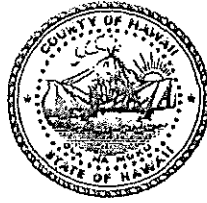


Harry Kim
Mayor



Christopher J. Yuen
Director

County of Hawaii

PLANNING DEPARTMENT

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

December 14, 2000

Mrs. Luvia Ishii
272 Mohouli Street
Hilo, HI 96720

Dear Mrs. Ishii:

Variance Permit No. 1169 (VAR 00-052)
Applicants: LUVIA JEAN ISHII, ET AL.
Owners: LUVIA JEAN ISHII, ET AL.
Request: Variance From Improvements Required,
Pursuant to Chapter 23, Subdivisions
Tax Map Key: 2-4-033:010, SUB 98-005

After reviewing your variance application and the information submitted, the Planning Director certifies the approval of your variance to allow a two (2) lot subdivision without meeting the minimum roadway system requirements as required by Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-87, Standards for non-dedicable street; escrow maintenance fund.

The Planning Director has concluded that the variance from the minimum subdivision roadway requirements with conditions be approved based on the following findings.

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances that exist which would warrant consideration of and necessitate a variance from the minimum road improvement requirements for the proposed two (2) lot subdivision:

1. The subject property containing an area of 3.433 +/- acres is LOT "N", Portion of Land Patent Grant Number 8936 to Bernice B. Lewis and Being a Portion of Lot

012435

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1104 of Waiakea Homesteads, Second Series, Situate at Waiakea, South Hilo, Hawaii.

2. The subject property is zoned Agricultural (A-1a) by the County and designated Agriculture "A" by the State Land Use Commission (LUC). As such the Zoning Code requires each subdivided lot to be a minimum one (1) acre.
3. The owners submitted a subdivision application (SUB 98-005) in 1998 to the Planning Department. Further action on the preliminary plat map and subdivision application to subdivide Lot N into two (2) lots has been deferred by the Planning Director pending resolve of agency and subdivision requirements and the subject variance application.
4. The Department of Finance-Real Property Tax memorandum dated July 7, 2000 states in part:

"There are no comments at this time"

"Current"

" Real Property taxes are paid through June 30, 2000."
5. The State Department of Health (DOH) memorandum dated July 10, 2000 states:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."
6. No comments were received from the Department of Public Works (DPW) Engineering Division.

Note: For the record, the Planning Department was informed verbally that the variance application was "filed" and no comments to the variance request were forwarded to the Planning Department.
7. The proof of mailing of notices to the surrounding property owners was received on July 19, 2000.
8. No oral or written objections to the variance application were received from the surrounding property owners.

9. With regard to our letter of September 18, 2000, requesting more information about the telecommunication tower located on the larger of the proposed lots, you and your representatives met with Deputy Director Kokubun on October 19, 2000, to explain that the tower was constructed by Voicestream PCS II Corporation. Furthermore, you have leased an easement for the site and for access to Voicestream with the provision that all required permits for the tower would be the responsibility of Voicestream. With this in mind, we will inform Voicestream that all applicable rules and regulations shall be adhered to as soon as possible.

Note: In consideration of the recent meeting, the owner(s)/applicant are required to incorporate and show the antenna tower location and applicable access easement(s) to the existing antenna tower on a revised preliminary plat map(s) and comply with variance and subdivision conditions.

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 applicants to improve the existing "40-FOOT WIDE" roadway denoted on the preliminary subdivision plat map meeting DPW requirement. The cost to provide the road improvements within the roadway and fronting the entire parcel is cost prohibitive and the pro-rata cost per lot is economically cost prohibitive. The applicants claim the road improvement cost to make improvements described by the DPW will exceed the current value of the existing unsubdivided property. The outlook for the immediate expenditure or appropriation of public road monies or funds to acquire the existing network of road rights-of-way and construct road improvements meeting minimum government standards fronting this property is remote at this time. It is felt the existing road network fronting the subject property and other surrounding properties will remain unchanged during the next decade and beyond. The second alternative is to extend the existing paved driveway up to the existing access driveways located on the subject property. The applicant, at their own expense, had previously developed separate access and driveways to the existing dwelling(s) on the property via the existing private roadway located on an adjacent property. It is felt the current zoning and permitted uses of the property and the applicant's proposal to create two separate developed lots for family planning and estate purposes

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will not have an adverse affect on the existing private roadway system with access to Ainaola Drive. Furthermore, the applicant recently obtained permission from the adjacent landowner(s) to further extend and pave portions of the existing driveway located within the 40-foot wide roadway fronting the property. It is felt the proposed 2 lot subdivision for family estate planning purposes will not further increase traffic between the existing development located on the subject property and use of the existing private roadway system.

