

October 23, 1990

CERTIFIED MAIL

Ms. Chrystal T. Yamasaki, R.L.S.
Wes Thomas & Associates, Inc.
75-5722 Kalawa Street
Kailua-Kona, HI 96740

Dear Ms. Kawasaki:

Variance Application (V90-30)
Petitioner: Peter Ogilvie
Variance from Minimum Water Requirements
Tax Map Key: 7-4-03: 24

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 an 8-lot subdivision with a 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).

The subject property consists of 8.8 acres of land on the west (mauka) side of the Mamalahoa Highway, 4,200 feet south of the Palani Road/Mamalahoa Highway junction in Kealakehe Homesteads, North Kona, Hawaii, TMK: 7-4-03: 24.

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

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 8-lot subdivision. Although the County's water system does serve the property now, it cannot support the additional lots being proposed without extensive improvements and additions, including storage, transmission, and distribution facilities. No funding is available nor is there any time schedule set for these improvements. The Department of Water Supply memorandum dated April 11, 1990, states these facts.

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The island rainfall map contained in Circular C88, Median Rainfall, State of Hawaii, shows that the subject property receives approximately 50 to 55 inches of rainfall per year. Based on the above median rainfall per year with a minimum roof area catchment of 2,500 square feet, approximately 90,000 gallons of water is available for the year. Water consumption per day 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 water available through a catchment system of this size exceeds the amount consumed.

Therefore, considering the foregoing facts, it is 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 reasonable alternatives in resolving the difficulty of the applicant. An alternative available to the applicant is to improve the existing County's water system as necessary. The second alternative would be to drill private wells that would service the 8 lots. The cost of installing sufficient wells including the necessary pumping storage and distribution facilities would run into the millions of dollars.

Requiring such a public or private water system in this area for the proposed subdivision would be an excessive demand upon the applicant 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 the Agricultural district, fire protection facilities (fire hydrants) is not a mandatory requirement of the water standards.

The analysis of the annual median rainfall for the area show that there is adequate rainfall to support a water roof catchment system, a condition of approval will be included to require a minimum of 2,500 sq.ft. catchment areas with the development of any single family residential development for this subdivision.

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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.

This 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 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. That any future dwellings constructed on the property shall have a minimum of 2,500 square feet roof catchment surface with a minimum 15,000 gallon water storage facility.
 - 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.

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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 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.

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

Should you have any questions, please feel welcome to contact our office.

Sincerely,



DUANE KANUHA
Planning Director

RHY:aeb

cc: Subd 90-53