

4-391

PD Var.391

May 18, 1990

CERTIFIED MAIL

Mr. Michael V. Gay
60 Kaikaina Street
Kailua, HI 96734

Dear Mr. Gay:

Variance Application (V89-43)
Michael V. Gay
Tax Map Key 8-8-02:11

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 allow the creation of a 12-lot subdivision without a water system meeting with the minimum water requirements of the County Department of Water Supply as required by Article 6, Division 2, Section 23-84(1) of the Subdivision Control Code, and with access of a 50-foot wide right-of-way with a 16-foot wide pavement in lieu of the minimum 20-foot wide requirement. The subject property which consists of 96.1 acres and identified by TMK: 8-8-2:11, is located along and mauka of the South Kona Belt Road, approximately 2,000 feet north of Papa Bay Estates Subdivision, Aliko, South Kona, Hawaii.

The approval is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances that exist which would warrant or necessitate a variance from the minimum water requirements to service the proposed 12-lot subdivision. The present County water system terminates at the Hawaii Belt Road/Hookena Beach Access Road junction. This is the nearest County water system and is located approximately 12 miles away from the subject parcel. There are no immediate plans to extend the water system to service the subject parcel.

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From the map contained in Circular C88, Median Rainfall, State of Hawaii, the subject property receives a median rainfall of approximately 39 to 49 inches of rainfall per year. From the monthly rainfall data of the Okoe Gage Station, given an average median 45 inches of rainfall per year and based on a minimum 2,500 square foot of roof catchment area, approximately 70,126 gallons of water would be available for the year. Water consumption per month based on a household of 3.5 persons per family is 50 gallons per person or 175 gallons per day. The total yearly water consumption per family is approximately 63,670 gallons. This would leave a surplus of approximately 6,251 gallons of water per year.

The applicant wish to subdivide the subject property in order for his individual heirs to further intensify agricultural use of the land. Such agricultural uses include macadamia nut orchards, coffee, and cattle grazing.

Therefore, considering the foregoing issues, we have determined that there are special or unusual circumstances applying to the subject property which exist either to a degree which deprives the owner or 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 the subject property.

ALTERNATIVES

There are no other reasonable alternatives in resolving the required water system of the applicant. An alternative would be for the applicant to extend the existing County water system from Hookena to the subject property which is approximately 12 miles in length. The improvements would consist of a transmission line (12" in diameter), water storage facilities (reservoirs), booster stations, etc. The cost of the transmission line alone will cost approximately \$60/linear foot or about \$3,801,600. This cost does not include the water storage facilities or the booster stations.

The other alternative would be to drill two wells on-site. The elevation of the property ranges from 1,650 to 2,200 feet. The cost of drilling one well would be approximately \$800 per linear feet. A well at 1,800 feet in depth would cost approximately \$1.44 million. For two wells, the cost would be \$2.88 million plus the cost of the necessary storage reservoir, transmission lines, booster pumps, and related improvements. There is no assurance that water would be found under the subject property.

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As such, the imposition of providing a public or private water system in this area for the proposed 12-lot subdivision would be putting excessive demands upon the applicant when a more reasonable alternative is available.

INTENT AND PURPOSE

The subject property which consists of 96.1 acres is located within the County's Unplanned zoned district. Under this zoning designation, the minimum building site area is five acres. The applicant is proposing a 12-lot subdivision each with an area of five acres or more, conforming to the minimum lot size requirement of the Zoning Code.

The intent and purpose of requiring a water system within a subdivision is to assure that adequate water is available for human consumption and fire protection. Since the property is within the Unplanned district, fire protection facilities (fire hydrants) are not a mandatory requirement of the water standards.

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

Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district; the intent and purpose of the Zoning and Subdivision Codes 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 to adjoining properties.

