

November 8, 1990

CERTIFIED MAIL

Mr. John D. Weeks
 77-6877 Mamalahoa Highway
 Hualaloa, HI 96725

Dear Mr. Weeks:

Variance Application (V90-25)
 Petitioner: James E. Mitchell
 Variance from the Minimum Roadway
 and Water Requirements
Tax Map Key: 7-9-03: 19 & 23

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 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) and to allow the existing unimproved jeep road within the 20 foot wide road easement and approximately 12 foot pavement within an 18 foot wide private road right-of-way and 8 foot pavement within a 12 foot wide private road 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 is a 52.7 acre parcel, located 1,400 feet west of and at the end of a private road which intersects Old Government Road, 1,200 feet north of its intersection with the Kuakini Highway-Mamalahoa Highway junction in Honalo, North Kona, Hawaii, TMR: 7-9-03: 19 & 23.

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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

An existing County waterline does exist along the easterly side of Mamalahoa Highway, however, it is approximately one mile (more or less) west from this proposed subdivision. The Kawainui Tank site which is approximately two (2) miles to the southwest of this proposed subdivision is more than 120 feet lower than subject property.

The "Old Government Road" which now has a paved A/C width of approximately 8 ft. runs from Mamalahoa Highway to the beginning of what is referred to as Road "A" has been in use by surrounding property owners for more than fifty years.

Road "A" being approximately 18 feet wide consists of two paved A/C wheel tracks (that are bordered on either side by rock walls; these walls being the boundary between the road as well as the boundary between property owners.) that leads up to the applicant's property. Road "A" having an approximate width of 12 ft. continues in a northerly direction to service the proposed Lot 1.

As indicated on the proposed plan, at the end of Road "A" which borders the applicant's property, an access easement of 20 ft. wide will serve access to proposed Lot 2.

The existing roads, "Old Government Road", Road "A" and Road "A'" will not be called upon for any increase in usage. Furthermore, the roadway will continue to serve only the present landowners since this proposed subdivision is being created for the ownership of the applicant's two children, and not for speculative land development. The owner understands and agrees that any further subdivision will require conformance with road standards of the Subdivision Code.

Based on the foregoing, it is felt that special and unusual circumstances do apply to the subject property.

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ALTERNATIVES:

The alternative to the water variance request requirement is to extend the County waterline from Mamalahoa Highway up the "Old Government Road", up Road "A" and either up Road "A'" or through the 20-ft. wide access easement "1" to service Lot 2; along with a storage tank, pumps, and first, a study to determine if the source is adequate to be pumped. This cost is unreasonable to impose; likewise, digging a well, again, would involve unreasonable costs. Hence, 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.

The existing roof catchment system has provided more than sufficient amounts of household water to the existing structure on Lot 1. The reservoir containing approximately 0.5 million gallons has been more than adequate for their agricultural needs (livestock and mac nuts). Again, the applicant is aware that further subdivision beyond the two (2) - 26+ acre parcels will require water standards in conformance with the Subdivision Code.

The alternative to the road standard variance request is to require improvements or to build a roadway to Subdivision Code standards. However, to improve the existing road to meet certain and specified specifications would not be justifiable at this time. This requirement would impose upon the applicant the cost of purchasing additional land from adjoining landowners to obtain the minimum width to meet the County standards.

Furthermore, the adjoining landowners may have no desire to sell a portion of their land for this purpose. Once again, the applicant is aware that any further subdividing of the property served by this access will not be permitted unless the road standards of the Subdivision Codes are met; meaning no further variance will be applied for by the applicant.

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 of the water standards in the Subdivision Code is to provide the residents an adequate and dependable supply of potable water, and in higher densities for fire protection. Again, in this case the roof catchment has provided more than a sufficient amount of potable water. The 0.5 million gallon reservoir has provided a more than adequate water supply for agricultural needs as well as a back-up supply for fire protection.

The intent of the roadway standard in the Subdivision Code is to provide adequate and safe access to the property involved. In this case, the "Old Government Road", Road "A", Road "A'" and the jeep road within the 20-Ft. wide access easement "1" has served the applicant for at least 25 years.

The intent of this two (2) lot proposed subdivision is for the use of the applicants two (2) children, and not for development. The owner/applicant is aware that if this variance is granted they will not further subdivide nor develop without first meeting the standards of the Subdivision Code.

Based on all of the above, these variance requests will be consistent with the general purpose of the zoning district, the intent and purpose of the Subdivision Code and the County General Plan, and will not be materially detrimental to the public's welfare and will not cause substantial adverse effects to the areas character but retain it's rural atmosphere."

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:

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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 the County will not at any time bear the responsibility of supplying public water to the subdivision.
 - c. That the subdivider agrees and accepts the fact the County shall also not bear the liability and responsibility of improving the road access to the proposed subdivision.
 - d. 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 2,500 square feet, and a minimum water-storage capacity of 15,000 gallons.
 - e. That no ohana dwellings will be permitted on the lots that are not served by the County water system or served with a paved road access.
 - f. 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.

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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.

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

Sincerely,


DUANE KANUHA
Planning Director

RHY:seh

cc: Sub. 90-69