creation of this subdivision with 6-lots accessing off of a private dead-end street required the developer to construct a 20 feet right-of-way with 16 feet of pavement. A subdivision with 7 or more lots would have had to construct a 50 feet right-of-way and 20 feet of pavement. This would have driven the cost of the project upward. Thus, as part of tentative subdivision approval, Lot 7 (parcel 85) was required to take access off of Kiwi Street.

The applicant states: "Their property borders on the West side (makai) on Kiwi Street with a very steep cliff-like bluff. This would not only be extremely costly, providing a deep cut into solid rock for driveway plus considerable side clearance for traffic safety reasons, entering

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Kiwi Street, it would actually defeat purpose and intent of the subdivision code, considering the difficult topography. In this particular case the deep terrain cut into the West hill shoulder for access purpose would cause exactly an increased collector problem of run-off waters, as they would be more concentrated, because the grade of the proposed driveway would cut far into the property, thus serving as a trench and flood channel disrupting a more evenly distribution over the entire lot area." The applicant also states that Kiwi Street is not major traffic artery, nor does the screening serve the separation of residential and non-residential activities.

The existing grade of the lot varies from 9 to 13 feet above the elevation of the road. In addition, there is a portion at the intersection of Kiwi Street which is relatively level.

According to the Department of Agriculture Soil Conservation Services's Soil Survey Report, the land is Punalu'u (rPYD) Series soil. The Punalu'u Series consist of well-drained thin organic soils over pahoehoe lava bedrock. The soil (peat) is rapidly permeable. The pahoehoe lava is very slowly permeable, although water moves rapidly through the cracks. Runoff is slow, and the erosion hazard is slight.

Section 23-37 (Lot suitable for intended use; inundation area) states:

"A lot shall be suitable for the purposes for which it is intended to be sold. No area subject to periodic inundation which endangers the health or safety of its occupants may be subdivided for residential purposes."

Therefore, considering the foregoing the Planning Director has determined that there are no special and unusual circumstances applying to the subject property which exist either to a degree which deprives the 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 the subject property.

#### ALTERNATIVES

The Subdivision Code is applied and administered within the framework of the County general plan which is a long range, comprehensive, general plan prepared or being prepared to guide the overall future development of the County. Within this framework, a person desiring to subdivide land by creation of a street within the County shall submit an application for subdivision and preliminary and final plans and documents for approval as provided for in the Subdivision Code.

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The subdivision was approved for a 13-lot subdivision with a private roadway easement. This roadway easement required a minimum 20-foot wide right of way with 16 feet wide pavement. The alternative of having the 13-lot subdivision with a minimum 50-foot right-of-way and 20-foot pavement was dismissed as an alternative requirement for this subdivision. These alternatives were addressed at the time of initial subdivision approval.

#### INTENT AND PURPOSE

The intent and purpose of the private dead-end street requirements of the Subdivision Code was to permit a subdivision of 6 lots or less with smaller rights-of-way and pavement requirements. The planting screen easement is essential to provide separation of the residential development from traffic. This requirement is also used to restrict access along a frontage affected by the planting screen.

In this situation, the developer had the opportunity to have the 13-lot subdivision with wider streets. If the applicant is allowed to access through the planting screen easement, the total number of lots accessing from a private road would be exceeded. This being the case, the intent and purpose of the minimum standards for dead-end streets would be circumvented.

Based on the foregoing findings, this variance request would not 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, this variance will be materially detrimental to the public's welfare and will cause substantial adverse impact to the area's character and to adjoining properties.

This variance request is therefore denied.

The Planning Director's decision is final, except that within thirty days after the date of the written decision, the applicant may appeal such action to the Board of Appeals. Effective March 3, 1999, the Hawaii County Board of Appeals is required to hear and determine appeals from final decisions of the Planning Director. This is pursuant to a recent amendment to the County Charter as adopted by the voters of the County of Hawaii at the general election held on November 3, 1998.

An application for an appeal to the Board of Appeals is attached for your convenience.

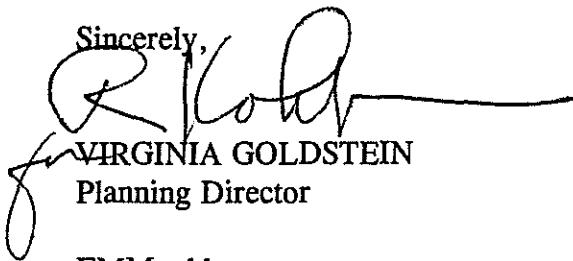
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Should you have any questions, please feel free to contact Eleanor Mirikitani of this department.

Sincerely,



VIRGINIA GOLDSTEIN  
Planning Director

EMM: rld

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Enclosure

xc: West Hawaii Office  
Subdivision File