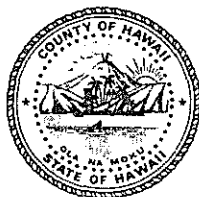


Stephen K. Yamashiro
Mayor



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

7099 3220 0000 4869 6841

May 3, 2000

Ms. Mary A. Warren
Murray, Smith & Associates, Ltd.
504 Kalanikoa Street, Suite No. 4
Hilo, Hawaii 96720

Dear Ms. Warren:

Variance Permit No. 1111 (VAR 00-003)
Applicant: MARY A. WARREN
Owner: MARY A. WARREN
Request: Variance From Chapter 25, Article 5,
Division 1, Section 25-5-5, Minimum Building Site Area
to Allow a 2 Lot Subdivision of the Existing Property
Tax Map Key: 1-7-001:050

After reviewing your variance application and the information submitted, the Planning Director certifies the approval of a subdivision to allow a lot to be created without meeting the minimum lot size requirements of the county's Zoning and Subdivision Codes.

Please accept our sincere apology for this tardy confirmation of the approval to allow the requested variance. Additional time to study older subdivision maps and records, property tax history, and county ordinances was necessary. Your patience is appreciated.

FINDINGS AND RECOMMENDATIONS

The Planning Director has concluded that the variance from the county's Zoning Code and Subdivision Code to allow the proposed 2-lot subdivision can be approved based on the following findings.

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Ms. Mary A. Warren
Murray, Smith & Associates, Ltd.
Page 2
May 3, 2000

SPECIAL AND UNUSUAL CIRCUMSTANCES

Prior to the submission of your variance application, the Planning Department discussed the circumstances of the proposed variance and subdivision request with the applicant's surveyor. The Planning Director directed the applicant/owner to pursue a variance from the Chapter 25, Zoning Code, prior to submission of a subdivision application. For the record we note and acknowledge the following:

1. The subject property contains 35,722 square feet +/- . The property is Lot 9, Grant 4969 to Mai, Olaa Homestead Reservation Lots, Puna, Hawaii.

The subject property was zoned Single-Family Residential (RS-20) by the County in 1967. The property is designated Urban "U" by the State Land Use Commission (SLUC).

2. The subject variance application was deemed complete by the Planning Director on January 18, 2000. The transmittal letter dated December 3, 1999, from the applicant's surveyor, includes a written explanation which states in part:

"We acknowledge our "telecon" relating to our request for reconsideration of the Planning Department's denial for reconsideration of the Planning Department's denial of Mary A. Warren Variance Application.

As discussed, we feel that the loss of 5,668 Square Feet, through condemnation for Highway Realignment should have qualified as "hardship".

We are submitting the Variance "package" along with this letter."

In addition to the statements in the transmittal letter, the following statements are taken from an attachment to the variance application, dated March 18, 1999, which state in part:

"There are special and unusual circumstances that exist which would warrant consideration of and necessitate a variance from the minimum lot requirements to service the proposed subdivision:

1. The subject property consists of Portions of Lot 9, Grant 4969 to Mai situate at Olaa Homestead Reservation Lots, Olaa, Puna, Island of Hawaii, Hawaii, containing 45,722 (sic) Square Feet.

Ms. Mary A. Warren
Murray, Smith & Associates, Ltd.
Page 3
May 3, 2000

2. The subject parcel was zoned by the County of Hawaii in 1967.
3. The owners/subdividers submitted a preliminary plat map dated May 15, 1997 prepared by Murray, Smith & Associates, Ltd. Together with a subdivision application application (SUB 97-058).
4. The purpose of this subdivision is to create two (2) lots, each being occupied by a residence, constructed prior to 1972.

Further action on the proposed two (2) lot subdivision (SUB 97-058) has been deferred pending resolution of the minimum Lot (sic) size requirements.

Please be advised that, although our Letter of Application dated May 15, 1997, addressed the fact that Lot "B" did not conform to the minimum lot area of 20,000 Square Feet (RS-20), and that a Variance Application would be required, it was somehow missed in the Planning Department's letter of Tentative Approval until we applied for Final Approval.

On behalf of the applicant, Ms. Mary A. Warren, we submit the following:

ALTERNATIVES

There are no other reasonable alternatives in resolving the difficulty of the petitioner, Mary. (sic) Warren.

You will note that a large parcel of TMK 1-7-01:50, containing 5,668 Square Feet was condemned for widening of the New Volcano Road (F.A.P. No. F-24) back in 1948. (See Map)

The normal highway widening area, affecting house lots, usually amounts to 500+ Square Feet to 700+ Square Feet.