INTENT AND PURPOSE

The intent and purpose of requiring access and roadway requirements at the time of subdivision is to designate and assure that the property has legal and physical access to and between the proposed lots and permitted uses on the proposed lots and that access to the property is provided in the event that there is a fire or emergency.

It appears the existing site conditions and surrounding roadway patterns were established and developed many years before the Zoning and Subdivision Codes were adopted in 1967. The current access to the proposed subdivision TMK parcel (TMK: (3) 2-4-033:010) is via a privately owned paved driveway located within a 40-foot wide "road" which is located on an adjacent TMK parcel (TMK: 2-4-033:028). The existing property or proposed lots will be located approximately 1000 feet from Ainaola Drive; a publicly owned and maintained right-of-way.

It appears the applicant submitted a site plan showing the location of the existing paved driveway and recent driveway improvements, which are located within the existing "40 Ft. Road" located on the adjacent property (parcel 028). The variance application and extension of the existing paved driveway improvements within the privately owned "40-Ft. (1.1772 Ac.) Road" denoted on the tax map(s) were endorsed and permitted by the current land owner(s).

DETERMINATION-VARIANCE CONDITIONS

The subject variance application was accepted and acknowledged by certified letter dated June 30, 2000. Additional time to confer with the DPW-Engineering Division and Building Division to review roadway and existing permitted building improvements, respectively, was required.

In addition, the Planning Director requested that the decision to consider the variance request be held in abeyance pending receipt of information regarding the existence of an existing antenna and other adjacent building improvements related to the antenna which are located on the subject lot. Pursuant to a recent meeting with the applicant/owner(s), the status of the existing antenna and permitted uses will be addressed by variance conditions and other appropriate procedures and permits. No oral or written objections to the subject variance application were received from the surrounding property owners or the 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, 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 to allow a proposed subdivision without installing the road improvements meeting DWS standards 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. 1169.
2. 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 98-005. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions, which affect the proposed lots 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. No further subdivision of the subject property or those lots arising out of SUB 98-005 shall be permitted unless said roadway meets the requirements of the Department of Public Works (DPW) and Chapter 23, Subdivisions are met. No ohana dwelling units shall be permitted on any proposed lots created by SUB 98-005.
 - b. The owners, their assigns, or successors shall indemnify and defend the State of Hawaii and County of Hawaii from any and all liability arising out of vehicular access to and from the subject property utilizing the "40-FOOT ROAD" identified on the preliminary and final subdivision plat map or any further private access driveways or utility easements arising out of SUB 98-005.

The owners, their assigns, or successor shall agree and accept the fact that the County will not bear the responsibility of providing any road repairs or other emergency road maintenance repairs to any existing private access driveways or any private driveways within any access and utility easements created by SUB 98-005.

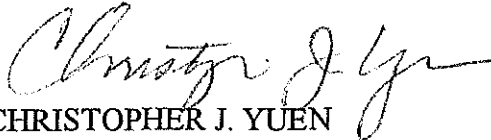
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3. The owners, their assigns or successors shall cause and submit an appropriate copies of a revised preliminary plat map and other maps as deemed necessary by the County of Hawaii Planning Department and all other applicable State and County rules and regulations pertaining to SUB 98-005 and land use.
4. The approval of this variance shall not be construed to imply tacit approval by the Planning Department to allow or locate a telecommunications facility on the subject property or any subdivided lots arising out of the approval of SUB 98-005.

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,



CHRISTOPHER J. YUEN
Planning Director

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XC: DPW-ENG. (Hilo)
SUB 98-005
Voicestream Wireless Western PCS II Corporation (Leasing Administrator)
Ms. Susan Gagorik-Planning Division