

Planning Department

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720 • (808) 961-8288

Lorraine R. Inouye
Mayor

Norman K. Hayashi
Director

Tad Nagasako
Deputy Director

May 3, 1991

Mr. Howard R. Conant
16275 102nd Avenue, #108
Surrey, British Columbia, Canada V3R 1K5

Dear Mr. Conant:

Variance No. 418 (V90-37)
Tax Map Key 8-7-13:33

We regret to inform you that after re-reviewing your application and the information presented in its behalf, the Planning Director is hereby denying your variance request. The reasons for the denial are as follows:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are no special or unusual circumstances applying to the subject real property which exist either to a degree which deprives the petitioner of substantial property rights that would interfere with the best use or manner of development of the property.

The petitioner's representative is aware that there is no county water system nor private water system in the vicinity of the subject property. In addition, the petitioner's representative is also aware that providing water meeting the requirements of the Department of Water Supply is one of the requirements for any subdivision proposals, and therefore, knew what the limitations were for any subdivision of the subject property.

The subject property as well as the surrounding area is situated within the County's Unplanned zoned district. The permitted uses under this zoned district are mainly agricultural-related uses. Whether a property consists of 28 acres or 5 acres, the best use of development of the property still remains the same, that is, agricultural-related

MAY - 8 1991

Mr. Howard R. Conant
May 3, 1991
Page 2

activities. One single family dwelling is also permitted within the Unplanned zoned district. Presently, a dwelling and agricultural activities and buildings could be allowed to be constructed on the subject property using water catchment/storage system or private water reservoir. These best uses of development again remains the same whether the property consists of 28 acres or 5 acres.

The imposition of water requirements are applied on a uniform basis for all subdivision proposals within the County of Hawaii. In this instance, the petitioner is requesting a waiver from these standards basically to create 4 additional lots with a condition that a specified water catchment/storage system be constructed for human consumption and fire prevention. Further, the petitioner has stated that he needs only 5 acres for his personal use. As pointed out, at present a dwelling and any agricultural-related activities and buildings could be constructed using a water catchment/storage system for water needs. As such, it would not make any difference whether the subject property is subdivided or not, both result in the utilization of water catchment/storage system for development. Therefore, use of water catchment/storage system is not considered to be an alternative per se in providing water needs. As such, we have determined that there is no deprivation of property rights which curtails or reduces existing property development rights. The subject property is presently vacant and has been vacant since March 1990 when the petitioner purchased the property.

Variances are designed to allow deviation from the literal enforcement of the Subdivision Control Code which if strictly applied would deny a property owner of all beneficial use of the land. The mere fact that the property may be put to a more profitable use or manner is not of itself enough to justify granting a variance.

Based on the foregoing, there are no special or unusual circumstances applying to the subject property which would deprive the petitioner or interfere with the best use or manner of development of the property. In addition, use of water catchment/storage system would not make a difference in the development of the property.

Mr. Howard R. Conant
May 3, 1991
Page 3

ALTERNATIVES

In this particular situation, the question of reasonableness has to be viewed against all three criteria for the granting of a variance and not solely on the reasonableness or economic costs of the alternative in trying to resolve the difficulty.

In the evaluation of this application, the imposition of present subdivision requirements may result in additional costs to the petitioner. Improvement costs, however, are borne by all subdividers of land. Under substandard situations, improvement costs are always expected to be higher. However, economic consideration 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 petitioner claims that upgrading the County's water system or drilling of two private wells would not be reasonable options. The petitioner has the alternative to coordinate with other surrounding property owners in the area in the possibility of drilling a cooperative private well(s). The petitioner also has the option in selling the entire 28 acre parcel. However, it should be pointed out again that the petitioner is still afforded to use water catchment/storage system in developing the subject property. Therefore, since the proposed subdivision is within an area where no water system is available 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 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

Mr. Howard R. Conant
May 3, 1991
Page 4

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 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 area's character and adjoining properties which do not have County water system.

Based on the above findings, the Planning Director further concludes that the variance request to allow a 5-lot subdivision without providing water meeting with the minimum water requirements of the Subdivision Control 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 by submitting 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.

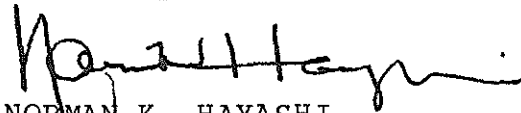
All actions of the Planning Commission are final except that, within thirty days after notice of action, the applicant or an interested party as defined in Section 25-27.2 of this article in the proceeding before the Planning Commission may appeal such action to the Board of Appeals in accordance with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

Mr. Howard R. Conant
May 3, 1991
Page 5

Should you have any questions, please feel free to contact us.

Sincerely,



NORMAN K. HAYASHI
Planning Director

6325d
AK/jdk

cc: Ms. Chrystal Thomas Yamasaki
John Ushijima, Esq. (via certified mail)
Corporation Counsel
West Hawaii Office
Planning Commission

cc: Subdivision Section 90-86
PC Appeal 90-01