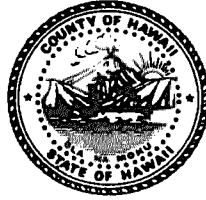


Harry Kim  
Mayor

Wil Okabe  
Managing Director

West Hawai'i Office  
74-5044 Ane Keohokalole Hwy  
Kailua-Kona, Hawai'i 96740  
Phone (808) 323-4770  
Fax (808) 327-3563



**County of Hawai'i**  
**PLANNING DEPARTMENT**

Michael Yee  
Director

Duane Kanuha  
Deputy Director

East Hawai'i Office  
101 Pauahi Street, Suite 3  
Hilo, Hawai'i 96720  
Phone (808) 961-8288  
Fax (808) 961-8742

October 18, 2019

John D. Weeks, II  
John D. Weeks, Inc.  
78-6877 Māmalahoa Highway  
Hōlualoa, HI 96725

Dear Mr. Weeks:

**SUBDIVISION WITHDRAWN**

**SUBDIVIDER: SILVA, Reba Mae**

Proposed Subdivision of Lot 2, Kona-South Estates, Unit 1, Being a Portion of Grant 2791  
Into Lots 2-A Through 2-G, Inclusive  
Kahuku, Ka'ū, Island of Hawai'i, Hawai'i  
TMK: 9-2-150:051 (SUB-90-000063)

Our last action on the subject application dated July 8, 1997, was to acknowledge a final plat map. Additionally, Special Permit No. 998 (SPP-98-000003) was granted to the property. The subject property has changed ownership a number of times since then. As we have not heard anything otherwise, we are deeming the file **withdrawn** and removed it from process. We will also deem related denied variance file, VAR 444 (VAR-90-000033) **null & void**.


Should an election to pursue the subdivision at a later date be made, a new application complete with filing fee must be resubmitted to this department.

Pursuant to Article 4, Section 23-60(c), Chapter 23, Subdivision Control Code, a portion of the filing fee equivalent of ten percent (10%) of the fee or fifty dollars (\$50.00), whichever is greater, shall be retained for applications which have been withdrawn or denied before granted tentative approval. However, tentative approval was issued to the preliminary plat map on October 13, 1992, and therefore, no refund is due.

John D. Weeks, II  
John D. Weeks, Inc.  
October 18, 2019  
Page 2

Should you have any questions, please feel free to contact Hans Santiago or Jonathan Holmes of this department.

Sincerely,

  
MICHAEL YEE  
Planning Director

JRH:tb

\\coh33\planning\public\Admin Permits Division\Subdivision\2019\2019-4\SUB-90-000063Silva WD 10-18-19.docx

xc:     Manager, DWS  
          Director, DPW  
          District Environmental Health Program Chief, DOH  
          Planning Dept.-Kona  
          DPW-Kona  
          Nancy E. Burns, P.E., Nancy E. Burns, P.E. Inc.  
          Steven S.C. Lim, Esq., Carlsmith Ball, LLP  
          G. Bailado, GIS Section (VAR N/V)  
          VAR 444 Denied (N/V)

CERTIFIED MAIL

444  
July 5, 1991

Ms. Reba-Mae Silva  
P.O. Box 372  
Kailua-Kona, HI 96745

Dear Ms. Silva:

Variance Application (V90-33)  
TMK: 9-2-150:51

We regret to inform you that after 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 not found to be special or unusual circumstances applying to the subject real property which exist to a degree which deprive the petitioner of substantial property rights that would interfere with the best use or manner of development of the property.

The fact that there is no County water system serving this area is neither special or unusual for this portion of Kau. These vast areas of substandard subdivisions and houselots without standard water, standard roads or utilities are, in fact, common to the Kahuku area of Kau. The lack of basic infrastructure is also indicative of an area's being premature for proper development.

The extremely low agricultural development and build-up of dwellings (95 percent of the lots are vacant) which have been constructed since the subdivision obtained final approval over 20 years ago is also testimony to the fact that additional subdivision lots are not in demand to fulfill a housing or agricultural need. The petitioner is still afforded the opportunity to construct a dwelling and utilize the subject property for agricultural activities.

JUL 0 8 1991

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 seven (7) lots with a condition that a specified water catchment/storage system be constructed for human consumption and fire prevention. It has been determined that there is no deprivation of property rights which curtails or reduces existing property development rights. 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.

#### 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 extending the County's water system or drilling of two private wells would not be reasonable options due to the construction costs. The petitioner has the alternative to coordinate with other surrounding property owners in the area in the possibility of extending the County water system or drilling a cooperative private well(s).

If very basic infrastructural requirements such as roads and water cannot be provided, the alternative of no further subdivision is considered the most logical and prudent for the health, safety and welfare of the general community. In addition, it is not the interests of the County to increase the supply of substandard subdivision lots especially in remote areas of the island where the development of residences is barely 5 percent.

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 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-3 acre zoning designation 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 lack of a dependable public or approved private water system in the area is evidence that the area is premature for standard development. Granting the variance request would also mean a lowering of the infrastructural standards for subdivided lots which is contrary to the intent of the County's General Plan goals and policies. The Subdivision Control Code exists for the specific purpose of requiring basic standard improvements for every subdivided lot for the safety and well being of future home builders. Increasing the vast overabundance of substandard subdivision lots would not be in the County's interest.

Based on the above findings, the Planning Director further concludes that the variance request to allow a 7-lot subdivision without providing water meeting with the 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 in accordance with the following procedures:

1. Non-refundable filing fee of one hundred dollars (\$100).

Ms. Reba-Mae Silva  
July 5, 1991  
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2. Ten copies of a statement of the specific grounds for the appeal.

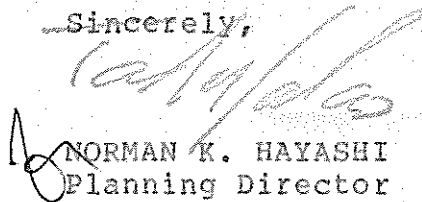
Should you decide to appeal, the Planning Commission shall conduct a public hearing within a period of ninety days from the date of receipt of a properly filed appeal. Within sixty days after the close of the public hearing or within such longer period as may be agreed to by the appellant, the Planning 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 Alice Kawaha of this office at 961-8288.

Sincerely,



NORMAN K. HAYASHI  
Planning Director

AK:mra  
2339D

cc: John D. Weeks, Inc.  
Ms. Rosemary Duarte  
West Hawaii Office