

CERTIFIED MAIL

June 16, 1989

Mr. Donald McIntosh, R.L.S.
Kona Surveyors
P.O. Box 2902
Kailua-Kona, HI 96745

Dear Mr. McIntosh:

Variance Application (V88-29)
William Gomes, Jr.
Tax Map Key 7-3-48:6

After reviewing the subject application and the information submitted in behalf of it, the Planning Director by this letter hereby certifies the approval of the subject variance request to allow the creation of a 2-lot subdivision with a minimum building site average width of 353 and 357 feet in lieu of the minimum 500 foot requirement pursuant to Article 8, Section 25-155 of the Zoning Code; and without a water system meeting with the minimum 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 40.65 acres and identified by TMK: 7-3-48:6, is located on the east side of Huehue Street adjacent to the Kaupulehu Forest Reserve, in the Kaloko-Mauka Subdivision, Kaloko, North Kona, Hawaii.

The Planning Director has concluded that the variance request from the minimum building site average width requirement should be approved, based on the following findings:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances which apply to the subject property which would warrant or necessitate a waiver from the minimum building site average width requirements. The property's topography is steep in character with general slope of approximately 38 percent. The front half of the parcel is close to 20 percent slope while the back half is closer to a 30 percent slope and ending at 35 percent to 40 percent at the rear boundary abutting Kaupulehu Forest Reserve. The intent of the

JUN 16 1989

Mr Donald McIntosh, R.L.S.

Page 2

June 16, 1989

proposed subdivision is to create 2 lots with equal area and similar land characteristics and value resulting in the building site average width below the minimum 500 foot requirement.

Therefore, we have determined that there are special and 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 applicant. An alternative would be for the applicant to create a flag lot. However, in doing so, the proposed flag lot would consist of all the lands that have 30 to 40 percent slope in land character. This would create an unequitable division of the property.

Therefore, in consideration of these factors, the variance request from the minimum building site average width requirement is determined to be reasonable. Although it could be argued that other alternatives are available to the applicant, the reasonableness and practical application of these alternatives have to be evaluated with respect to the application and surrounding area.

INTENT AND PURPOSE

The intent and purpose for the minimum building site average width requirement is to assure that there is adequate building area available to construct any buildings in addition to providing adequate area for light, air and circulation. Although the proposed 2-lots will result in a building site average width of 353.05 and 356.95 feet, there would be adequate area to construct improvements on the property after the 30 foot front and rear yards, and the 20 foot side yard setback requirements are imposed.

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.

Mr. Donald McIntosh, R.L.S.

Page 3

June 16, 1989

The Planning Director has concluded that the variance request from the minimum water requirements should be approved, based on the following findings:

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 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. There are no immediate plans to construct improvements and additions to the water system facilities. Therefore, the applicant is proposing to utilize a water catchment system.

From the data contained in DOWALD'S Median Rainfall (Circular C88) and Rainfall Atlas of Hawai'i (Report R76), the subject property receives a median rainfall of approximately 49.2 inches of rainfall per year. Based on the above median rainfall per year with a minimum roof area catchment of 2,300 square feet, approximately 70,278 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 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 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 \$4.24 million. For two wells the cost would be \$8.48 million plus

Mr. Donald McIntosh, R.L.S.

Page 4

June 16, 1989

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 2-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 40.65 acres is located within the County's Agricultural-20 acres (A-20a) zoned district. Under this zoning designation, the minimum building site area is twenty acres. The applicant is proposing a 2-lot subdivision each with an area of twenty 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-20a) 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 areas character and to adjoining properties.

The Planning Director has concluded that this request 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:

Mr. Donald McIntosh, R.L.S.

Page 5

June 16, 1989

- 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 2,300 square feet roof catchment surface with a minimum 15,000 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.

xc: William Gomes, Jr.
Allen Gomes
Subd. 87-119

AR-14

DUANE KANUHA
Planning Director

Allen Gomes
Sincerely,

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

Mr. Donald McIntosh, R.L.S.
Page 6
June 16, 1989