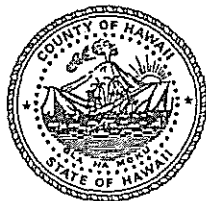


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • Fax (808) 961-8742

May 31, 2005

Mr. Gregory C. MacIsaac
P. O. Box 771
Kamuela, HI 96743

Dear Mr. MacIsaac:

VARIANCE PERMIT NO.1515 WH (VAR 05-013)

Agent: JAMES L.K. DAHLBERG
Applicant: GREGORY C. MACISAAC
Owners: ANNUNAKI TRUST, ET AL.
Request: Variance from Chapter 25, Zoning
Tax Map Key: 6-2-010:052, (SUB 03-0160)

After reviewing your variance application, the Planning Director certifies the approval of Variance Permit No. 1515 permits a 2-lot (RS-15) subdivision and allows a proposed lot-Lot 42-B to be created with a 41+ feet minimum building site average width in lieu of lot the minimum 90 feet building site average width requirement. The variance is from the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-6, Minimum building site average width.

BACKGROUND

1. **Location.** The subject property, Lot 42 containing 34,903 square feet, South Kohala View Estates, being a portion of R.P. No. 2237 L.C. Award No 8518-B, Apana 1 to James Young, is situated at Ouli, South Kohala, Hawaii.
2. **Zoning.** The subject property is zoned Single-Family Residential (RS-15) by the County and designated Urban ("U") by the State Land Use Commission (LUC).

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3. **Subdivision Request/PPM.** The applicant-owners submitted subdivision application (SUB 01-0160) includes a preliminary plat map (PPM) dated September 17, 2003. Further action to consider the subdivision application is being deferred.
4. **Variance Application.** The applicant-owner submitted the original variance application and other submittals on or about February 23, 2005.

Agency Comments and Requirements WH (VAR 05-013):

- a. The State Department of Health (DOH) memorandum, dated April 27, 2005, states:

"WWB has no objections to the proposed subdivision. However, as we have no information on existing wastewater systems we are unable to provide comments. Please have your engineer or contractor submit a completed cesspool information card identifying the location of all wastewater systems and their relationship to existing and proposed property lines."
 - b. No oral or written comments were received from the Department of Public Works (DPW).
6. **Notice to Surrounding Property Owners.** A transmittal letter dated April 9, 2005, attached list of surrounding property owners, and other submittals were received on April 12, 2005. According to the transmittal letter and submittals received, the first and second notices were forwarded to surrounding owners by hand or mail.
 7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received and no written objections from adjoining property owners contacted or public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances apply to the subject project which exist either to a degree which deprive the applicant/owner 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-Lot 42. The special circumstances is that Lot 42 is a triangular shaped lot with frontage along Kawaihae Road and the widest portion (base of the triangle) of the property is 133.56 feet.

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Proposed lot-"LOT 42-B" will not meet the 90 feet minimum building site average width requirement for property zoned RS-15. In addition to property geometry, Lot 42's sloping nature-topography or "lay of the land" is unusual and current access between Lot 42 and the Kawaihae Road is restricted by a previous subdivision.

The variance application's site plan map was prepared by a surveyor and denotes the location of the building improvements previously built on Lot 42 or within the proposed subdivision. According to the proposed subdivision plat map, the existing dwelling improvements or buildings originally constructed on "Lot 42" met the minimum yard and open space or yard requirements pursuant to the Hawaii County Zoning Code.

ALTERNATIVES

Due to the property's unusual geometry, there are limited alternatives, other than acquiring additional property from the adjoining property (Zoned: A-40a), rezoning, etc.

INTENT AND PURPOSE OF THE SUBDIVISION CODE

The intent and purpose for the minimum building site average width requirement is to assure that there is adequate building area to construct buildings and that adequate light and air and circulation patterns to and around buildings are provided. Although, the proposed subdivision will result in a lot with a building site area of approximately 41 + feet, the dwelling and garage buildings improvements constructed on proposed lot "LOT 42-B" or building improvements constructed within the proposed 2-lot subdivision comply with minimum yards (albeit-non-conforming minimum yards) and associated open space requirements pursuant to the Zoning Code.

Therefore, in view of the representations made by the applicant, the property's unusual geometry, and evaluation of existing building improvements constructed within the proposed subdivision, the Planning Director has concluded that the applicant's variance request from the minimum building site average width requirement to permit the proposed 2-lot subdivision can be approved.

DETERMINATION-VARIANCE CONDITIONS

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.

Mr. Gregory C. MacIsaac

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The subject variance application was acknowledged by letter dated March 16, 2005. Additional time to consider DPW comments and review other subdivisions within surrounding area was necessary. The applicant's agent agreed to extend the decision dated to May 31, 2005 to allow the Planning Director time to complete the variance background and render a decision on the variance request.

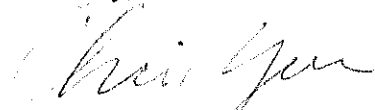
The variance request to allow proposed 2-lot subdivision is approved subject to the following variance conditions:

1. The subdivider, owners, their assigns, or successors shall be responsible for complying with all stated conditions of this variance.
2. The subdivider, owners, their assigns, or successors understand that both lots arising out of SUB 03-0160 will use and maintain proposed road access and utility easement without any expectation of governmental assistance to maintain the privately owned driveway or utility improvements with the access and utility easement.
3. The owners, their assigns or successors shall pay any outstanding real property taxes due and comply with all other applicable State and County rules and regulations pertaining to subdivisions.

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

WRY:cd

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xc: SUB 03-0160
Planning Department-KONA