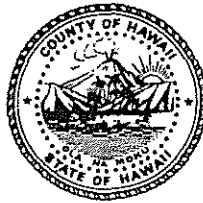


William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

County of Hawai'i

PLANNING DEPARTMENT

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

June 10, 2009

Sandra P. Song, Esq.
Sandra P. Song, Attorney at Law
10 Kamehameha Avenue
Hilo, HI 96720

Dear Ms. Song:

SUBJECT: VARIANCE-VAR 08-074
Representative: SANDRA P. SONG, Attorney at Law
Owners: DARYL L. SMITH, ET AL.
Request: Variance from Chapter 25, Zoning
Minimum Building Site Average Width
Tax Map Key: 1-1-006:102, (SUB 07-000514)

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 07-074 subject to variance conditions. The variance permits proposed 2-lot subdivision (SUB 07-000514) allows the creation of lots not meeting the required minimum building site average width required for proposed 2-lot subdivision zoned Single-Family Residential, (RS-20), required by Chapter 25, Zoning, Article 5, Division 1, Single-Family Residential Districts, Section 25-5-7, Minimum building site average width.

BACKGROUND

1. **Location.** The above referenced TMK property, Lot 10 containing approximately 42,237 square feet, is within Block B of the Ikina Moana Tract being a portion of R.P. 7223, L.C. Aw. 8559-B, Apana 16 to W.C. Lunalilo, and situated at Olaa, Puna, Hawaii. The TMK property's street address is 11-2972 Lanihuli Road.

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2. **Zoning.** The subject property is zoned Single-Family Residential (RS-20) by the County and designated Urban "U" by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** The owners submitted subdivision application and preliminary plat map (PPM), February 2, 2005, proposing to subdivide subject TMK property into 2-lots. Further action on subdivision application (SUB 07-000514) is being deferred pursuant to letter dated June 6, 2007 in the subdivision file.
4. **Variance Application.** The applicant's representative submitted a variance application and submittals on December 12, 2008. The variance application includes exhibits and background information which states in part:

Page 2. "The Applicant is requesting a variance from Section 25-5-6 of the Hawaii County Code, regarding the minimum building site average width, for the proposed lots of a two-lot subdivision."

Page 2-3. "The Property consists of a long narrow lot, 42,237 square feet in area. The width of the lot along Lanihuli Road is 108.30 feet and the depth or length of the lot is 390.00 feet. The proposed two-lot subdivision, (sic) would create a separate lot for the existing single family dwelling and related improvements, and a new flag lot behind the developed area.

The proposed developed lot, Lot 10-A, will be 20,001 square feet in area. The Zoning Code requires a building site average width for a 20,001 square foot lot of 110 feet, as evidenced by the following calculations:

Minimum average building site width for 7,500 sq. ft. = 60 ft.
 $20,001 \text{ sq. ft.} - 7,500 \text{ sq. ft.} = 12,501 \text{ sq. ft. in excess of } 7,500 \text{ sq. ft.}$
 $12,501 \text{ sq. ft.} \div 500 \text{ sq. ft. (sic)} = 25 \text{ ft.} \times 2 = 50 \text{ ft. to be added to minimum building site average width}$
 $60 \text{ ft.} + 50 \text{ ft.} = 110 \text{ ft (sic) total minimum building site average width for } 20,001 \text{ sq. ft. lot}$

The depth of Lot 10-A is 214.60 feet and the width of the lot is 93.3 feet. Applying the formula for determining building site average width (dividing the total area of the building site by the maximum depth of the building site measured in the general direction of the side lines, HCC Sec. 25-1-5) the minimum building site average width for Lot 10-A is 82.79 feet, as evidenced by the following calculations:

$$20,001 \text{ sq. ft.} \div 214.60 \text{ ft.} = 82.79 \text{ ft (sic) [Correction: 93.201 feet]}$$

The proposed flag lot, Lot 10-B, will be 22,236 square feet in area, which includes usable lot area of 18,943.2 square feet, and the 15-foot wide pole, 3,069 square feet in area, providing access to the lot from Lanihuli Road. The Zoning Code requires a building site average width for a 22,236 square foot lot of 119 feet, as evidenced by the following calculations:

