

CERTIFIED MAIL

February 9, 1987

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

Dear Ms. Yamasaki:

Variance Application (V86-43)
Applicant: Anna Keanaaina
Tax Map Key 7-3-05:9

After reviewing the above application and the information submitted in behalf of it, the Planning Director by this letter hereby certifies the approval of the above variance request to allow the creation of a 10-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 35.49 acres, is located along the makai or west side of the Hawaii Belt Road, approximately 550 feet south of the Hawaii Belt Road-Kaiminani Street (Kona Palisades Subdivision Road), Kalaoa 5th, North 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 10-lot subdivision. On November 26, 1986, Rezoning Ordinance No. 85 86 became effective which reclassified the zoning designation of the property from Unplanned to Agricultural (A-3a). As a condition of approval, the County imposed condition "B" which stated that "a variance application shall be submitted to the Planning Department within one year from the effective date of the change of zone." Although the County knew of the petitioner's intent to subdivide the property and the lack of adequate water, they approved the rezoning of the property to permit the 10 lot subdivision.

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Further, condition "D" stated that a "restrictive deed covenants for all the lots will be submitted to the Planning Department for review and approval prior to submittal to the Bureau of Conveyances for recordation with the final subdivision plat map. These Covenants shall include, but not necessarily be limited to restriction on further conveyances of subject parcels beyond the families of the 10 original heir, unless one of the following conditions are met."

In essence, these conditions and restrictions imply approval of any subdivision request from the minimum water requirements.

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. The Department of Water Supply has stated that the existing water system facilities cannot support the proposed subdivision at this time unless extensive improvements are made to it. Further, no funding is available nor any time schedule set for improvement. An alternative would be for the applicant to make these necessary improvements to the existing system. The total cost of this improvements would be prohibitive for the proposed 10-lot subdivision. The other alternative would be to drill 2 wells at a cost of over a million dollars. The cost of these two alternative improvements will be greater that the cost of the land.

As such, the imposition of providing a public or private water system in the 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 Agricultural (A-3a) district, fire protection facilities (fire hydrants) is not a mandatory requirement of the water standards.

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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.

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 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 that 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 3,000 roof catchment surface with a minimum 15,000 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.

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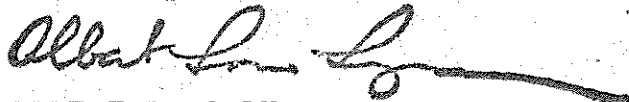
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3. In the event that there are any amendments or changes to the subdivision after the agreement is signed, the subdivider shall be responsible for informing the Department of the amendments or changes so that the agreement can reflect the amendments 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.
4. In the event that any of the lots are provided by a separate water service (individual meters) from the Department of Water Supply, the above covenants will no longer be in effect.

Should any of the foregoing conditions not be complied with, this variance request 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: Anna Keanaaina
Department of Water Supply
bcc: Subd. File (Kaoru)