The original total area prior to the condemnation of 5,668 Square Feet amounted to 41,390 Square Feet.

A normal highway condemnation for road widening would then have adequate land area for two (2) 20,000 Square Feet Lots.

Ms. Mary A. Warren
Murray, Smith & Associates, Ltd.
Page 4
May 3, 2000

INTENT AND PURPOSE

The variance will be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning and Subdivision Codes and County General Plan and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or adjoining properties.

You will note that the total distance between the two (2) residences amount to 90+ feet.

You will also not that proposed division line between Lots A and B amount to an average of 45 feet from each residence.

We are merely creating a division line between residences that have existed for over thirty (30) years."

Note: For the record, the preliminary plat map submittal and subdivision application (SUB 97-058) were declared null and void on June 1, 1999 by the Planning Department. It appears that the site plan, dated January 21, 1999, submitted with subject variance application previous subdivision application (SUB 97-058) and "Map" referenced in March 18, 1999 attachment above, are the same submittals.

There are two (2) existing dwelling units on the subject property. The variance requested would enable the applicant to resubmit a 2-lot subdivision of "Lot 9" affected by a previous "taking" of property for road widening. The proposed subdivision would create Lot "A" containing 20,000 square feet and Lot "B" containing 15,720 square feet. Each proposed lot will include a dwelling.

3. The State Department of Health (DOH) memorandum dated January 25, 2000 states:

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

4. The Department of Finance-Real Property Tax memorandum dated January 19, 2000 states:

"There are no comments at this time"

Ms. Mary A. Warren
Murray, Smith & Associates, Ltd.
Page 5
May 3, 2000

“Real Property taxes are paid through December 31, 1999.”

5. The Department of Public Works (DPW) memorandum dated February 15, 2000 states:

“After discussing the subject variance with both the Engineering and Building Divisions, we could find no relevance or see any interest in the granting of VAR 00-002, 00-003 or any other minimum building site variance. As a result, to expedite processing, we suggest you discontinue transmitting these variance to this office.”

6. As directed by the Planning Director, proof of mailing was submitted to Planning Department on February 14, 2000. For the record, no oral and written objections to the variance application were received from the surrounding property owners.

Therefore, considering the above facts, site plan submittals, agency comments, past correspondence, and additional information and facts submitted by the applicant related to past expansion and development of the existing right-of-way affecting the existing property, the Planning Director has determined that there are special and unusual circumstances applying to the subject land area or property which exists either to a degree which deprives the current 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

In view of the above findings and facts, due to the previous taking of land from the original property for the expansion of the existing right-of-way fronting the property, the Planning Director has determined that there are special and unusual circumstances to warrant the granting of the subject variance to allow a proposed 2-lot subdivision.

DETERMINATION-VARIANCE CONDITIONS

The subject variance application and attached variance submittals were deemed necessary and complete by the Planning Director on January 18, 2000. Additional time to review and study the previous subdivision correspondence and action, past agency comments, and other copies of building information and building permits affecting the subject property was required.

Ms. Mary A. Warren
Murray, Smith & Associates, Ltd.
Page 6
May 3, 2000

Based the foregoing findings and the existing property circumstances, 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.

The variance requested by the applicant and required by Planning Director is approved subject to the following conditions:


1. The applicants/owners, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The variance is from Chapter 25, Article 5, Division 1, Section 25-5-5, Minimum Building Area to allow a 2-lot subdivision of the existing property.
3. The applicants/owners shall cause and submit a subdivision application showing the approved lot on a subdivision map to the Planning Director for review and subdivision approval. The preliminary and final subdivision maps shall include and denote the existing future road widening lines and identify all existing structures and related building improvements built or established on the subject property. The final subdivision plat map shall comply with all the requirements of Chapter 23, Subdivisions, Chapter 25, the Zoning Code, and other county and state statutes pertaining to subdivisions and property recordation.
4. Existing and future building improvements and permitted uses on the approved lot(s) shall be subject to State law and County ordinances and regulations pertaining to building construction setbacks and building occupancy.

Thank you very much for your understanding and your patience.

Ms. Mary A. Warren
Murray, Smith & Associates, Ltd.
Page 7
May 3, 2000

Any questions may be directed to this office at 961-8288.

Sincerely,


VIRGINIA GOLDSTEIN
Planning Director

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xc: Subdivision Section