Minimum average building site width for 7,500 sq. ft. = 60 ft.
 $22,236 \text{ sq. ft.} - 7,500 \text{ sq. ft.} = 14,736 \text{ sq. ft. in excess of 7,500 sq. ft.}$
 $14,736 \text{ sq. ft.} \div 500 \text{ sq. ft.} = 29.472 \text{ ft.} \times 2 = 59 \text{ ft (sic) to be added to}$
minimum building site average width
 $60 \text{ ft (sic)} + 59 \text{ ft} = 119 \text{ ft total minimum building site average width for}$
22,236 sq. ft. lot

The depth of Lot 10-B is 390.60 feet because of the 214.60 foot long pole, with the actual width lot being 108.30 feet. However, applying the formula for determining building site average width, the minimum building site average width for Lot 10-B is 57 feet, as evidenced by the following calculations:

$$22,236 \text{ sq (sic) ft.} \div 390 \text{ ft.} = 57 \text{ ft.}$$

Thus the variance being requested from the required minimum building site average width for Lot 10-A is 82.79 feet (sic) **[Correction: 93.201 feet]** in lieu of 110 feet, and for Lot 10-B, 57 feet in lieu of 119 feet.”

4. **County Building Records:**

According to the applicant's background information (page 1), “The Property, which is long, narrow lot, fronts Lanihuli Road for a distance of

108 feet, and has a depth of 390 feet. An existing single-family house approximately 1,048 (sic) in area, constructed in 1964, and detached shed approximately 280 square feet in area, constructed in 1974, are located in the front portion of the Property proposed for Lot 10-A of the two-lot subdivision."

5. **Variance Application (VAR 08-074)-Agency Comments and Requirements:**

- a. The State Department of Health (DOH) memorandum is dated February 10, 2009 states in part:

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

- b. The County of Hawaii-Fire Department (HFD) comments or memorandum dated January 19, 2009 states in part:

"We have no comments to offer at this time in reference to the above-mentioned Variance application request."

6. **Notice to Surrounding Owners.** The owner's representative submitted an affidavit dated February 13, 2009 regarding mailing of notice, list of surrounding property owner(s) within 300 feet of subject TMK property, and copy of notice "mailed" or sent to list of surrounding property owners. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on February 11, 2009.

Posted Sign. The owner's representative or owner(s) submitted an affidavit dated February 17, 2009 regarding sign posted upon subject TMK property and photograph of a posted sign.

7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received. The following objection letters were received:

- 7a. Letter(s) dated January 25, 2009 and April 15, 2009 from Vicki

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Taylor (TMK: (3) 1-1-006:069) objecting to the variance request
and/or variance application(s) regarding proposed subdivision.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The owners became aware of the minimum building site average width requirement after submitting proposed 2-lot subdivision application (SUB 07-000514). The building site average width means that figure obtained by dividing the total area of a building site by the maximum depth of the building site measured in the general direction of the side lines. Subsequent to filing the subdivision the owner's representative filed variance application (VAR 08-074) to address the proposed subdivision's building site average width including a separate variance application (VAR 08-073) from Chapter 23, Subdivision regarding water supply. The variance application's site plan map is a reduced copy of the subdivision's PPM, prepared by the owner's surveyor.

In addition to representative's findings above, it appears that the subject TMK property or Lot 10 containing 42,237 square feet was created prior to September 21, 1966. Property zoned RS-20 requires a 110 feet minimum building site average width. Therefore, without subdividing, Lot 10's current 108 + feet average width is non-conforming. The proposed subdivision will result in creating "LOT 10-A" with a 93 + feet average lot width and proposed flag lot "LOT 10-B" with the "flag" having minimum width of approximately 108 + feet, respectively. The portion of Lanihuli Road (Right-of-Way and paved roadway) fronting the subject TMK property or proposed subdivision is owned and maintained by the County.

