#196

CERTIFIED MAIL

December 10, 1984

Mr. Thomas Young
P. O. Box 101
Papaaloa, HI 96780

Dear Mr. Young:

Variance Application (V84-33)
Variance From Minimum Water Requirements
Tax Map Key 1-8-06:113

We regret to inform you that after reviewing your application and the information presented in its behalf, the Planning Director is hereby denying your variance request. The reasons for the denial are as follows:

SPECIAL AND UNUSUAL CIRCUMSTANCES

The first Subdivision Ordinance for the County of Hawaii was approved in the form of Ordinance No. 136 on November 22, 1944. According to the County Tax Office, the subject property was first assessed in 1944.

The subject property which consists of 12.431 acres is situated within the County's "Agriculture 5-acre" zoned district. The petitioner has not shown by the evidence in his application that there exists any special or unusual circumstances related to the land which would warrant or necessitate a waiver from the minimum water requirements to service the 2 lots in the proposed subdivision.

The petitioner cites an economic hardship as a reason for the application for a waiver from the minimum water requirements. The imposition of water requirements are applied on a uniform basis for all subdivision proposals within the County of Hawaii. In this instance, the petitioner is asking for a waiver from these standards, basically to enhance their financial position. The petitioner also states that the adjacent property to the east was granted a water waiver for the subdivision of that property. The planning department records

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show that this 2-lot subdivision was granted because they already had existing water services to each of the proposed lots, however any new subdivision of that property would not be permitted until improvements are made to the existing system. As such, we have determined that there is no deprivation of property rights which curtails or reduces existing property development rights.

Additionally, the proposed subdivision of the subject property does not intend further intensification of any agricultural use of the land. Since, there is no change being anticipated in the use of the land, there are no special or unusual circumstances applying to the subject property in this particular application which obviously interferes with the best use or manner of development of the subject property.

ALTERNATIVES

In this particular situation, the question of reasonableness has to be viewed against all three criteria for the granting of a variance and not solely on the reasonableness or economic costs of the alternative in trying to resolve the difficulty.

In the evaluation of this application, the imposition of present subdivision requirements may result in additional costs to the petitioner. Improvement costs, however, are borne by all subdividers of land. Under substandard situations, such as the petitioner's, improvement costs are always expected to be higher. However, economic consideration cannot be the sole basis for the granting of a variance, especially in areas where infrastructural facilities are substandard, and when other alternatives are possibly available. In this particular case, the petitioner claims that the full improvements would not be a viable option for them because of the number of lots. However, the petitioner also has another reasonable option in selling the entire 12.431-acre parcel to resolve their financial hardship.

INTENT AND PURPOSES

The purpose of the minimum water requirements is to ensure that minimum safety standards relative to health, fire protection, sewage disposal, etc., are provided for in concert with the Goals, Policies, and Standards of the General Plan, Zoning and Subdivision Codes. The petitioner has not shown in their application how a waiver, from the minimum water requirements, would have the subject property be put to a better or more productive use and not violate the intent and purposes of the General Plan, Zoning and Subdivision Codes, concerning water.

There is no public water system to serve this area and the closest system is approximately 1,000 feet away. The policies of the General Plan's Water element state to "Improve and replace inadequate systems; New public water systems should be first installed in urban areas which have established needs and characteristics, such as occupied dwellings and other uses, or in areas adjacent to them if there is need for urban expansion, or to further the expansion of the agricultural industry. The fire prevention distribution system shall be coordinated with water distribution systems in order to ensure water supplies for fire-fighting purposes." The granting of any waiver from the minimum water requirements would be in direct contradiction of these policies.

The allowable density of this area and the surrounding area under the present zoning is of major concern because of the potential infrastructural demands and impacts that will result from the development of these existing properties, if water facilities are not brought up to higher standards. Furthermore, the approval of such variance requests in an area of existing substandard infrastructure would not be in the public interest and welfare of the County of Hawaii.

The cumulative results of a favorable action would be materially detrimental to the public safety in terms of health, and fire protection concerns and would cause substantial long term adverse impacts with regard to these issues to the adjoining properties and surrounding communities based on the lack of these facilities in this area. This kind of planning practice would debilitate the implementation of the standards set forth in the Subdivision Code as well as violate the spirit and intent of the law for which it was originally created.

Based on the foregoing findings, the variance request would not be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning and Subdivision Codes and the County General Plan; will be materially detrimental to the public's welfare; and cause substantial adverse impact to the area's character and to adjoining properties.

As such, the Planning Director concludes that the variance application from the minimum water requirements of the Subdivision Code should be denied.

The Director's decision is final, except that within thirty days after receipt of this letter, you may appeal the decision in writing to the Planning Commission in accordance with the following procedures:

1. Non-refundable filing fee of one hundred dollars ($100); and

2. Ten copies of a statement of the specific grounds for the appeal.

Should you decide to appeal, the Planning Commission shall conduct a public hearing within a period of ninety days from the date of receipt of a properly filed appeal. Within sixty days after the close of the public hearing or within such longer period as may be agreed to by the appellant, the Planning Commission shall affirm, modify or reverse the Director's action. A decision to affirm, modify or reverse the Director's action shall require a majority vote of the total membership of the Planning Commission. A decision to defer action on the appeal shall require a majority vote of the Planning Commission members present at the time of the motion for deferral. If the Planning Commission fails to render a decision to affirm, modify, or reverse the Director's action within the prescribed period, the Director's action shall be considered as having been affirmed.

All actions of the Planning Commission are final except that, within thirty days after notice of action, the applicant or an interested party as defined in Section 25-27.2 of this article in the proceeding before the Planning Commission may appeal such action to the Board of Appeals in accordance with its rules.

All actions of the Board of Appeals are final except that they are appealable to the Third Circuit Court in accordance with Chapter 91 of the Hawaii Revised Statutes.

Should you have any questions, please feel free to contact us.

Sincerely,

A. L. L.

ALBERT LONO LYMAN
Planning Director

RHY:wkm

Enc: Background Report

cc: Planning Commission (w/enc.)