

CERTIFIED MAIL

November 26, 1991

R. Ben Tsukazaki, Esq.  
Menezes Tsukazaki Yeh & Moore  
100 Pauahi Street, Suite 204  
Hilo, HI 96720

Dear Mr. Tsukazaki:

Variance Application (V90-31)  
Applicant: Terra Properties  
Tax Map Key 4-4-8:7

We regret to inform you that after reviewing your application and the information presented in its behalf, the Planning Director is hereby denying your variance request. The reasons for the denial are as follows:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are not found to be special or unusual circumstances applying to the subject real property which exist to a degree which deprive the petitioner of substantial property rights that would interfere with the best use or manner of development of the property.

The Department of Water Supply has its standard water system along Kalaniai Road which serves the existing parcel 7. However, the existing system can only serve existing lots and does not have the capacity to serve any proposed additional lots. This situation has been a long standing one in this area where the water infrastructure is limited in size and scope and cannot adequately serve additional lots even if the zoning density allows it. Thus, it is not a special or unusual circumstance applying to the land. Transmission lines, booster pumps, storage capacity and source capacities singly or in combination are the limiting factors in the provision of adequate water.

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The imposition of water requirements are applied on a uniform basis for all subdivision proposals within the County of Hawaii. In this instance, the petitioner is requesting a waiver from these standards basically to create four (4) lots with a condition that a specified water catchment/storage system be constructed for human consumption and fire prevention. We have determined that there is no deprivation of property rights which curtails or reduces existing property development rights. Variances are designed to allow deviation from the literal enforcement of the Subdivision Control Code which if strictly applied would deny a property owner of all beneficial use of the land. The mere fact that the property may be put to a more profitable use or manner is not of itself enough to justify granting a variance.

Based on the foregoing, there are no special or unusual circumstances applying to the subject property which would deprive the petitioner or interfere with the best use or manner of development of the property.

#### ALTERNATIVES

In this particular situation, the question of reasonableness has to be viewed against all three criteria for the granting of a variance and not solely on the reasonableness or economic costs of the alternative in trying to resolve the difficulty.

In the evaluation of this application, the imposition of present subdivision requirements may result in additional costs to the petitioner. Improvement costs, however, are borne by all subdividers of land. Under substandard situations, improvement costs are always expected to be higher. However, economic consideration cannot be the sole basis for the granting of a variance, especially in areas where County water system is non-existent or substandard, and when other alternatives are possibly available. In this particular case, the petitioner claims that upgrading the County's water system or drilling of two private wells would not be reasonable options. The petitioner has the alternative to coordinate with other surrounding property owners in the area in the possibility of upgrading the County water system or drilling a cooperative private well(s).

Therefore, since the proposed subdivision is within an area where water is not available for additional lots and there are

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other reasonable alternatives to consider, the denial of this variance would not be considered excessive.

INTENT AND PURPOSE

The intent and purpose of the minimum water requirements is to ensure that minimum safety standards relative to health, fire protection, sewage disposal, etc., are provided for in concert with the Goals, Policies, and Standards of the General Plan, and the Subdivision Control Code. It is the County's General Plan policies and standard that water system improvements and extensions shall promote the County's desired land use development pattern, that all water systems shall be designed and built to Department of Water Supply standards, that the fire prevention systems shall be coordinated with water distribution systems in order to ensure water supplies for fire protection purposes, and that water systems shall meet the requirements of the Department of Water Supply and the Subdivision Control Code.

While the proposed subdivision would be consistent with the Agricultural-5 acre zoning district relative to the minimum lot size, approval of the variance request would not be consistent with the intent and purpose of the County General Plan and the Subdivision Control Code, and will be materially detrimental to the public's welfare. The subject property is similar to the area's character and adjoining properties which have County water available to only existing lots.

Based on the above findings, the Planning Director further concludes that the variance request to allow a 5-lot subdivision without providing water meeting with the requirements of the Subdivision Control Code should be denied.

The Director's decision is final, except that within thirty days after receipt of this letter, you may appeal the decision in writing to the Planning Commission in accordance with the following procedures:

1. Non-refundable filing fee of one hundred dollars (\$100); and
2. Ten copies of a statement of the specific grounds for the appeal.

Should you decide to appeal, the Planning Commission shall conduct a public hearing within a period of ninety days from the

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date of receipt of a properly filed appeal. Within sixty days after the close of the public hearing or within such longer period as may be agreed to by the appellant, the Planning Commission shall affirm, modify or reverse the Director's action. A decision to affirm, modify or reverse the Director's action shall require a majority vote of the total membership of the Planning Commission. A decision to defer action on the appeal shall require a majority vote of the Planning Commission members present at the time of the motion for deferral. If the Planning Commission fails to render a decision to affirm, modify, or reverse the Director's action within the prescribed period, the Director's action shall be considered as having been affirmed.

All actions of the Planning Commission are final except that, within thirty days after notice of action, the applicant or an interested party as defined in Section 25-27.2 of this article in the proceeding before the Planning Commission may appeal such action to the Board of Appeals in accordance with its rules.

All actions of the Board of Appeals are final except that they are appealable to the Third Circuit Court in accordance with Chapter 91 of the Hawaii Revised Statutes.

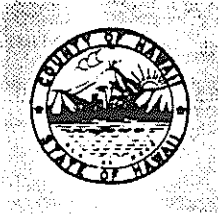
Should you have any questions, please feel free to contact Alice Kawaha of this office.

Sincerely,

  
NORMAN K. HAYASHI  
Planning Director

AK:smo  
3807D  
Enc: Background Report

cc: Renny Slatkin  
Chrystal Thomas



## BOARD OF APPEALS

26 AUPUNI STREET • HILO, HAWAII 98720

COUNTY OF  
HAWAII

February 22, 1993

R. Ben Tsukazaki, Esquire  
Menezes, Tsukazaki, Yeh & Moore  
100 Pauahi Street, Suite 204  
Hilo, HI 96720

Dear Mr. Tsukazaki:

Board of Appeals (BOA 92-9)  
Appellant: Terra Properties  
Appeal of the Planning Commission's Action to Uphold the Planning  
Director's Denial of Variance Application (V 92-31)  
Tax Map Key: 4-4-8:07 90


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At its February 12, 1993 meeting, the Board of Appeals voted to adopt the attached Findings of Fact, Conclusions of Law and Decision and Order which overturns the earlier Planning Director's denial of the subject variance request and the Planning Commission's upholding of it.

This enables your subdivision application to proceed without compliance with the water requirements of the Subdivision Code.

Should you have any questions on this variance, please contact Donald Tong of this office who serves as staff to the Board.

Sincerely,

  
William J. Paris, Jr. Chairman  
Board of Appeals

xc: Board of Appeals  
Subdivision No. 90-90  
Variance No. 460  
Planning Commission  
Planning Director  
Terra Properties

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