

CERTIFIED MAIL

November 21, 1991

Mr. Dennis Shigeoka
The Keith Companies-Hawaii
400 Hualani Street, Ste. 20-D
Hilo, HI 96720

Dear Mr. Shigeoka:

Variance Application (V90-41)
Applicant: Hawaiian Trust Retirement Plan
Variance from the Standard Water Requirements
Tax Map Key 2-4-07:144

After reviewing the above request and the information presented in its behalf, the Planning Director has concluded that the above variance request should be denied. The reasons for the denial are:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are not found to be special and unusual circumstances relating to the real property in this case which exist to a degree which deprives the 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 that property.

This area of Waiakea Uka has existed without an adequate public water system for many years. The Department of Water Supply's system is inadequate due to small transmission lines, and insufficient tanks, pressure and source to serve the area. However, this is a shortcoming which is common to the area and is accompanied by narrow width roads. The land is located in the remote upper reaches of the city limits which is one reason for its not being served by urban amenities.

What was not divulged by the applicant is the fact that this property (one of a six (6) lot subdivision #4727) was granted a water waiver from the Department of Water Supply in January 1980 which required that its resultant lots contain a covenant recorded in their deeds that no future subdividing would be permitted without its being served by a standard water system. Although the Department of Water Supply is no longer processing water waivers, it is the County's position that the stipulation remains.

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Furthermore, in response to the applicant's contention that development is being "hindered" or "interfered" with, there is no inherent right to subdivide land without providing the standard improvements required by the subdivision code, absent special and unusual circumstances. The owner is not being deprived of the agricultural use of his property, and the lack of a county water system in this remote part of the city is not a special or unusual circumstance. In fact, it is common that the outer reaches of a city not have the usual complement of infrastructure that the urban areas contain.

A property's zoning density (such as A-3a) does not automatically confer subdivision rights without property improvements. In this case, as others, a standard water system is considered vital; a lowered standard, such as roof catchment would be detrimental to the community. And, a deed restriction on this property already prevents further subdivision without a standard water system.

It is not the intent of the County to perpetuate the development of substandard lots. The approval of this variance request would result in such a happening because a roof catchment water system would be substandard where the county water standard is concerned. The County General Plan which is the policy document for the County stipulates that all water systems shall meet the standards of the Department of Water Supply. Roof catchment does not. The situation in this case, where the County water system cannot serve additional lots, is characteristic of this upper area of Waiakea Uka. Where the infrastructure for an area, such as water, is inadequate or does not exist, or where the developer cannot or will not improve it to the standards required, then the area is considered premature for subdivision development, absent special or unusual circumstances.

Permitting roof catchment systems would be a definite lowering of the subdivision standard which would be contrary to County policy and detrimental to the public's health, safety and welfare.

ALTERNATIVES

There are alternatives available for the property other than subdividing. The whole range of agricultural uses is available to the applicant, regardless of lot size. Those uses would not be increased by the subdivision of this property into smaller lots.

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A group of owners could band together and plan or construct the necessary improvements. The property could also be sold as is. Again, there is no depriving of the owner's use of the land; only a requirement that certain improvements be made, at certain standards, if a subdivision of the property is desired.

A variance permit is not the only option available to the owners in the present use of their land, but it would, if granted, result in a lowered subdivision standard. It would also widen the door to uncontrolled, non-standard catchment water for properties outside the scope of the county water service. Non-standard water can endanger the health, safety and welfare of persons who utilize roof catchment systems for their potable water supply.

Furthermore, the current 15 acre parcel was created by a water waiver from the Department of Water Supply. One stipulation of that waiver was that, no further subdividing would be permitted without a county standard water system being provided. It was required that each of the deeds to the six lots (of which this Parcel #144 is one) contain this restrictive covenant. Therefore, where the County is concerned, the prospect of this lot being further subdivided with a water system other than a standard county system, should not be considered.

INTENT AND PURPOSE

The intent and purpose of the water standard is to provide to all subdivision lots, a safe and dependable quality of potable water. Lot owners could thus be assured that subdivided land sold in Hawaii has adequate standard access and water. A roof catchment system supplies a lower standard of water which would endanger the health, safety and welfare of a lot owner if he decided to build a home on land which was not served by the public water system or a private one meeting the same public standards.

For these reasons, it is found that granting the variance would be contrary to the intent of the Subdivision Ordinance and the General Plan, and would be detrimental to the public welfare.

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.

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

Sincerely,


NORMAN K. HAYASHI
Planning Director

DT:lm
3781D
Enc.: Background Report

cc: Planning Commission w/enc.