

V462

CERTIFIED MAIL

January 22, 1992

Mr. Dieter Losansky  
Station 1, Box 6024  
Captain Cook, HI 96704

Dear Mr. Losansky:

Variance Application (V91-15)  
Petitioner: Dieter Losansky  
Water Standards of the Subdivision Code  
TMK: 8-9-03:84

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 or unusual circumstances applying to the subject real property which exist either to a degree which deprives the petitioner of substantial property rights or that would interfere with the best use or manner of development of the property.

The applicant is aware that the County water system can not adequately serve the subject property. The applicant is also aware that the subdivision requirement for any partitioning such as his requires the provision of water meeting the standards of the Department of Water Supply. Additional subdivided lots located in this remote area of South Kona have not been able to be served by a standard water system for over 13 years. Thus the status of the lack of the County water system serving this area has been known for over a decade. Therefore, the lack of an adequate water supply to serve additional lots is not a special nor an unusual circumstance applying to this property. Furthermore, the applicant purchased this property in May, 1989, according to Real Property Tax office records, and is expected to have been aware of the long existing non availability of the public water system.

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There is also no inherent right to subdivide land without its being supplied with standard improvements such as roads and water. Allowable uses under its "Unplanned" land classification includes the wide variety of agriculture uses listed in the zoning code. There is no depriving of the petitioner's property rights by the denial of a variance, as the permitted uses remain the same for this 55 acre lot as it would for a 5 acre parcel.

The subdivision code's water requirements are applied uniformly to all subdivision requests. Furthermore, the use of private roof catchment water systems is available for all and any existing lot, large or small. Therefore, there is again no depriving of one's property rights for his existing land in its existing form. The fact that there can be more profit realized by subdividing the land is not sufficient justification for granting a variance.

Based on the foregoing, there are not found to be special or unusual circumstances applying to the subject real property which would deprive the petitioner or interfere with the best use or manner of development of the property.

#### ALTERNATIVES

There are alternatives available to the applicant which would not limit or deprive him of existing substantial property rights or which interfere with the best use of manner of development. He could today use this property in any reasonable agricultural manner. He could construct a dwelling or even farm dwellings for employees, and structures necessary to the conduct of the agricultural pursuit.

The applicant, however, wants the development of his property to be the further subdividing of this parcel into eleven (11) lots and wants to utilize, as his water system, roof catchment and tank storage in place of the County requirement of "water meeting the standards of the Dept. of Water Supply." In the absence of a standard water supply, he would substitute a nonstandard system of roof catchment water to support his proposed subdivision.

Another alternative is to also sell the property as is, for agricultural purposes. Requesting a variance in order to compensate for the lack of a basic standard improvement is not sufficient grounds to approve the request, for there is no inherent right to subdivide property without providing the

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necessary infrastructure. Although a property's permitted density might allow further parcelization, a proper subdivision cannot occur without the owner's providing basic necessities, such as road access and standard water. If a property is not already supplied with these necessities, or if it cannot provide them, the land may well be premature for such development, absent special and unusual circumstances.

Providing a standard water system can not be supplanted with a lesser standard. Much as proper access to a lot must be that which can accommodate modern vehicles instead of a horse trail, so must the provision of a standard water be required in view of modern health, safety, fire protection and dependability concerns.

#### 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 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 Unplanned zoning district relative to the minimum lot size, approval of the request would not be consistent with the intent and purpose of the County General Plan and the Subdivision code and will be materially detrimental to the public welfare.

It is furthermore, not the intent and purpose of the subdivision standards nor the goals, policies and standards of the general plan (policy document of the County) to perpetuate the subdivision of land which does not contain a safe, sanitary, and adequate water supply.

For the reasons stated above, this variance application is therefore denied.

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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.

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:smo/4196D

cc/encl: West Hawaii Office