

CERTIFIED MAIL

October 28, 1991

Mr. & Mrs. Daniel Santos  
2315 Ainakahele Drive  
Hilo, HI 96720

Dear Mr. & Mrs. Santos:

Variance Application (V90-46)  
Variance from Minimum Water Requirements  
of the Subdivision Code  
PETITIONER: DANIEL AND DIANE SANTOS  
TMK: 2-4-07:33

Having reviewed the subject variance request, the Planning Director has concluded that the variance request to permit a subdivision which would not meet the standard water requirements of the subdivision code be denied. The reasons for the denial are as follows:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are not found to be special and unusual circumstances applying to the subject real property which exist either to a degree which deprives the owners of substantial property rights that would otherwise be available or to a degree which obviously interferes with the best use or development of that property.

There is no inherent right to subdivide land even if the zoning designation permits the sizes desired, if the infrastructure serving the area is inadequate, is not already in place or is not being developed concurrently with the subdivision. The applicants are not being deprived of or denied the right to utilize their land for agricultural purposes if they can not subdivide. Neither are the owners' rights being interfered with, as they can sell or agriculturally develop their land, build a dwelling, raise animals or conduct any agricultural use on it.

Standard water requirements are imposed on a uniform basis for all subdivision proposals within the County of Hawaii. In this instance, the petitioner is requesting a waiver from the County's water standards basically to create two (2) lots, one of which would be served by a roof catchment and storage system for human

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consumption and fire prevention. However, it has been determined that there is no depriving of property rights by this denial, which curtails or reduces existing property development rights. Variances are granted to allow deviation from the literal enforcement of the Subdivision Control Code which if strictly applied would deny a property owner of any beneficial use of his land. The mere fact that the property may be put to a more profitable use or manner by subdividing it is not of itself sufficient cause to justify granting variance.

Real property tax records show that the applicants purchased this parcel in 1988 and subsequently constructed a dwelling upon it. Subdivision records show that this parcel was one of six subdivided in 1980 (#4548 - Machida). Each of those six parcels' deeds describes a water waiver being granted it by the Department of Water Supply. Each deed also requires compliance with that department's rules which stipulate that no other water exceptions from the water requirement would be granted to land which had been granted such a waiver previously. The applicants' lot is one of the six lots encumbered by that rule. While the Department of Water Supply no longer administers such waivers, the County's position is that the standards prevail and no future subdivision of this land (any of the six lots) should occur without a standard water system being provided.

The applicants did not divulge this deed restriction although the property was encumbered with this requirement since 1980 and they cannot have been unaware of the restriction.

The fact that there is an inadequate public water system in the area which causes the Department of Water Supply to not be able to supply additional subdivided lots with a connection, is a common and standard response to proposed subdivisions in that general vicinity. Therefore, there is no special and unusual circumstance with regard to the Department of Water Supply's refusal to permit additional lots in this area to be served by the system at this time.

The variance criteria are strict in that special and unusual circumstances must be present in order for a variance to be granted. The existing water system cannot adequately support more subdivided lots than already exist; this situation is typical for the general Waiakea Uka area and is thus not special nor unusual.

Furthermore, it is the County's policy, stated in the general plan that all water systems shall meet the standards of the

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

Based on the foregoing, it has been determined that there are no special and unusual circumstances applying to the subject property which exist to a degree which deprive the owner of substantial property rights that would otherwise be available, or which obviously interferes with the best use or manner of development of the property.

#### ALTERNATIVES

There are reasonable, common alternatives other than subdividing which are available to the applicant especially since his deed precludes further subdivision without standard water. Economic situations can be improved by selling the land, or trading the large 10 acres piece for a less valuable smaller one, which could result in an economic gain. Water systems can be improved by combining with other property owners in the area if the public system cannot presently serve them. Agricultural uses of the property continue to be available to the owners. A variance permit is not the only option available to the applicant, but it would, if granted, result in a lowered standard for all, and would widen the door to uncontrolled, non standard catchment water for all subdivisions outside present County service capability. This latter result would be detrimental to the community. If a property cannot be served by the proper infrastructure, it is one indication that the property is premature for subdivision, and a lowering of the standards to accommodate that lack, in the absence of special and unusual circumstances is not a solution which would benefit the community.

Furthermore, the applicant's deed covenants require compliance with the Department of Water Supply rule prohibiting further subdivision of this particular lot (among five others) without a standard water system because a water waiver was previously granted to this land.

#### INTENT AND PURPOSE

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 land being sold in Hawaii had adequate standard access and water. A lowered standard of water

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which a roof catchment system supplies could endanger the health safety and welfare of a lot owner if he decided to build a home on his land which was not served by 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 (30) 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 (90) days from the date of receipt of a properly filed appeal. Within sixty (60) 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 (30) 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.

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Should you have any questions, please feel welcome to contact  
Donald Tong of this office.

Sincerely,

A handwritten signature in cursive script that reads "Norman K. Hayashi". The signature is written in dark ink and is positioned above the typed name.

NORMAN K. HAYASHI  
Planning Director

DT:smo  
3411D  
Enclosure

cc: West Hawaii Office  
DWS  
DPW  
Subd 90-144