

CERTIFIED MAIL

January 10, 1990

Mr. Daniel Wilson
P.O. Box 1316
Pahoa, HI 96778

Dear Mr. Wilson:

Variance Application (V89-24)
Water Requirements
Tax Map Key 1-2-7:33

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 permit a subdivision of six (6) lots with roof catchment water systems in lieu of a water system meeting the standards of the Department of Water Supply as required by the Subdivision Code. The subject property is 71+ acres in area, identified by tax map key 1-2-7:33 and is located on the east side of Pahoa-Kalapana Highway in the vicinity of the 18-mile marker and approximately 3 miles north from Kaimu Beach in Kakala Keokea Homesteads, Puna, Hawaii.

The approval is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are 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 proposed subdivision is only 150 ft. from the Kalapana-Pahoa 8" water transmission line. However, the Department of Water Supply has stated in their March 14, 1980 subdivision application response, that the water source facilities cannot accommodate the proposed subdivision and no system improvements are being funded in the near future. The subdivision, therefore, is not being allowed to connect to the County system at this time even though the owner applicant was desirous of doing so. Land developments which

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had occurred before January 1987, were allowed to connect, but the source is now inadequate. Future but indefinite improvements will rectify the situation. Only 1 water meter (per existing lot) connections are being allowed.

Based on the foregoing, it has been determined that there are 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 unreasonably interfere with the best use or manner of development of the property.

ALTERNATIVES

There are no reasonable alternatives available to resolve the existing insufficient source and system. Only extensive improvements to the County water source system would alleviate the situation, and no timetable nor funding is presently available.

Developing a private roof catchment system to provide the development with water is the only other means available, and this is what the applicant intends to do if permitted by the variance permit.

An analysis of the annual median rainfall for the area indicates that there is sufficient rainfall to support an adequate water roof catchment and storage system.

INTENT AND PURPOSE

The intent and purpose of the water requirement of the Subdivision Code is to ensure that adequate potable water is made available for human consumption and, in higher densities, for fire protection. Lacking sufficient public or private piped water systems to connect to, the presence of an adequate rainfall catchment and storage capacity is in some cases deemed a temporarily acceptable substitution for limited size developments.

Although the County General Plan's policies and standards call for water systems built to DWS standards, the fact that the transmission line is nearby and available for tapping but for the insufficient supply source is one rationale for permitting a catchment system for this 6-lot subdivision. It should not be construed as being an automatically permitted alternative for subdivisions which are presently beyond the scope of the County water system.

Were the rainfall less, the development (number of lots) larger and the waterline so distant from the development as to appear a remote prospect for many years, the substitution of a roof catchment system for the County standard system might not be warranted. Because future residents of all subdivisions have common basic expectations of adequate access and water, these necessities must be available in appropriate scale and standard. Therefore, in consideration of the zoning designation, property rights of the owner, and the practical possibility in the future for improvements to the existing County water system, the variance request is found to be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning Code and the County General Plan; will not be materially detrimental to the public's welfare; and will not cause substantial adverse impact to the area's character and adjoining properties, provided certain conditions are met.

Therefore, the Planning Director has concluded that this variance request be approved subject to the following conditions:

1. The applicant, his assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. The applicant, his 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 able 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 that 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 1,500 square feet roof catchment surface with a minimum 10,000 gallon water storage facility.

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- d. That no ohana dwellings will be permitted on any 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.
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.
 5. All other applicable State and County rules and regulations shall be complied with. Should any of the foregoing conditions not be met, the Director may proceed to declare the variance null and void.

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

Sincerely,



DUANE KANUHA
Planning Director

DT:lm

cc: Subd. 89-38