

CERTIFIED MAIL

July 30, 1986

Mr. Mark Van Pernis
Gallup & Van Pernis
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P.O. Box 1837
Kailua-Kona, HI 96745

Dear Mr. Van Pernis:

Variance Application - Stephen McElrath (V86-20)
Variance from Minimum Water Requirements
Tax Map Key 8-7-13:12

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 water requirements of the County Department of Water Supply as required by Article 6, Division 2, Section 23-84(1) of the Subdivision Code. The subject property which consists of 34.472 acres and identified by TMK: 8-7-13:12, is located on the east (mauka) side of Mamalahoa Highway approximately 10,000 feet south of the Kaohi Road-Mamalahoa Highway intersection, Olelomoana 1st, South Kona, Hawaii.

The approval is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances that exists which would warrant or necessitate a waiver from the minimum water requirements to service the proposed 2-lot subdivision. In 1980, the petitioner had filed and received tentative approval to create a 6 lot subdivision on a water waiver from the Department of Water Supply. However, during the course of this application, the adjoining property owner and the petitioner entered into an agreement to consolidate and resubdivide their properties into a configuration that would result in a better configuration of the

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property. Final approval was granted on September 6, 1984 (Subd. #5159). In 1985, another application was submitted to reconfigure the two lots into its present configuration. This application was approved on December 23, 1985 (Subd #5339). During the course of applying for these subdivisions, fees for the surveyors were incurred of which the petitioner and McAdam family were to share. However, during this period Mrs. McAdam passed away and the McAdam family could not carry out the terms of the agreement (financial, etc.). The most recent subdivision (#5339) resulted in a lot configuration that results in the lots being connected by a pole.

During this time, the Corporation Counsel determined that the Water Commission did not have the authority to grant water waivers, thereby necessitating the variance request from the minimum water requirements of the Subdivision Code.

There presently exists on the property a single family dwelling with its own private water catchment system. In essence, the variance request is to allow the creation of another lot for which a private catchment water system would be required.

Therefore, considering all of these foregoing issues, we have determined that there are special or unusual circumstances applying to the subject property which exist either to a degree which deprives the owner or applicant of substantial property rights that would otherwise be available or to a degree which obviously interferes with the best use or manner of development of the subject property.

ALTERNATIVES

There are no other reasonable alternatives in resolving the difficulty of the petitioner. An alternative would be for the applicant to extend the existing County water system from Hokena to the subject property which is approximately 6 miles in length. The cost of this improvement would be prohibitive for a 2 lot subdivision with the cost per lot being far in excess of the land cost itself. The other alternative would be to drill 2 wells at a cost of over 1.62 million dollars. Similarly, the cost of this improvement will be greater than the cost of the land.

As such, the imposition of providing a public or private water system in this area for the proposed subdivision would be putting excessive demands upon the petitioner when a more reasonable alternative is available.

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INTENT AND PURPOSE

The intent and purpose of requiring a water system within a subdivision is to assure that adequate water is available for human consumption and fire protection. Since the property is within the Unplanned district, fire protection facilities (fire hydrants) is not a mandatory requirement of the water standards.

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 purpose 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.

Based on the foregoing, the Planning Director has concluded that this request be 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 a County dedicable public water system is not now or in the foreseeable future available to service the subdivision, and that no portion of the subject property may be further subdivided without first having a water system meeting with the standards of the Department of Water Supply.
 - b. That the subdivider agrees and accepts the fact the County will not at any time bear the responsibility of supplying public water to the subdivision.
 - c. That any future dwellings constructed on the property shall have a minimum of 2,500 roof catchment surface with a minimum 10,000 gallon water storage facility.

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- d. 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 to the subdivision after the agreement is signed, the subdivider shall be responsible for informing the Department of the amendments or changes so that the agreement can reflect the amendments or changes; further, the 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 sale, deed, lease or other similar documents affecting the title or ownership of each subdivided lot.

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

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

Sincerely,



ALBERT LONO LYMAN
Planning Director

MO:lv

cc: Department of Water Supply
bcc: Subd. File (via Kaoru)