

CERTIFIED MAIL

July 16, 1991

Mr. Don McIntosh
P.O. Box 2902
Kailua-Kona, HI 96745

Dear Mr. McIntosh:

Variance Application (WHV 90-2)
Applicant: Ron Slaymaker
Tax Map Key 7-4-3:5

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 and unusual circumstances applying to the subject property which deprive the applicant of substantial property rights that would otherwise be available or which interfere with the best use or manner of development of the property.

The standard water system is situated within the existing subdivision roadway which serves the subject parcel 5. 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.

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

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standards basically to create four 1-acre lots and a remaining 12-acre lot with a condition that a specified water catchment/storage system be constructed for human consumption and fire prevention. It has been 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 with the variance approval 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 (higher costs) 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 improving and upgrading the County's existing water system facilities or drilling of two private wells would not be reasonable options due to the construction costs. 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).

While the alternative of obtaining a variance to utilize water catchment is the least costly, it would also result in lowered subdivision standards and, thus, be contrary to the intent of the Zoning and Subdivision Codes as well as the General Plan. The alternative of no further subdivision is considered the most logical and prudent for the health, safety and welfare of the general

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community. Further, the petitioner is still afforded the opportunity to construct a dwelling and/or utilize the land for a variety of agricultural activities.

Therefore, since the proposed subdivision is within an area where county water is not available for additional lots and there are other reasonable alternatives to consider, this variance request should not be granted.

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-1 acre zoning designation 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. Granting the variance request would also mean a lowering of the infrastructural standards for subdivided lots which is contrary to the intent of the County's General Plan goals and policies. The Subdivision Control Code exists for the specific purpose of requiring basic standard improvements for every subdivided lot for the safety and well being of future home builders.

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

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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 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 at our office.

Sincerely,


for
NORMAN K. HAYASHI
Planning Director

AK:smo
2354D

Enc: Background Report

F/R
cc: West Hawaii Office (w/Encl)