

CERTIFIED MAIL

October 5, 1992

Terrance R. Shumaker, Esq.
P. O. Box 309
Honokaa, HI 96727

Dear Mr. Shumaker:

Variance Application (V91-²⁷25)
Applicant: Fred Kozy
TMK: 4-2-8:18

After reviewing your application and the information submitted 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 real property which exist either to a degree which deprives the owner 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 that property.

The subject property is in the mauka area above Kukaiau and Paauilo where county water lines do not extend. There are instead, some private water lines supplied through 5/8-inch county water meters along the Mamalahoa Highway which serve some upper areas. Such a private, substandard water line serves the applicant's property now. Other inhabitants often utilize roof catchment, while others may tap off neighbors' meters, a procedure not sanctioned by the DWS.

The absence of a standard water system to serve the applicant's property is not a special or unusual circumstance. In fact it is common in this area. The use of private non-standard pipelines siphoning water from a 5/8-inch water meter goes beyond the intended capacity of that meter which

Terrance R. Shumaker, Esq.
October 5, 1992
Page 2

intent is to serve one single family dwelling. The unlimited siphoning of county water into a private substandard distribution system is a tenuous method of supplying property with potable water and is not acceptable for subdivision purposes and not sanctioned by the Department of Water Supply (DWS). Any similar siphoning into other private water networks by other 5/8-inch meter users could quickly endanger the quantity supply of county water if this "tapping" of county water continues. This is obviously not a recommended method of water supply.

Development in the form of subdivision of any land in the County requires compliance with the Subdivision Code. Division 2, Section 6 of said code stipulates that certain improvements are required. The improvements include the provision of water meeting the requirements of the DWS and roads meeting the approval of the Chief Engineer.

The exception in the law which allows some variation from these standards is the provision concerning Variances, but the variance procedure has criteria which the applicant must meet.

The reasons for the variance request as set forth by the applicant describe a situation wherein he does not intend to utilize roof catchment water but will instead use county water piped through a private, non-standard network of pipelines. The private system has pumps and storage tanks (although they are not built to DWS requirements), to serve each proposed lot. He emphasizes that catchment water will not be used for the properties and that instead, it will be county water through private transmission lines.

Upon review of this proposal, it is found that the existing water system is already less than desirable and not standard since numerous users already siphon more water than permissible from the one 5/8-inch meter comprising this Mauna Kea Ranch water system. The addition of three more lots to the system is an untenable overuse of that 5/8-inch meter which was always intended to be for one single family dwelling.

The DWS's response to the proposed Subdivision No. 90-169 describes the proposal as "...not being within the service limits of the Department's existing water system facilities" (letter dated, October 10, 1990) and reflects the limited system which serves the area and which can not condone additional lots with their potential ranch/agricultural uses drawing more water through that 5/8-inch meter.

Terrance R. Shumaker, Esq.
October 5, 1992
Page 3

ALTERNATIVES

There are limited alternatives to providing a standard water system to the proposed lots due to the large costs entailed by the distance and elevation. Yet, cost alone can not be the reason for granting a variance.

Again, in order to subdivide land the developer must, according to the subdivision code, provide improvements (if they do not already exist) such as roads and water systems, to county standards. Exceptions to the standards are handled through the Variance procedures, and in order to be granted, a variance must meet the criteria stated in the code. (special and unusual circumstances applying to the real property...).

Should the improvements not be enplaced, at the appropriate standard, it may well be a case where the land is not suitable (or is premature) for subdividing at this time.

INTENT AND PURPOSE

The intent and purpose of the water requirement of the subdivision code is to ensure that all lots created by subdivision in the county are served by a safe, dependable supply of potable water.

To permit the partitioning which would allow additional lots without standard water systems, would perpetuate substandard subdivision within the county, the likes of which exceed 100,000.

Both the Subdivision Code and the General Plan of the county require standard water systems meeting the requirements of the DWS. A subdivision without the standard water system would be contrary to those laws.

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.

Terrance R. Shumaker, Esq.

October 5, 1992

Page 4

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.

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 feel free to contact Donald Tong of this office.

Sincerely,



NORMAN K. HAYASHI
Planning Director

DT:mlm
6530D

cc: Subdivision
DWS
Fred Kozy