PD Var. 395

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June 20, 1990

CERTIFIED MAIL

Mr. Paul J. Sulla, Jr., Esq.
148 State Street
Boston, MA 02109

Dear Mr. Sulla:

Variance Application (V90-9)
Paul J. Sulla, Jr.
Tax Map Key 4-6-09:15

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 7-lot subdivision with six (6) lots not being served by 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 approximately 59.3 acres and identified by TMK: 4-6-09:15 is located approximately 3.9 miles northwest of Honokaa Town, Ahualoa Homesteads, Hamakua, Hawaii.

This is to further inform you that Variance No. 359 which allowed the creation of a five-lot subdivision with four lots not being served by an approved water system on the subject area is hereby determined to be null and void.

The approval of the subject variance 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 7-lot subdivision. The County waterlines are located along the subject property. However, the Department of Water Supply commented that the existing water system facilities cannot support the proposed subdivision at this time. Further, there are no immediate plans to construct extensive improvements and additions to the water system facilities. Therefore, the applicant is proposing to utilize a water catchment system.

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From the data contained in DOWALD'S Median Rainfall (Circular C88) and Rainfall Atlas of Hawaii (Report R76), the subject property receives a median rainfall of approximately 86 inches of rainfall per year. Based on the above median rainfall per year with a minimum roof area catchment of 1,400 square feet, approximately 80,410 gallons of water would be 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. The amount of water available through a catchment system exceeds the amount consumed.

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 deprive the owner or applicant of substantial property rights that would otherwise be available or to a degree which obviously interfere with the best use of manner of development of the subject property.

ALTERNATIVES

There are no other reasonable alternatives in resolving the required water system of the applicant. Extensive improvements to the County water source system and facilities would be financially detrimental to the applicant.

The other alternative would be to drill two wells. The cost of drilling one well would be approximately $2.08 million. For two wells the cost would be $4.16 million plus the cost of the necessary storage reservoir, transmission lines, booster pumps, and related improvements. There is no assurance that water would be found under the subject property.

As such, the imposition of providing a public or private water system in this area for the proposed 7-lot subdivision would be putting excessive demands upon the applicant when a more reasonable alternative is available.

INTENT AND PURPOSE

The subject property which consists of 59.3 acres is located within the County's Agricultural - 5 acres (A-5a) zoned district. Under this zoning designation, the minimum building

site area is five acres. The applicant is proposing a 7-lot subdivision each with an area of five acres or more conforming to the minimum lot size requirement of the Zoning Code.

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-5a) district, fire protection facilities (fire hydrants) are not a mandatory requirement of the water standards.

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

Based on the foregoing findings, this 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 applicant, its assigns, or successor 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 1,400 square feet roof catchment surface with a minimum 12,000 gallon water storage facility.

d. That no ohana dwellings will be permitted on the lots that are not served by the County water system.

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 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 and its successors and assigns, and shall be incorporated 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 water service (individual meter) from the Department of Water Supply or an approved private water system, the above covenants for the specific property will no longer be in effect.

Should any of the foregoing conditions not be complied with, the Planning Director may null and void this Variance Permit.

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

Sincerely,

DUANE KANUHA
Planning Director

MO/WLM:aeb

cc: Department of Water Supply
Subd. No. 88-103
PD Var. No. 359