

CERTIFIED MAIL

December 2, 1991

Mr. and Mrs. Bart Jones
c/o Wes Thomas and Associates, Inc.
75-5722 Kalawa Street
Kailua-Kona, HI 96740-1818

Dear Mr. and Mrs. Jones:

Variance Application (V91-5) ⁴⁶¹
Applicants: Bart and Cora Jones
Variance from Water Requirements of the Subdivision Code
Tax Map Key 4-4-11:09

After reviewing your application and the information presented in its behalf, the Planning Director has concluded that your variance request should be denied. The reasons for the denial are:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are not found to be special and unusual circumstances applying to the subject property which deprive the applicant of substantial property rights that would otherwise be available or which interfere with the best use or manner of development of the property.

The Department of Water Supply has stated that the county water system serving this general area is insufficient in carrying capacity to serve additional subdivided lots. The present system is only capable of serving existing lots. This condition also affects other properties in the general area, so the applicants' situation is neither special nor unusual.

Furthermore, the owners are not being deprived of substantial property rights, as they have always been able to utilize the land for the agricultural purpose for which it is zoned. There is no inherent "right" to subdivide land without providing the necessary infrastructure such as a water system built to county standards. Today's water requirements must meet potable standards. There are no "non-potable" standards just as there are no "non-Dept. of Water Supply" standards. If the public water system does not serve the property, the developer should provide it.

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Providing a lower standard of road or water system instead would not be in the public interest, absent special and unusual circumstances. It has already been stated that the applicants are not being deprived of the agriculture use of their land. If an area lacks a standard water system and the developer is not able to or desires not to provide it, then that area may well be considered premature for further subdividing.

The imposition of water requirements are applied on a uniform basis for all subdivision proposals within the County of Hawaii. In this situation, there is not found to be any deprivation of existing property development rights. Variances are intended to allow deviation from the literal enforcement of the Subdivision Control Code when if it were strictly applied, would deny a property owner of any beneficial use of his land. But the mere fact that the property may be put to a more profitable use or manner is not by itself enough to justify granting a variance.

The County general plan which is the adopted public policy of the County states that "all water systems shall be designed and built to Dept. of Water Supply standards." In order that the variance procedure be applicable to this situation--to substitute roof catchments for the Department of Water Supply water standards--special and unusual circumstances applying to the real property must be evident. In this case, they are not.

Based on the foregoing, there are not found to be the special and unusual circumstances applying to the subject property which would deprive the applicant of substantial property rights that would otherwise be available or which interfere with the best use or manner of development of the property.

ALTERNATIVES

The alternative to being able to utilize the over-extended County water system is for the applicant to provide or help improve the existing water system. Costliness, by itself is not considered sufficient reason to warrant the granting of a variance request. And, not necessarily must the applicant do the improvements alone. A group of property owners could cooperatively band together.

When an area does not already contain the necessary infrastructure to adequately serve it, and the developer is not able or decides not to provide it, then that area can also be considered as being premature for the proposed development. The

alternative then is not to subdivide but to use the land in some other way. The land's zoning designation, agriculture, which is common to the area, allows a vast array of uses. The applicants are not being prevented from using their land for agricultural purposes, nor is there interference with his property rights. The land can also be sold as one parcel instead of two. Even now without subdividing, two dwellings (one Ohana) may be built on this property.

There is no inherent "right" to subdivide land if the proper infrastructure is not in place or cannot be provided. If standard improvements can not be made then the alternative of "no subdividing" should be considered.

Lowering the water standards through a variance which would permit roof catchment cannot be considered in this particular case since there is no special or unusual circumstance applying to this situation.

The imposition of present subdivision requirements usually results in additional costs to the developer. Improvement costs, however, are borne by all subdividers of land. Where there are substandard situations, improvement costs are usually expected to be higher. However, high costs cannot be the sole basis for the granting of a variance, especially in areas where County water system is non-existent or substandard, and when other alternatives are possibly available. In this particular case, the applicant claims that upgrading the County's water system or drilling of two private wells would not be reasonable options. The applicant has the alternative to coordinate with other surrounding property owners in the area in the possibility of upgrading the County water system or drilling a cooperative private well(s).

Therefore, since the proposed subdivision is within an area where water is not available for additional lots and there are other reasonable alternatives to consider, the denial of this variance would not be considered excessive.

INTENT AND PURPOSE

The intent and purpose of the minimum water requirements is to ensure that minimum safety standards relative to health, fire protection, sewage disposal, etc., are provided for in concert with the Goals, Policies, and Standards of the General Plan, and the Subdivision Control Code. It is the County's General Plan policies and standard that water system improvements and extensions shall promote the County's desired land use development pattern, that all water systems shall be designed

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and built to Department of Water Supply standards, that the fire prevention systems shall be coordinated with water distribution systems in order to ensure water supplies for fire protection purposes, and that water systems shall meet the requirements of the Department of Water Supply and the Subdivision Control Code.

While the proposed subdivision would be consistent with the Agricultural-5 acre zoning district relative to the minimum lot size, approval of the variance request would not be consistent with the intent and purpose of the County General Plan and the Subdivision Control Code, and will be materially detrimental to the public's welfare. The subject property is similar to the surrounding area's character and adjoining properties which have County water available to only existing lots.

The request by the petitioners for a variance from these water standards, for the reasons stated, would lower the water standards of the county for their development. Their request does not meet the criteria for the granting of a variance.

Based on the above, the Planning Director has concluded that the variance request to allow this proposed subdivision without providing a water system meeting the standards of the Subdivision Code should be denied.

The Director's decision is final, except that within thirty days after receipt of this letter, you may appeal the decision in writing to the Planning Commission in accordance with the following procedures:

1. Non-refundable filing fee of one hundred dollars (\$100); and
2. Ten copies of a statement of the specific grounds for the appeal.

Should you decide to appeal, the Planning Commission shall conduct a public hearing within a period of ninety days from the date of receipt of a properly filed appeal. Within sixty days after the close of the public hearing or within such longer period as may be agreed to by the appellant, the Planning Commission shall affirm, modify or reverse the Director's action. A decision to affirm, modify or reverse the Director's action shall require a majority vote of the total membership of the Planning Commission. A decision to defer action on the appeal shall require a majority vote of the Planning Commission members present at the time of the motion for deferral. If the Planning Commission fails to render a decision to affirm, modify, or reverse the Director's action within the prescribed period, the Director's action shall be considered as having been affirmed.

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All actions of the Planning Commission are final except that, within thirty days after notice of action, the applicant or an interested party as defined in Section 25-27.2 of this article in the proceeding before the Planning Commission may appeal such action to the Board of Appeals in accordance with its rules.

All actions of the Board of Appeals are final except that they are appealable to the Third Circuit Court in accordance with Chapter 91 of the Hawaii Revised Statutes.

Should you have any questions, please contact Donald Tong of this office at 961-8288.

Sincerely,



NORMAN K. HAYASHI
Planning Director

DT:lm
3276D(1-5)
Enc. - Background Report

cc: Planning Commission w/enc.
Hestean Farms