

October 23, 1990

CERTIFIED MAIL

Mr. Michael Moore, Esq.
Menezes, Tsukazaki, & Yeh
100 Pauahi Street, Suite 204
Hilo, HI 96720

Dear Mr. Moore:

Variance Application (V90-26)
Variance from the Minimum Roadway
and Water Requirements
Tax Map Key: 8-1-05: 2

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 existing roof catchment system in lieu of a water system meeting the minimum requirements of the County Department of Water Supply as required by Chapter 23 (Subdivision Code), Article 6, Division 2, Section 23-84(1), and to allow the existing two separated concrete strips within a 14 foot right-of-way in lieu of the minimum 20-foot pavement within a 50 foot wide right-of-way as required by Chapter 23 (Subdivision Code), Article 6, Division 2, Sections 23-87 and 23-88.

The subject property consisting of 39.582 acres is situated approximately 1/2 mile south of the Konawaena High School Road junction along Mamalahoa Highway and 3,900 feet east (mauka) at the end of a private road (St. John's Road) in Onouli 2nd, South Kona, Hawaii, TNK: 8-1-05: 2.

The Planning Director has concluded that the variance request from the minimum water and roadway requirements should be approved, based on the following findings:

SPECIAL AND UNUSUAL CIRCUMSTANCES

Change of Zone Ordinance No. 88-56 was adopted effective May 12, 1988, conditionally amending the zoning district classification for the subject property from Agricultural-20 acres (A-20a) to Agricultural-10 acres (A-10a) for a 30.988 acre portion of the property designated as parcel 1, and to Agricultural-5 acres (A-5a) for a 8.594 acre portion designated as parcel 2.

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Kulalani Ranch is a Hawaii general partnership formed in 1978 to purchase land for dwelling and agricultural uses. The partnership consists of 6 partners from 3 families: the Arnetts, the Roberts and the Warrens.

There are three existing single family dwellings on the property, each occupied by one of the partnership families. The proposed subdivision will create three lots within parcel 1 comprising 10.982 acres, 10.002 acres, and 10.004 acres, and one lot within parcel 2 comprising 8.594 acres. Upon subdivision, one of the three existing dwellings will be situated on one of the 10+ acre lots. This will enable the partnership to establish three separate agricultural projects on the 10+ acre parcels, as well as one joint project on the remaining 8.594 acre parcel. Ownership of the 10+ acre parcels will be independent, with the 8.594 acre parcel owned as tenants in common.

There are special and unusual circumstances that exist which warrant and necessitate a waiver from the minimum water requirements to service the proposed 4-lot subdivision.

The County water system does not service the area where the property is situated. The existing water system facilities cannot support the proposed subdivision at this time according to the Department of Water Supply. Sufficient public funds are not available and there are no immediate plans to construct the extensive improvements and additions to the County water system facilities needed to service the property.

There are currently three water tanks on the property serving the three dwellings and supporting garden and agricultural uses. These are two 18,000 gallon tanks and one 29,000 gallon tank. These tanks are fed by a total of 10,602 square feet of roof surface. Specifically, the three existing dwellings on the property have catchment surfaces of 4,010 square feet (Arnetts), 3,424 square feet (Roberts) and 3,350 square feet (Warren).

Additionally, there is a spring fed fresh water pond on the property. The capacity of the pond is approximately 12,000 gallons. The pond is used for agricultural needs, and the applicant plans to create another pond adjacent to the natural pond to assist further development of agricultural activities.

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The property is located at the 2200-2300 foot elevation. From data contained in DOWALD's Circular C88 (Median Rainfall), the subject property receives an annual median rainfall of 68.8 inches. (Gauge No. 29.8 Malukalu). Based on this annual median rainfall, a roof catchment area of 10,602 square feet will provide approximately 454,405 gallons of water per year.

Specifically, the Arnett dwelling with 4,010 square feet of catchment area will provide approximately 171,870 gallons per year; the Roberts dwelling with 3,242 square feet of catchment area will provide 138,953 gallons per year; and the Warren dwelling with 3,350 square feet of catchment area will provide approximately 143,582 gallons per year. These computations are based on a factor of 7.48 gallons per cubic foot of rainfall (68.8 inches per year = 5.73 cubic feet per year), multiplied by the square footage of catchment area. Water consumption for domestic use is estimated by the Department of Water Supply to be 50 gallons per person per day, or 175 gallons per day for a household of 3.5 persons. The total yearly water consumption of the average household is thus approximately 63,875 gallons. The amount of water available through the existing catchment systems and the natural pond well exceeds the amount necessary for normal household consumption and agricultural purposes.

