

VAR 620

CERTIFIED MAIL

November 3, 1994

Mr. Steven J. Menezes, Esq.
Menezes Tsukazaki Yeh & Moore
Attorneys At Law
100 Pauahi Street, Suite 204
Hilo, HI 96720

Dear Mr. Menezes:

Variance Application (VAR 94-57)
Applicant: F. Robert Insinger
Request: Variance From Minimum Water System and Roadway
Requirements
Tax Map Key: 1-4-27: 9; Subd. No. 94-72

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 two (2)-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 and with access off of a 40-foot wide private roadway easement with substandard improvements in lieu of the minimum 50-foot wide right-of-way with a twenty foot wide pavement as required by the Subdivision Control Code. The subject property consisting of 50,201 square feet is located within Kapoho Beach Lots Subdivision, Extension 2, Alapai Point Section, Puna, Hawaii.

The approval of the variance request to allow the proposed subdivision without the minimum water requirements is based on the following:

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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 two (2)-lot subdivisions. The Department of Water Supply stated: "The proposed subdivision is not within the service limits of the Department's existing water system facilities."

Therefore, considering the foregoing issues, it has been determined that there are special and unusual circumstances applying to the subject property which exists either to a degree which deprives 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 the subject property.

ALTERNATIVES

There are no reasonable alternatives in resolving the required water system requirements. To bring a County water system into the subdivision by the individual applicant would not be economically feasible.

The other alternative would be to drill wells to create a private water system. However, due to the limited nature of the 2-lot subdivision would also be cost prohibitive. Also, there is no assurance that adequate water would be found. As such, the imposition of upgrading and extending the existing public water system or the creation of a private water system in this area for the proposed two (2) lot subdivision would be putting excessive demands upon the applicant when a more reasonable alternative is available.

In addition, the area receives approximately 100 inches of rain annually which will more than adequately support a private water catchment system. The applicant can also purchase water if necessary for the private catchment system.

INTENT AND PURPOSE

The subject property consisting of 50,201 square feet is located within the County's Single Family Residential 10,000 square feet, zoned district. Under the zoning designation, the minimum building site area is 18,000 square feet. The applicant is proposing a two (2)-lot subdivision with area exceeding the minimum 10,000 square foot lot size requirement of the Zoning Code.

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

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 Code and the County General Plan, and will not be materially detrimental to the public's welfare; and will not cause substantial adverse impact to the area's character and to adjoining property.

The water variance 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 subdivision 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:
 - 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.

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- 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 returning with the land and shall be binding upon the applicant/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. 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.
- g. Comply with all other applicable State and County rules and regulations.

The approval of the roadway variance is 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 roadway requirements for this proposed two (2) lot subdivision. The roadway leading to the proposed subdivision is approximately one and one-half (1 1/2) miles from the Kaimu-Kapoho Road. The roadway is not considered to be a major thoroughfare, secondary arterial or will even serve as a through road for further development of this area.

Therefore, considering the foregoing facts, it is determined that there are special and unusual circumstances applying to the subject property which exist to a degree which deprives the owner or 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 the property.

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ALTERNATIVES

There are no reasonable alternatives in resolving the minimum road requirements. To upgrade approximately one and one-half (1 1/2) miles of the substandard private roadway by the subdivider would not be economically feasible.

The imposition of this off-site improvements to the petitioner alone is unfair and unreasonable as others who stand to benefit are not contributing to the cost of the improvements.

Based on the above circumstances, the off-site improvement requirement is determined to be financially infeasible and would put unnecessary burden and hardship on the petitioner for this limited two (2) lot subdivision.

INTENT AND PURPOSE

The intent and purpose of requiring minimum roadway improvements is to assure that adequate road access is available to serve the subdivision.

The subject property consisting of 50,201 square feet is located within the County's Single Family Residential-10,000 square feet zoned district.

Under this zoning designation, the minimum building site area is 10,000 square feet. The applicant is proposing a two (2) lot subdivision with area exceeding the minimum 10,000 square feet lot size requirement of the Zoning Code.

The existing substandard roadway easement is essentially "grandfathered" in having served the existing lots. The applicant is also aware that any further subdividing of the property served by this access will not be permitted unless the road standards of the Subdivision Control Code are met; meaning no further variance will be considered for this roadway.

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

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

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1. The applicant, its assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. No further subdivision of the subject property utilizing the subject roadway shall be permitted unless said roadway meets Subdivision Control Code requirements without variances.
3. The subdivider shall submit a deed covenant indemnifying the State and County from any liability related to vehicular access to be recorded with the new deeds.
4. Provide roadway improvements fronting the subject subdivision in compliance with the Department of Public Works non-dedicable agricultural standards. Submit construction plans for approval by the appropriate agencies. Deleted
PP. 11-12
4/10/95.
5. Comply with all other applicable State and County rules and regulations.

Sincerely,



VIRGINIA GOLDSTEIN
Planning Director

EC:mjh
5492D

xc: Subdivision No. 94-72
Department of Water Supply
Department of Public Works