

CERTIFIED MAIL

September 26, 1986

Ms. Elaine Carlsmith
P. O. Box 309
Paauilo, HI 96776

Dear Ms. Carlsmith:

Variance Application (V86-19)
Elaine Carlsmith
Tax Map Key 4-3-15:25

After reviewing your application and the information submitted in behalf of it, the Planning Director by this letter hereby certifies the approval of your variance request to allow the creation of a 2-lot subdivision without a water system meeting with the minimum requirements of the County Department of Water Supply as required by Article 6, Division 2, Section 23-84(1) of the Subdivision Code, Paauilo (2nd series) Homesteads, Hamakua, Hawaii.

The approval is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances applying to the property which exist to a degree which obviously interferes with the best use or manner of development of the property.

The petitioner cites Civil Action No. 6944 (Settlement Agreement) dated December 28, 1982 as a reason for the partitioning action and for the application for a waiver from the minimum water requirements. The petitioner is requesting for a waiver from the water standards of the Subdivision Code to settle a civil action between Elaine S. Carlsmith and Jordan S. Ramos as well as to resolve a financial problem.

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Although the Department of Water Supply has a water system in the area, no additional water services are being granted at the present time due to its system being taxed to its limits. Extensive improvements and additions, including source, storage, transmission, booster pump, and distribution facilities, must be constructed. No funding is available to upgrade the present system.

ALTERNATIVES

There are no other reasonable alternatives in resolving the difficulty of the petitioner in resolving this civil dispute over property agreement of sales agreement and the settlement agreement that was accepted by the Third Circuit Court. At the time of the settlement, the petitioner was not aware of the limitation and restriction on the availability of water service for future lots that may be created by subdivision actions. As such, the imposition of having the petitioner improve the existing County water system would be putting excessive demands upon the petitioner when a more reasonable alternative is available.

INTENT AND PURPOSE

The intent and purpose of requiring a water system for the creation of new lots is to assure that adequate water is available for human consumption and fire protection. Presently one of the two proposed lots has an existing dwelling on it and is being served by water from the existing County water system. The requested variance is to allow the creation of one additional lot without meeting with the minimum water requirements. The judicial Settlement Agreement mandates that the parties involve complete with the agreement whereby each party receives its prorata share of the property. The Third Circuit Court's Settlement Agreement is considered to be complying with the intent and purposes of the County's General Plan, Subdivision and Zoning Codes.

The analysis of the annual median rainfall for the area shows that there is adequate rainfall to support a water roof catchment system.

Based on the foregoing findings, the variance request would be consistent with the general purposes of the zoning district, the intent and purpose of the Zoning and Subdivision Codes and the County General Plan; 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.

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The variance request is approved, subject to the following conditions:

1. The petitioner, its assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. The petitioner, its assigns or successors, shall file a written agreement with the Planning Department prior to receipt of final subdivision approval containing the following stipulations and covenants:
 - a. That the subdivider agrees and accepts the fact that the County water system is not now or in the foreseeable future available to provide service to proposed Lot 9-A, and that no portion of the subject property may be further subdivided without first having a commitment from the Department of Water Supply that water will be available for any future subdivision.
 - b. That the subdivider and/or owners of the properties agrees and accepts the fact, the County will not at any time bear the responsibility of supplying public water to the lots.
 - c. That any future dwellings on other buildings constructed on proposed Lot 9-A, shall have a minimum roof catchment area of 2,500 square feet with a minimum 15,000 gallon water storage facility.
 - d. That each lot owner is required to participate in any improvement district which may be created for public water system improvements which would benefit the proposed lots.
 - e. That the written agreement shall be duly recorded at the Bureau of Conveyances of the State of Hawaii by the Department at the cost and expense of the subdivider.
3. In the event that there are any amendments or changes of the subdivision after the agreement is signed, the subdivider shall be responsible for informing the Department of the amendments or changes; further, the

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written agreement shall be considered as a condition and covenant running with the land and shall be binding upon the subdivider or owner, his heirs, executors, administrators or assigns or its successors and assigns and shall be incorporated by reference as an exhibit and made part of each agreement of ownership of each subdivided lot.

Should any of the foregoing conditions not be complied with, this variance shall automatically be void.

If you have any questions on this matter, please feel free to contact us.

Sincerely,

ALBERT LONO LYMAN
Planning Director

MO:ds

cc: David Basque
Dept. of Water Supply

bcc: Kaoru