

CERTIFIED MAIL

September 29, 1986

Mr. Donald C. McIntosh  
Kona Surveyors  
P. O. Box 2902  
Kailua-Kona, HI 96745

Dear Mr. McIntosh:

Variance Application (V86-15)  
Egbert H. Fell, M.D.  
Tax Map Key 8-8-16:14

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 was created via Subdivision No. 1140 which was approved by the Planning and Traffic Commission on June 25, 1957. During this period, Ordinance No. 58 was in effect. However, under Ordinance No. 58, any parcels of land created with a land area in excess of 20 acres did not fall within the meaning of subdivision and did not require the approval from the Planning and Traffic Commission. The Planning and Traffic Commission had the authority to modify the requirements of subdivision ordinances and not require that water be provided to subdivisions.

The petitioner, via a consultant, had submitted a statement that there is 45 inches of rainfall per year. This information is from the U.S. Department of Agriculture Soil Conservation Service Map

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(M7-L-22696A) dated March 1973, Average Annual Rainfall, Hawaii County. The State of Hawaii, Department of Land and Natural Resources, Division of Water and Land Development's Circular C88, Median Rainfall report dated June 1982, contains a map of the Median Annual Rainfall based on data to 1975. On this map, the median annual rainfall is approximately 31.5 inches of rain for the subject property.

In our analysis of the annual rainfall data, the Kole Pen gage station was used as reference to project the approximate rainfall data per month for the subject site using the 31.5 inches of annual median rainfall. Utilizing this number with a roof catchment system with an area of 3,000 square feet, approximately 58,142 gallons of water could be made available. Using a figure household of 3.5 person per family with consumption of 50 gallons per person per day, the daily consumption per family is 175 gallons. For the year, the family would consume a total of 63,875 gallons. This would result in a catchment system with a deficit of approximately 5,733 gallons.

#### ALTERNATIVES

The consultant for the petitioner has stated in the application that "An unreasonable financial hardship would result from strict compliance with the rules for anyone including my client, to put in a water system for twelve (12) miles, or developing a well when such a small development is requested." Further, "The enclosed study by civil engineer, Leo Fleming, shows that water catchment is feasible. Five acres of avocados is now being irrigated less than a half-mile away with a drip system utilizing only two 10,000 gallon water tanks."

As noted previously, the applicant is proposing a roof catchment water system to comply with the water requirements. Our calculations shows that based on an annual median rainfall of 31.5 inches of rain, a 3,000 square foot roof catchment area based on this rainfall would yield approximately 58,142 gallons of water. An average household of 3.5 persons per family with consumption of 50 gallons per person would result in a year usage of 63,875 gallons. This would result in a deficit of approximately 5,733 gallons.

Although alternatives are available, our evaluation has shown that there isn't adequate rainfall in the area to provide for the minimum water requirements for the year.

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INTENT AND PURPOSE

The purpose of the minimum water requirements is to ensure that minimum standards relative to health, fire protection, sewage disposal, etc., are provided 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 the waiver from the minimum water requirements would have the subject property comply with the purpose of the minimum water standards and not violate the intent and purposes of the General Plan, Zoning and Subdivision Codes, concerning water.

The allowable density of this area and surrounding areas with identical rainfall 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 without an adequate water system.

The cumulative results of the 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 regards 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 in 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 areas 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

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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

MO:ds

Enc: Background Report

cc: Planning Commission (w/enc.)