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CERTIFIED MAIL

June 21, 1989

Mr. Russell Figueiroa
R.M. Towill Corporation
420 Waiakamilo Road, Suite 411
Honolulu, HI 96817-4941

Dear Mr. Figueiroa:

Variance Application (V89-5)
Variance from Minimum Water Requirements
of the Subdivision Code
Tax Map Key 7-4-04:1 and 3 (por.)

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 waive the requirements of the Subdivision Code and allow roof catchment systems for a 4-lot subdivision. The subject property is 20.09 acres in area, identified by tax map key 7-4-04:1 & 3 (por.) and is located on the west side of Mamalahoa Highway, 4,000 feet east of Kealakehe School and 4,500 feet south of its intersection with Palani Road in the Kealakehe Homesteads, North Kona, Hawaii.

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 4-lot subdivision. Although the County's water system does serve the property now, it cannot support the additional lots being proposed without extensive improvements and additions, including storage, transmission, and distribution facilities. No funding is available nor is there any time schedule set for these improvements. A letter from the Department of Water Supply to the initial developer, Wallace Gallup, Subdivision Folder #88-48, dated May 12, 1988, states this fact.

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The island rainfall map contained in Circular C88, Median Rainfall, State of Hawaii, shows that the subject property receives approximately 75 inches of rainfall per year. Based on the above median rainfall per year with a minimum roof area catchment of 2,500 square feet, approximately 104,000 gallons of water is available for the year. Water consumption per day 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 of this size exceeds the amount consumed. (Background information contains calculations)

Therefore, considering the foregoing facts, it is 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 reasonable alternatives in resolving the difficulty of the applicant. An alternative available to the applicant is to improve the existing County's water system as necessary. However, this alternative would be unfeasible since the improvement cost would be approximately \$2.3 million, more than the value of the property.

The second alternative would be to drill private wells that would service two lots. The cost of installing sufficient wells including the necessary pumping storage and distribution facilities would also run into the millions of dollars.

Requiring such a public or private water system in this area for the proposed subdivision would be an excessive demand upon the applicant 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 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, the applicant has predicated his request on proposed 2,500 sq. ft. catchment areas.

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.

This variance request is 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 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 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, with a copy sent to this Department.


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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 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 proceed to declare this Variance Permit null and void.

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

Sincerely,


DUANE KANUHA
Planning Director

DT:lv

cc: Wallace Gallup, Jr.
West Hawaii Planning Coordinator
Subd. 88-48