

VAR 572

CERTIFIED MAIL

March 1, 1994

Mr. Avery Freed
P.O. Box 90815
Honolulu, HI 96835-0813

Dear Mr. Freed:

Variance Appliance (VAR 94-10)
Petitioner: Avery Freed
Request: Variance Form Minimum Water Requirements
of Subdivision Control Code
Tax Map Key: 1-3-3:2; Subd. No. 93-158

After reviewing your application and the information submitted on behalf of it, including comments received from consulting agencies, the Planning Director, by this letter, hereby certifies the approval of your variance request to allow the creation of a five (5)-lot subdivision without a water system meeting the minimum water requirements of the County Department of Water Supply as required by Article 6, Division 2, Section 23-84 (1) of the Subdivision Control Code.

The subject property is located approximately one-half (1/2) mile from the ocean, portion of Opihikao Homesteads and Kauaea, Puna, Hawaii.

The Planning Director has concluded that the variance request from the Subdivision Control Code minimum water requirements should be approved based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances that exist which would warrant or necessitate a waiver from the minimum requirements to service the proposed five (5)-lot subdivision. The Department of

02837

MAR 4 1994

Mr. Avery Freed
Page 2
February 23, 1994

Water Supply stated "The proposed subdivision is not within the service limits of the Departments existing water system facilities."

As such, all dwelling on the five (5) lots will be provided with water catchment systems for domestic consumption as well as fire-fighting purposes.

Therefore, considering the foregoing issues, it has been determined that there are special and unusual circumstances applying to the subject 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 interfere with the best use or manner of development of the subject property.

ALTERNATIVES

There are no reasonable alternatives in resolving the required water system requirement. To upgrade the existing County water system by the individual applicant would be not economically feasible. The other alternative would be to drill wells to create a private water system. However, due to the unlimited nature five (5)-lot subdivision not serviced by County water system) of the subdivision, this alternative would be cost prohibitive. Also, there is no assurance that adequate water would be found.

As such, the imposition of upgrading the existing public water system or the creation of a private water system in this area for the proposed five (5) - lot subdivision would be putting excessive demands upon the applicant when a more reasonable alternative is available.

In addition, the area receives adequate annual rainfall to support a private water catchment system. The applicant can also purchase water, if necessary, for the private water catchment system.

INTENT AND PURPOSE

The subject property consisting of 41.383 acres is located within the County's A-1a/A-10a zoned district. Under this zoning designation, the minimum building site area is one (1) and ten (10) acres. The applicant is proposing a five (5)-lot subdivision with area exceeding the minimum one (1) and ten (10) acre lot size requirements of the Zoning Code.

Mr. Avery Freed
Page 3
February 23, 1994

The intent and purpose of requiring a water system in this case is to assure that a adequate water system is available for domestic consumption and fire protection. In this situation, the substitute private water catchment system is considered adequate for this agriculture land.

Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning and Subdivision Control Codes and the County General Plan, will not be materially detrimental to the public's welfare, and will not cause substantial adverse impact to the area's characters and to adjoining properties.

The variance request is, therefore, approved subject to the following conditions:

1. The applicant, his assigns, or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant, his assigns, or successors shall file a written agreement with the Planning Department prior to receipt of final subdivisions approval containing the following stipulations and covenants which 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: of the subdivider:
 - a. The applicant/subdivider agrees and accepts the fact that a County dedicable public water system is not now or in the foreseeable future able to service the subdivision
 - b. The applicant/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. Any existing and/or future dwellings not serviced by County water system constructed on the property shall have a minimum 6,000-gallon water storage facility for domestic consumption for water catchment. This catchment system shall adhere to the Department of Public Works, Building Division's "Guidelines for Owners of Rain Catchment Water Systems" as well as the State Department of Health requirements related to water testing and water purifying devices.

Mr. Avery Freed
Page 4
February 23, 1994

- d. Provide a water supply system sufficient for fire-fighting consisting of a minimum 3,000 gallons of water per existing and/or proposed future dwelling on the property meeting with the approval of the Hawaii County Fire Department. If dwellings are spaced closer than 50 feet apart, 4,000 gallons of water per dwelling will be required.
- e. In the event that there are any amendments or changes to the subdivision after the agreement is signed, the applicant/subdivider shall be responsible for informing the department of the amendments or changes so that the agreement 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 applicants/subdivider or owner, his 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.
- f. No further water variances will be approved for proposed lots No. 1, 2 & 3. Any further subdivisions of said lots will require a County Water System or county approved private water system.
- g. In the event that any of the lots are provided by a water service (individual meter) from the Department of Water Supply or an approved private water system, the above covenants for the specific property will no longer be in effect.
- h. Comply with all other applicable State and County rules and regulations.

Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,



VIRGINIA GOLDSTEIN
Planning Director

EC:jc/2729D

xc: Subdivision No. 93-158
Department of Water Supply