

CERTIFIED MAIL

December 19, 1984

Mrs. Chrystal Yamasaki, R.L.S.
Wes Thomas & Associates
75-5722 Kalawa Street
Kailua-Kona, HI 96740

Dear Mrs. Yamasaki:

Variance Application (V84-39)
Variance from the Minimum Water Requirements
Tax Map Key 7-5-01:4

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.

The subject property which consists of 30.004 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 6 lots in the proposed subdivision.

The allowances of variances is designed to allow deviations from the literal enforcement of the subdivision code, which, if strictly applied would deny a property owner of all beneficial use of the land and thus amount to confiscation of the property. The mere fact that the property may be put to a more profitable use is not of itself enough to justify granting a variance.

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The imposition of water requirements are applied on a uniform basis for all subdivision proposals within the County of Hawaii. The subject property was created by Subdivision #5054 which was approved on December 20, 1983 as part of a 3-lot subdivision. This property was to be serviced with water by a 5/8-inch meter. Therefore, the petitioner knew what the limitations were for any future subdivision of this property. The surrounding property located directly mauka of this property was subdivided and was provided with a private water system off of the County's system. There are also various large acreages nearby with the same zoning designation that could possibly be subdivided under the same circumstances, if this variance were to be approved. As such, we have determined that there is no deprivation of property rights which curtails or reduces existing property development rights. There are also no special or unusual circumstances applying to the subject property in this particular application which obviously interferes with the best use and manner of development of the subject property.

ALTERNATIVE

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, improvement costs are always expected to be higher. More importantly, 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. However, the petitioner has other reasonable alternatives available. Initially, he could sell the 30 acre parcel. Secondly, he could participate in a water source improvement agreement with the Department of Water Supply. Therefore, since the proposed subdivision is within an area where water is available and there are other reasonable alternatives to consider, the denial of this variance would not be considered excessive.

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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 his 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 or purposes of the General Plan, Zoning and Subdivision Codes, concerning water.

The existing source, transmission and distribution system of the County's facility is inadequate. The policies of the General Plan's Water element, through the Kona Regional Plan and the Subdivision Code, reflect that additional improvements be made to the system in this area before any further subdivision activity occurs.

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 will result from the development of existing properties, if water facilities are not brought up to higher standards. Furthermore, the approval of such variance requests in an area where existing water facilities are inadequate 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 could 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 for.

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 further concludes that the variance application should be denied.

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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,



ALBERT LONO LYMAN
Planning Director

RHY:wkm

Enc: Background Report

cc: Planning Commission (w/enc.)
Kenneth Hollar

bcc: Subd. No. 84-18 (Kaoru)