The applicant is willing to adopt the following subdivision covenants to assure that the catchment and storage facilities for each of the 4 lots will be adequate to meet domestic and agricultural water requirements:

1. Each dwelling situated upon a lot within the subdivision not serviced by a County water system shall be serviced by a water catchment system containing a minimum catchment surface area of 3,000 square feet, and a minimum water-storage capacity of 18,000 gallons.
2. The owner of any lot not serviced under the County water system shall participate in any improvement district which may be created for public water system improvements which would result in County Water service to said lot.
3. The subdivision lots may not be further subdivided without a public or private water system acceptable to the County.

The applicant has constructed an on-site access road from the makai boundary of the property to the makai property boundary of proposed lot 7-P-4, consisting of two concrete strips, each 2 feet wide and 4 inches thick, set 2 1/2 feet apart, with a total width of 6 1/2 feet. The area between the strips and the shoulders is sod with grass, and the shoulders have been backfilled and graded. There is sufficient space along the shoulders to allow passage of vehicles coming in opposite direction.

This type of roadway was designed to mitigate on-site drainage. An inventory and Evaluation prepared by the U.S. Department of Agriculture Soil Conservation Service in August, 1989 provides recommendations to reduce runoff from the property. One of their recommendations states the following:

"Paving of the access road should be kept to a minimum but provide for safe driving conditions. If the access road is two strips the unpaved center area should be level with the two strips and vegetated with a sod forming grass. The shoulders should be vegetated with a sod forming grass."

The applicant's roadway variance request to allow the use of the roadway as constructed by the applicant is in conformance with the recommendations of the Soil Conservation Service. The existing roadway provides a safe means of access to the proposed subdivision, promotes soil conservation, and reduces both on-site and off-site water run-off.

Considering the above, there are special or unusual circumstances regarding the provision of water and on-site roadway access to the proposed subdivision which exist to a degree which deprives the applicant of substantial property rights that would otherwise be available, and to a degree which obviously interferes with the best use or manner of development of the subject property.

ALTERNATIVES

The alternative of providing water for the proposed subdivision through the public water system in this area would cause an unreasonable hardship upon the applicants given the distance to the existing system. The County has no current plans to install the extensive improvements required. The

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alternative of development of a private well system is also unreasonable in that the costs of drilling a well would be an unreasonable expense given the nature and size of the proposed subdivision. The existing catchment system and the natural pond provide a sufficient supply of water for both domestic and agricultural needs. Other alternatives are not reasonable or realistic, and the existing catchment system is the most appropriate under the circumstances.

The Soil Conservation Service has recommended that paving of any on-site roadway be kept to a minimum in order to limit surface runoff and related erosion. The applicant has followed the recommendations of the Soil Conservation Service in implementing a conservation plan, and the alternative of a code standard roadway will unnecessarily hinder these conservation efforts. The need to control and mitigate both on-site and off-site drainage for the property makes the applicant's proposal for the on-site access roadway the most feasible and practical alternative. The proposal of the applicant will most effectively minimize the drainage and also accommodate the need for safe access to the property.

There are also no other reasonable alternatives that would resolve the hardship that would be imposed upon the applicant if it was forced to satisfy code requirements regarding water and roadway improvements. The imposition of any roadway and water improvements for this particular situation would be an excessive demand on the petitioner when a more reasonable alternative is available.

INTENT AND PURPOSE

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 Agricultural districts, fire protection facilities (fire hydrants) are not a mandatory requirement of the water standards. The annual median rainfall for the area, coupled with the existing water catchment and storage facilities, and a natural spring-fed water source, indicates there is both adequate rainfall and facilities to assure a sufficient supply of water for both domestic and agricultural needs.

The purpose of the Subdivision Code's on-site road improvement requirements is to assure adequate and safe access to the property. The proposed road improvements will fulfill this purpose and will also serve to minimize water runoff on the property and to surrounding properties. These improvements will neither cause adverse impact to the area's character or surrounding properties or be materially detrimental to the public welfare, but instead will enhance the protection of property from run-off, limit off-site run-off, and also provide adequate and safe access to the property.

Based on the above, the variance request is 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 welfare; and will not cause substantial adverse impact to the area's character and to adjoining properties.

The variance requests are 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 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 the County will not at any time bear the responsibility of supplying public water to the subdivision.
 - c. Each dwelling situated upon a lot within the subdivision not serviced by a County water system shall be serviced by a water catchment system containing a minimum catchment surface area of 3,000 square feet, and a minimum water-storage capacity of 18,000 gallons.

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- d. That no ohana dwellings will be permitted on the 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, with a copy sent to this Department.
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 conditions 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 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. That all future subdivision of any of the lots to be created will comply with the necessary subdivisions and zoning code requirements. No future variances from roadway or water improvements shall be considered or issued for any of the lots affected by this subdivision.

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

Sincerely,



DUANE KANUHOU
Planning Director

RHY:aeb

cc: SD 88-157