

CERTIFIED MAIL

November 4, 1987

Mr. Fred J. Koehnen
1939 Kilauea Avenue
Hilo, HI 96720

Dear Mr. Koehnen:

Variance Application (V87-31)
Applicants: Carl Rohner/Fred Koehnen
Tax Map Key 1-9-09:126

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 requests 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 and with access off of a 30-foot right-of-way with an 8-foot wide gravel travelway in lieu of minimum 50 foot right-of-way and 20 foot pavement requirement as required by the Subdivision Code. The subject property which consists of 1.33 acres and identified by TMK: 1-9-09:126, is located on the northeast side of Kilauea Road approximately 200 feet northeast of the Kilauea Road/Kalanikoa Road intersection, McKenzie Tract, Puna, Hawaii.

The variance request from the minimum water requirements is approved based on the following findings:

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. The basic intent and purpose of the subdivision is to divide the property in half so each of the owners (Rohner and Koehnen) may receive their half share of the property which they inherited.

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The present County water system terminates at the Glenwood water reservoir which is located approximately 10.5 miles from the subject parcel. There are no immediate plans by the County Department of Water Supply to extend the water system to service the Volcano community.

From the map contained in Circular C88, Median Rainfall, State of Hawaii, the subject property receives a median annual rainfall of approximately 118.1 inches. From the monthly rainfall data of the Ohianlani Dairy gage station and based on a minimum 1,200 square foot of roof catchment area, approximately 89,810 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 25,935 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 owners or applicants 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 applicants. An alternative would be for the applicants to extend the existing County water system from the Glenwood reservoir site to the subject property which is approximately 10.5 miles in length. The cost of the transmission line alone will be approximately \$60/linear foot or about \$3,300,000. This cost does not include the necessary water storage facilities, booster pump stations, etc. This off-site improvement cost will amount to over \$1,650,000 per lot which is well in excess of the land cost.

The second alternative would be to drill 2 wells. The elevation of the property is approximately 3,780 feet above sea level. The cost of installing a well in place is approximately 4800 per linear feet. A well 3,780 feet in depth would cost approximately \$3,024,000. The cost of development of 2 wells will be approximately \$6,048,000. This cost 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.

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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 applicants when a more reasonable alternative is available.

INDENT 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 areas 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.

The variance request from the minimum roadway requirement is approved based on the following findings:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There special and unusual circumstances that exist which would warrant or necessitate a waiver from the minimum roadway requirements to service the proposed 2-lot subdivision. The proposed 2-lot subdivision is being requested to partition the property in half so each owner can receive their half interest in the land which they inherited. There presently exists a 10-foot wide gravel road within a 30-foot wide road right-of-way that is to be used for access to one of the proposed lots. This existing gravel road has and is used as access to the subject property and properties within the Kanihonua Tract houselots. Presently, there exists one dwelling on the property. The present zoning (RS-10) permits the construction of 5 homes on the subject property which can be constructed without the lot being subdivided. If these houses were constructed without subdivision, access from this gravel road is permitted without requiring any improvements to it.

As such, these foregoing factors are considered to be special or unusual circumstances applying to the subject

property which exist either to a degree which interferes with the best use or manner of development of this 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 applicants could use to resolve the difficulty they're claiming for the proposed subdivision. The applicants are proposing the subdivision for the purposes of settling each 1/2 interest in the property. It is not a subdivision that is being created for the purpose of selling the lots to the general public.

In certain situations, the roadway needs of an area have to be evaluated, not only from the cost perspective 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 existing roadway is presently used as access to the property as well as property owners within the Kanihonua Tract houselots are specific circumstances which serve to justify the reasonableness of the applicant's 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 applicants, 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 intent and 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 roadway with an 8-foot wide gravel travelway is determined to be adequate for the proposed 2-lot subdivision. 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 or rezoning requests.

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Inasmuch as the existing 30-foot wide roadway has been used as access to the existing property and other properties within the Kanihonua Tract houselots and will remain in private ownership, the granting of the variance application will not be materially detrimental to the public's 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 Single Family Residential 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 Control Code and the General Plan.

The Planning Director has concluded that your requests be approved subject to the following conditions:

1. The applicant, its assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. The applicant, 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 1,200 square foot 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.
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, the Planning Director may nullify your variance permit.

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

Sincerely,



ALBERT LONO LYMAN
Planning Director

MO:lv

xc: Chief Engineer-DPW
Manager-DWS

bcc: Subd. 81-106 (via Wally)