

CERTIFIED MAIL

October 20, 1986

Mr. John F. Otranto
RRI, 84E
Captain Cook, HI 96704

Dear Mr. Otranto:

Variance Application (V86-25)
John F. Otranto
Tax Map Key 8-7-14:25

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 with a 20- and 30-foot wide road easement with no improvements in lieu of the minimum 50-foot right-of-way with a 20-foot wide agricultural non-dedicable standard road and without a water system meeting with the minimum requirements of the County Department of Water Supply as required by the Subdivision Code in the Unplanned zoned district. The subject property which consists of 27.751 acres and identified by TMK: 8-7-14:25, is located on the mauka (east) side of the Homestead Road approximately 1,300 feet mauka of the Mamalahoa Highway and the Opihihale Houselots, Opihihale 2nd, South Kona, Hawaii.

VARIANCE FROM MINIMUM ROADWAY REQUIREMENTS

The approval is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

The subject property which consists of 27.751 acres is situated within the County's "Unplanned" zoned district. There are special or unusual circumstances related to the property which would warrant or necessitate the narrower right-of-way to service the proposed 2-lot subdivision. The special circumstances are 1) Access to the subject property is via an existing 20- and 30-foot roadway easement and a portion of a homestead road reserve; 2) The property does not have any frontage on an approved private or public street; 3) The geographical isolation of the subject property since it is accessible only through the 20- and 30-foot roadway easement and the homestead road reserve; and 4) The courts divorce settlement whereby each party receives half of the property.

Mr. John F. Otranto
Page 2
October 20, 1986

The basic intent of the proposed 2-lot subdivision is to comply with the courts order (Civil No. 11180) to divide the property so each party can receive their equal share of the property. If the subject property was located in an agricultural zoned district with lot size requirement of less than three acres, the minimum right-of-way requirement of a private road for a 2-lot subdivision would be 16 feet with a 12-foot wide pavement, a variance from the minimum right-of-way (50-foot) would not have been required. Additionally, since the existing easement serves only a limited number of properties and is not part of an overall street system, the easement will be used only by the localized traffic of this particular subdivision and existing lots which have access over the easement. While there may be requests for Ohana Dwellings, the petitioner will have to formally submit applications to the County, which will review and evaluate each application on its merits. Therefore, although there is this potential development available on the petitioner's property, it should not imply that automatic approval would be given for these requests should they be applied for. The necessary review by the appropriate governmental agencies would have to be done, prior to any decision on these requests.

As such, these foregoing factors are considered to be special or unusual circumstances applying to the subject real property which exist either to a degree which interferes with the best use or manner of development of that property. Moreover, we have determined that there is conclusive evidence to show a deprivation of property rights which curtail or reduces existing property development rights.

ALTERNATIVES

There are no reasonable alternative the petitioner could use to resolve the difficulty that they are claiming for the proposed subdivision. The petitioner could request that property owners on which the existing roadway easements are located on to grant him the additional 20-foot easement for a total of 50 feet. However, this alternative is unfeasible since it would reduce the use of the other properties by another 20 feet. The fact that only 1 additional lot will be utilizing the existing 30-foot easement will have a minimal impact on this right-of-way.

In certain situations, the roadway needs of an area have to be evaluated, not only from the cost perspectives but whether or not the minimum roadway requirements would be excessive in light of the intended use and property characteristics. The cost/benefit ratio and the fact that the road will be used only

Mr. John F. Otranto
Page 3
October 20, 1986

by localized traffic are specific circumstances which serve to justify the reasonableness of the petitioner's request. Thus, in this particular variance application, the economic consideration is not the sole basis for the granting of the variance request.

Therefore, in consideration of these factors, the variance request from the roadway requirements are determined to be reasonable. Although it could be argued that other alternatives are available to the petitioner, the reasonableness and practical application of those alternatives have to be evaluated with respect to the application and surrounding area. In this particular case, the imposition of the other alternatives in this situation, is considered to be excessive when a more reasonable solution is available.

INTENT AND PURPOSE

The purpose of the minimum roadway requirement is to ensure that minimum safety standards relative to traffic and drainage, etc., are provided for.

The existing 30-foot wide easement is determined to be adequate for the proposed 2-lot subdivision it is intended to serve at this time. However, the granting of the variance shall not be construed nor used as justification for any future variances from the minimum roadway standards for future subdivision requests. Accordingly, in view of the agricultural nature and character of the area, we have determined that the existing 30-foot wide easement will satisfy the purposes as intended by the Subdivision Code.

Inasmuch as the existing 30-foot easement will not be a through street and will remain in private ownership, the granting of the variance application will not be materially detrimental to the public welfare nor cause any substantial adverse impact to the area's character or to adjoining properties. Further, this variance application does not apply to density limitations nor introduces a use not otherwise permitted within this unplanned zoned district.

As such, in view of these findings, the approval of this variance would still be consistent with the general purpose of the zoning district, and the intent and purpose of the Subdivision Code and the General Plan.

Based on the foregoing, the Planning Director has concluded that this request be approved.

Mr. John F. Otranto
Page 4
October 20, 1986

VARIANCE FROM MINIMUM WATER REQUIREMENTS

The approval is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances that exist which would warrant or necessitate a waiver from the minimum water requirements to service the proposed 2-lot subdivision. The present County water system terminates at the Hawaii Belt Road/Hookena Beach Access Road junction. This is the nearest County water system and is located approximately 8 miles away from the subject parcel. There are no immediate plans to extend the water system to service the subject parcel.

From the map contained in Circular C88, Median Rainfall, State of Hawaii, the subject property receives an annual median rainfall of approximately 49.2 inches per year. From the monthly rainfall data of the Opihihale 2 gage station and based on a minimum 2,500 square foot of roof catchment area, approximately 76,595 gallons of water is available for the year. Water consumption per month based on a household of 3.5 persons per family is 50 gallons per person or 175 gallons per day. The total yearly water consumption per family is approximately 63,875 gallons. This would leave a surplus of approximately 12,720 gallons of water per year.

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 petitioner 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 petitioner to extend the existing County water system from Hookena to the subject property which is approximately 8 miles in length. The improvements would consist of a transmission line (12" in diameter), water storage facilities (reservoirs), booster stations, etc. The cost of the transmission line alone will cost approximately \$60/linear foot or about \$2,534,400. This cost does not include the water storage facilities or the booster stations. This off-site cost will amount to about \$1,267,200 per lot. This cost is in excess of the land cost (individual lots).

Mr. John F. Otranto
Page 5
October 20, 1986

The second alternative would be to drill 2 wells. The elevation of the property is 1,600 feet. The cost of installing a well in place is approximately \$800 per linear feet. A well 1,600 feet in depth would cost approximately 1.28 million dollars. The cost of development of 2 wells will be approximately 2.56 million dollars. This does not include the cost of the storage facilities nor the transmission lines, booster stations, etc. The cost of these improvements 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.

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 areas 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:

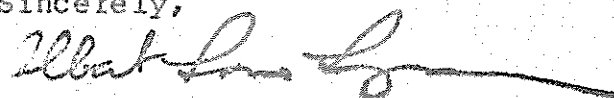
Mr. John F. Otranto
Page 6
October 20, 1986

- a. That the subdivider agrees and accepts the fact 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.
 - 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:wk

cc: Department of Public Works
Department of Water Supply