

October 17, 1990

CERTIFIED MAIL

Ms. Chrystal Yamasaki
Wes Thomas and Associates, Inc.
75-5722 Kalawa Street
Kailua-Rona, HI 96740

Dear Ms. Yamasaki:

Variance Application (V89-45)
Applicant: Michael Arnold
Tax Map Key 8-7-13:24 and 65

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 6-lot subdivision without a water system meeting 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 Code; and with one lot (14-A) having a minimum building site average width of 245+ feet in lieu of the minimum requirement of 280 feet as stipulated within the Unplanned (U) District of the Zoning Code..

The approval of the variance request to allow the proposed subdivision without the minimum water requirements is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances that exist which would warrant or necessitate a waiver from the minimum water requirements to service the proposed 6-lot subdivision. The nearest County water system terminates at the Mamalahoa Highway/Hookena Beach Access Road junction, approximately 6 miles north of the subject area. The Department of Water Supply has no immediate plans to extend the water system to service the subject subdivision.

From the data contained in DOWALD's Circular C88 (Median Rainfall), the subject parcels receive a median rainfall of approximately 44 to 59 inches of rainfall per year. Based on an average median rainfall of 51 inches per year with a minimum roof area catchment of 2,200 square feet, approximately 69,951 gallons of

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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 63,875 gallons. The amount of surplus water available through a catchment system would be approximately 6,076 gallons, which exceeds the amount consumed.

Therefore, considering these foregoing issues, we have determined that there are special and unusual circumstances applying to the subject properties 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 properties.

ALTERNATIVES

There are no reasonable alternatives in resolving the required water system of the applicant. Extending the County water source system would be financially detrimental to the applicant.

The other alternative would be to drill two wells. The cost of drilling one well with a depth of 1,250 feet would be approximately \$1 million. For two wells the cost would be \$2 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 properties.

As such, the imposition of providing a public or private water system in this area for the proposed 6-lot subdivision would be putting excessive demands upon the applicant when a more reasonable alternative is available.

INTENT AND PURPOSE

The subject properties, consisting a total of 45.82 acres, are 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 6-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.

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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 areas 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 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 2,200 square feet roof catchment surface with a minimum 10,000 gallon water storage facility plus adequate start-up supply.
 - d. That no ohana dwelling(s) will be permitted on any lots that are not served by the County water system.

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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.

The approval of the variance request to allow one lot with a minimum 245+ feet building site average width is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances which apply to the subject parcel which would warrant or necessitate a waiver from the minimum building site average width requirements. Parcel 24 was created prior to the adoption of the Zoning and Subdivision Codes and is non-conforming in regards to the minimum 280 foot building site average width requirement. The lots created at that time were approximately 250 feet wide. The proposed subdivision will not increase the number of non-conforming lots with respect to the building site average width requirement. With the consolidation and resubdivision of parcels 24 and 65, the other proposed 5 lots will conform to the minimum 280 foot building site average width requirement.

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

ALTERNATIVES

There are no reasonable alternatives in resolving the difficulty of the petitioner. An adjoining 5.6+ acre parcel is owned by another individual and is situated between proposed lot 14-A and the access easement for the proposed subdivision. Therefore, lot 14-A could not be made wider. The petitioner could consider including the adjoining parcel with the proposed subdivision, however, this would need to be negotiated with the property owner. There is no assurance that the property owner would agree to a negotiation.

In consideration of these factors, the variance request from the minimum building site average width requirement is determined to be reasonable. The imposition of the other alternatives in this situation is considered to be excessive when a more reasonable solution is available.

INTENT AND PURPOSE

The granting of the variance will not be contrary to the intent of the Zoning Code and the objectives sought to be accomplished by the minimum building site average width requirement of the Code. The purpose of the minimum building site average width requirement is to assure that any lot created has an adequate buildable area relative to structural setbacks and other requirements. Within the Unplanned zone, the setback requirement is 30 feet from all property lines. Application of the minimum setback requirements to the proposed lot 14-A would yield a minimum buildable area width of 185+ feet. The building site average width of proposed lot 14-A will be 245+ feet. These widths are determined to be reasonable and adequate to accommodate structures on the property. Although the proposed lot will have less than the required minimum average width, the objective of this provision in the Zoning Code can still be met.

The granting of this variance request will not be materially detrimental to improvements or property rights in relation to the properties in the near vicinity. Since all setback requirements can be met, air circulation, light, and open space considerations for the proposed lot and adjacent properties can be satisfied. Therefore, impacts to surrounding properties will be minimal.

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In view of the above issues, this variance request would be consistent with the general 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 areas character and to adjoining properties.

The 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. The applicant, its assigns or successors, shall be responsible for securing final subdivision approval within one (1) year from the date of receipt of tentative subdivision approval.
3. That no variances from the minimum setback requirements for the proposed lot shall be applied for in the future. This condition shall be stipulated in the deed of the property and recorded with the Bureau of Conveyances.
4. All other applicable State and County rules, regulations and requirements shall be complied with.

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

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

Sincerely,



DUANE KANUHA
Planning Director

MO:aeb

cc: Dept. of Water Supply

bcc: Subd 89-114 (via Ed)