The variance request is approved, subject to the following conditions:

1. The applicant, its assigns, or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant, its assigns, or successors shall secure tentative subdivision approval within one (1) year from the effective date of the Variance Permit.
3. The applicant, its 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:

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- a. That the subdivider agrees and accepts the fact that a County dedicable public water system is not now or in the foreseeable future available 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 2,500 square foot roof catchment surface with a minimum 10,000-gallon water storage facility.
 - d. That no ohana dwellings will be permitted on the lots without first having service from a County water system or an approved private 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 no cost and expense of the subdivider.
4. 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.
5. 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.

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6. That no variance from the minimum water requirements for the proposed lots shall be applied for in the future.
7. All other applicable State and County rules and regulations and requirements shall be complied with.

Should any of the foregoing conditions not be complied with, the Planning Director may null and void this Variance Permit.

However, the Planning Director has concluded that the variance request to allow a 16-foot wide pavement in lieu of the 20-foot wide agricultural standard pavement and to disallow the north/south crossroad should be denied based on the following findings:

There are no special and unusual circumstances applying to the subject property which do not generally apply to surrounding properties or improvements in the same district. There is no evidence of topographical, inundation or other property constraints which would support a deviation from providing the minimum roadway requirements. It should be noted that two separate subdivisions, approximately 2,000 feet south of the subject property, have constructed accesses meeting with the minimum dedicable subdivision standards. Further, a number of adjoining parcels have the potential for further subdivision to a minimum lot size of five acres. The proposed roadways could provide a potential traffic circulation for the adjoining properties. All of these parcels are faced with the same development restrictions as the subject property. The impact of the potential density and the need for providing adequate access and vehicular circulatory patterns for this area further requires that this portion of the variance request be denied.

There are other reasonable alternatives that could resolve the difficulty that the applicant is claiming for the subdivision. The applicant has the necessary land area which affords the opportunity for a multiplicity of design solutions for the subdivision of the property. The applicant could also phase down the proposed development which could potentially lessen the level of required roadway improvements. Five adjoining parcels have the potential to be further subdivided. Should there be any proposed 6-lot subdivision on each parcel, approximately 30 additional 5-acre lots would be created. This would increase the number of lots for potential use of the proposed roadways.

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As stated earlier, there is no evidence related to any topographical or other property constraints which require special consideration in a design solution of the proposed subdivision. It has been determined that there are other design alternatives available which would enable the applicant to subdivide the property and still meet with the minimum roadway requirements of the Subdivision Code.

Based on the foregoing findings, this portion of the variance request is viewed not to be consistent against the criteria test for a variance and thus would not be consistent with the general purpose of the zoning district, and the intent and purpose of the Subdivision Code and the General Plan. The purpose of the minimum roadway requirements was to ensure that minimum safety standards relative to traffic and drainage were to be provided for. In addition, these minimum standards were designed to provide for other concerns including accommodation for adequate sight distance for on-street parking, adequate space for emergency vehicles to maneuver and positioning when required, to ensure services such as mail delivery, street addresses, road maintenance, etc.

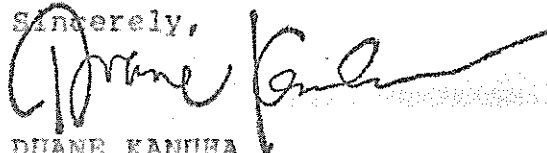
Although the roadways may remain in private ownership, this would not eliminate any burden to the County. Any liability concerns would rest with the County if the roadway variance was granted and the request could not stand up against the variance criteria. Any approval of the variance would make the County a party to a traffic accident liability suit that could be made against or by the applicant, or against or by a future landowner in the subdivision.

Thus, it could be further concluded that the granting of the variance from the minimum roadway requirements would be materially detrimental to the public welfare or cause substantial adverse impact to an area's character or to adjoining properties. As such, it is determined that the variance request to allow a 16-foot wide agricultural standard pavement in lieu of the 20-foot wide agricultural standard and to disallow a north/south crossroad be denied.

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

Sincerely,



DUANE KANUHA
Planning Director

MO:aeb

cc: Chief Engineer
Manager, DWS
Sub# #89-100