ALTERNATIVES

Alternatives available to the applicant to augment the subject TMK property's geometry or property's width along the right-of-way include the following action:

Consolidation of the subject TMK property or Lot 10 with adjoining properties to modify the property lines to create property which can be equally subdivided into 2 lots having a minimum 110 feet average building width.

INTENT AND PURPOSE

The intent and purpose of requiring lots to meet a minimum average width is to create a consistent land pattern and assure that building sites are adequate to assure that minimum

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yards, and buildings have access to light, air circulation, etc.

Pursuant to the background information and findings, the subject TMK property current 108.30 feet frontage along Lanihuli Road, even without subdividing, is non-conforming. Given the usable or proposed minimum building area upon proposed "LOT 20-A" (currently improved) and upon the proposed "flag" of "LOT 20-B", the Planning Director feels that both lots created by proposed 2-lot subdivision will have adequate buildable areas respectively within both lots to accommodate dwelling and water catchment building improvements.

Therefore, in view of the property's unusual geometry and other unusual circumstances including findings cited by the representative and Planning Department, the Planning Director feels that the owners or representative's request for variance is reasonable to allow proposed 2-lot subdivision (SUB 06-000514) to permit subdivision of the subject TMK property resulting in the creation of 2-lots having 92 + and 108 + feet average width building areas.

The request for variance and variance application was acknowledged by letter dated February 4, 2009 and additional time was required by the Planning Department to consider the representative's background findings and comments from a neighbor or surrounding property owner. The owner's representative granted the Planning Director an extension of time to June 14, 2009 to render a decision on the variance application.

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 request 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.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

This variance application is **approved** subject to the following variance conditions:

1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or

Sandra P. Song, Esq.
Sandra P. Song, Attorney at Law
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demand for the property damage, personal injury, or death arising out of any act or omission of the applicants/owners, their successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.

3. No permit shall be granted to allow an ohana dwelling or building permit issued to allow construction of an "ohana" dwelling shall be granted to the subject TMK property or upon lots created by proposed 2-lot subdivision application (SUB 07-000514), subject to provisions of the Zoning Code or State Law which may change from time to time.
4. Future or new building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare subject Variance-VAR 08-074 null and void.

Sincerely,

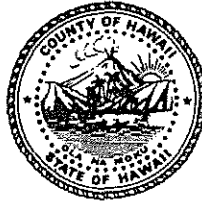


BJ LEITHEAD TODD
Planning Director

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xc: Real Property Tax Office-(Hilo)
SUB 07-000514
Vicki Taylor

William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

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July 1, 2009

Sandra P. Song, Esq.
Sandra P. Song, Attorney at Law
10 Kamehameha Avenue
Hilo, HI 96720

Dear Ms. Song:

SUBJECT: VARIANCE-VAR 08-074 (BACKGROUND)
Representative: SANDRA P. SONG, Attorney at Law
Owners: DARYL L. SMITH, ET AL.
Request: Variance from Chapter 25, Zoning
Minimum Building Site Average Width
Tax Map Key: 1-1-006:102, (SUB 07-000514)

Pursuant to discussion with staff, variance letter (VAR 08-074), **BACKGROUND** (page 6), item no. 6, dated June 10, 2009 is hereby revised and corrected to read as follows:

"6. **Notice to Surrounding Owners.** The owner's representative submitted affidavits dated December 16, 2009 and February 13, 2009 regarding notices sent or "mailed" to list of surrounding property owner(s) within 300 feet of subject TMK property including copy of notice(s) dated December 12, 2008 and February 12, 2009 "mailed" to surrounding property owners. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on February 11, 2009."

We apologize for any confusion and inconvenience caused by the error in our earlier letter.

JUL 02 2009

Sandra P. Song, Esq.
Sandra P. Song, Attorney at Law
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Should you have any questions, please contact staff in our Hilo office.

Sincerely,



BJ LEITHEAD TODD
Planning Director

WRY:mad

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xc: Real Property Tax Office-(Hilo)
SUB 07-000514
Vicki Taylor