



Planning Department

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

Lorraine R. Inouye
Mayor

Norman K. Hayashi
Director

Tad Nagasako
Deputy Director

CERTIFIED MAIL

October 22, 1992

Mr. and Mrs. Magdalino Malapit
P. O. Box 111
Captain Cook, HI 96704

Dear Mr. & Mrs. Malapit:

Variance Application (V 92-2)
Water Requirements of the Subdivision Code
Tax Map Key: 8-1-17:01

After reviewing your application and the information submitted in its behalf, the Planning Director by this letter hereby certifies the approval of your variance request to permit the development of a two lot subdivision which would not be served by a standard water system.

The property is 8.1 acres in area, identified by Tax Map Key: 8-1-17:01 and is located at the mauka end of a 3450 feet long private road extending west of its junction with the Mamalahoa Highway and 3000 feet north of its intersection with Kaawaloa Road in Keopuka, South Kona. The approval is based on the following:

I. WATER REQUIREMENTS

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances which apply to the real property which exist either to a degree which deprive the applicant 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.

As a result of the rezoning of the property by the Council (Ordinance 91-42) it became a policy of the Council that this particular property be subdivided, with the conditions imposed in the ordinance which reclassified the land from Agricultural 5-acre (A-5a) to Agricultural 1-acre (A-1a).

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The property was rezoned by the County Council despite the denial recommendation from the Planning Department. The rezoning and the attendant conditions imposed by the Council directed the Planning Department in this particular case, to approve the proposed subdivision despite the lack of a standard water system serving the property.

The Director, therefore, hereby carries out the Council's rezoning directive for this property by granting a variance from the standard water system requirement of the subdivision code for this property allowing it to be subdivided without a water system meeting with the standards of the Department of Water Supply.

ALTERNATIVES

Now that the applicant is allowed another meter from the Department of Water Supply he can construct his 3,200 feet of waterline to County standard. However, such a standard pipeline (with pumps, tanks) is estimated to cost nearly \$200,000. Another alternative is to construct a private, non-standard line to feed into a private storage tank; and this is what the applicant now claims he would do, at a fraction of the standard pipeline cost.

INTENT AND PURPOSE

The intent and purpose of the water requirement of the subdivision code is to ensure that all newly subdivided lots in the county are served by a standard, safe, dependable supply of potable water as certified by the County's Department of Water Supply. However, by granting the rezoning for this property in the absence of a standard county water system, in essence the Council as the policy-making body of county government has directed the Planning Department to approve the proposed subdivision without a water system that meets with the standards of the Department of Water Supply. Change of Zone Ordinance 91-42 having been enacted as county policy essentially directs the Director to grant the variance in order for the subdivision to occur. Therefore, the Director in order to implement this specific county policy, Ordinance 91-42, hereby grants the variance from the standard water requirements of the subdivision code, subject to the following conditions:

1. The appellant, its assigns, or successors shall be responsible for complying with all stated conditions of approval.

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2. The appellant, its assigns, or successors shall file a written agreement with the Planning Department prior to receipt of final subdivision approval containing the following stipulations and covenants:
 - a. That the subdivider agrees and accepts the fact that a county dedicable public water system is not now or in the foreseeable future available to service the subdivision and that no portion of the subject property may be further subdivided without first having a water system meeting with the standards of the Department of Water Supply.
 - b. That the subdivider agrees and accepts the fact that the County will not at any time bear the responsibility of supplying public water to the subdivision.
 - c. No ohana dwelling shall be permitted or built on any of the lots resulting from this subdivision unless the applicable road, water and related subdivision code requirements, without variances, are met.
 - d. A written agreement stipulating this condition shall be duly recorded at the Bureau of Conveyances of the State of Hawaii by the Department at the cost and expense of the subdivider.

In the event that there are any amendments or changes to the subdivision after the agreement is executed, the subdivider shall be responsible for informing the Department of the amendments or changes so that the agreements can reflect the amendments or changes; further, the written agreement shall be considered as a condition and covenant running with the land and shall be binding upon the subdivider or owner, his heirs, executors, administrators or assigns and its successors and assigns and shall be incorporated as an exhibit and made part of each agreement of sale, deed, lease or other similar documents affecting the title or ownership of each subdivided lot.

3. The applicant shall install a fully operating private water line complete with the necessary pumps and storage from his water meter to serve both lots created by this subdivision with County piped water prior to obtaining final subdivision approval.

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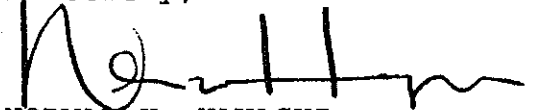
4. All other applicable State and County rules, regulations, and requirements, including those conditions imposed in Change of Zone Ordinance No. 91-42, shall be complied with. Should any of the foregoing conditions not be met, the Planning Director shall proceed to declare this variance permit null and void.

II. ROAD REQUIREMENTS

A variance from the road requirements portion of the applicant's request is moot because the Ordinance permitting the rezoning to A-3a states, as a condition of approval, that the "(D) access to the proposed lots shall meet with the approval of the Department of Public Works." This provision is an ordinance condition which cannot be changed by an administrative variance. The situation still stands that the applicant must provide access to his lot meeting with the approval of the Department of Public Works.

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

Sincerely,



NORMAN K. HAYASHI
Planning Director

DT:mlm/smo
6000D
Enclosure

cc: Councilman Domingo
T. Stuart Murray
DPW
DWS
Subdiv. 91-124
West Hawaii Office