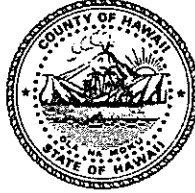


Stephen K. Yamashiro
Mayor



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
P 417 370 254

April 27, 1999

Mr. Gregory R. Mooers
P.O. Box 1101
Kamuela, Hawaii 96743

Dear Mr. Mooers:

Variance Application WH(VAR99-006)
Variance No. 995
Applicant: GREGORY R. MOOERS
Owner: TERRY WARNER
Subdivision Application No. 98-110
Variance from Minimum Access Drive Width of Flag Lot Requirements
Tax Map Key: 6-5-007: 025

After reviewing your application and the submittal, the Planning Director certifies the approval of your variance request to allow a 2 lot subdivision, with an access drive width of 10 feet in lieu of the Minimum 15 feet access drive width as required by Ordinance 96-160, Chapter 25, Article 4, Division 1, Section 25-4-14(1).

Please accept our sincere apologies for this tardy confirmation of the approval granted to allow the requested variance. We have been working within the department to improve the efficiency of this process which will hopefully result in more timely responses to future applications. Your patience is appreciated.

The subject property is situated at Waimea Homesteads (HTS Plat 405-A), Lot 2, of Block 3, and Grant 6295 to John Lindsey, Jr., Waimea, South Kohala, Hawaii, Tax Map Key: 6-5-007: 025.

The Planning Director has concluded that the variance request from the Zoning Code Minimum Width of Drive Access to Connecting the Building Site with the Street should be approved based on the following:

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SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances that exist which would warrant or necessitate a waiver from the minimum requirements to access the proposed two (2) lot subdivision. The Applicant states in a letter dated February 26, 1999 : "Lot 2-F presently has a 20-foot wide pole providing access to the subject property from Lindsey Road. In addition, Lot 2-F has an easement over the adjacent 20-foot wide access pole to Lot 2-G, which is immediately west of the subject property. Lots 2-F and 2-G presently share this access over the 40-foot wide combined pole width. This shared easement has adequately served both Lot 2-F and Lot 2-G. The applicant believes one additional lot will not adversely affect this situation.

"The existing combined pole contains mature landscaping on both sides that would need to be removed if this share access was terminated or required to be improved.

"Should the poles for the two proposed lots be changed into an easement, the applicant would be required to engineer improvements and to pave the easement. In addition, the applicant would be required to engineer and construct a dedicable water line to the Department of Water Supply, so that the county line fronted on all lots as required by DWS rules. These would be extremely expensive improvements for one additional lot, particularly since the lots are presently served by two existing water services provided by DWS.

"The applicant proposed to use the existing easement to provide access to the existing and proposed additional lot in its present grassed situation and believes that this is consistent with the existing park-like atmosphere for this small residential neighborhood."

Therefore, considering the foregoing issue, it has been determined that there are special and unusual circumstances applying to the subject property.

ALTERNATIVES

There are no reasonable alternatives in resolving the required access drive connecting the building site with the street. To require the applicant to meet the existing County requirements would not be economically feasible.

The other alternative would be to abandon the plans to subdivide the property. However, due to the limited nature 2-lot subdivision, this alternative would discourage the permitted utilization of residential lands. It would also deprive the owner of substantial property rights that would otherwise be available and obviously interferes with the best use or manner of development of that property. There are no other reasonable alternatives that would resolve the difficulty.

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A Flag lot is defined under Section 25-1-5 as "a building site consisting of an access drive and a body in such a manner that the body would be landlocked from a public street or private way except for connection by the access drive.

Section 25-4-14 (Flag lots) states "A flag lot shall be permitted when sufficient street frontage is not available for more than one building site, provided the following conditions are met:

(1) The access drive connecting the building site with the street shall have a minimum width of fifteen feet; (2) The access drive shall be the sole access for only one building site, unless dual access is approved by the director after consultation with the chief engineer; (3) The building site area, including the access drive, shall be the minimum building site area required for the zoning district; (4) The minimum yards for a flag lot, excluding the access drive, shall be the minimum side yards required for a building site in the applicable zoning district.

The Land Use Pattern Allocation Guide (LUPAG) Map designates the area as Low Density Urban Development. Low Density refers to single family residential in character, ancillary community and public uses, and convenience type commercial uses. The LUPAG Map component of the General Plan is a representation of the document's goals, policies, standards and courses of action to guide the coordinated growth and development of the County. It reflects a graphic depiction of the physical relationships among the various land uses. The LUPAG Map establishes the basic urban and non-urban land use pattern for areas within the County. The requested variance is consistent with the general purpose of the district, the intent and purpose of this chapter, and the County general plan and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or to adjoining properties. In this particular instance, based on the circumstances, conformance to existing zoning code flag lot requirements are impractical.

The request therefore warrants and necessitates a waiver from the minimum requirements for the proposed two (2) lot subdivision considering its relation to existing access, to topographical conditions, to public convenience and safety, and the proposed use of land to be served by the flag lot.

INTENT AND PURPOSE

The subject property consisting of 31,860 square feet is located within the County's Single Family Residential (RS-10) zoned district. Under this zoning designation the minimum building site area is 10,000 square feet. The applicant is proposing a two (2) lot subdivision consisting of Lot 2-F-1 (11,695 square feet) and Lot 2-F-2 (20,165 square feet).

The intent and purpose of requiring a pavement width requirement is to permit the subdivision and where necessary to give access to or permit a satisfactory future subdivision. These are

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related to existing and planned streets, to topographical conditions, to public convenience and safety issues, and to the proposed use of land to be served by the flag lot. The applicant is proposing to subdivide the property and therefore, in this situation, the proposed 10 feet access drive connecting the building site with the street is considered adequate for this Residential zoned land.

There were no objections from the surrounding property owners or the general public.

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 this variance will not be materially detrimental to the public's welfare and will not cause substantial adverse impact to the areas' character and to adjoining properties.

This variance request is approved, subject to the following conditions:

1. The applicant, his assigns or successors, shall be responsible for complying with stated conditions of approval.
2. The approval of this variance shall be include in the conveyance document for the subject properties and a copy of the recorded conveyance document shall be submitted to the Planning Department within a year from the effective date of approval of this variance.
3. If either lot is further subdivided, the applicant shall comply with the requirements of the Department of Public Works, Engineering Division, Chapter 23, Subdivisions (Section 23-88) and Chapter 25 of the Zoning Code.
4. All other applicable State and County rules and regulations shall be complied with.

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

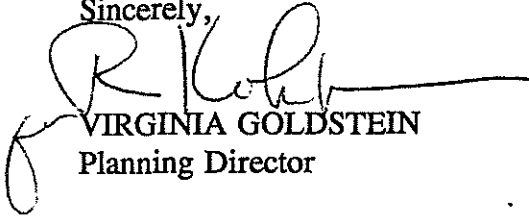
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Should you have any questions, please feel free to contact Royden Yamasato of this department.

Sincerely,



VIRGINIA GOLDSTEIN
Planning Director

EMM: rld

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xc: West Hawaii Office
Subdivision File