

CERTIFIED MAIL

624

December 23, 1994

Mr. Malcolm Raymond Saxby
P.O. Box 771
Hilo, HI 96720

Dear Mr. Saxby:

VARIANCE APPLICATION (VAR 94-65)
APPLICANT: MALCOLM RAYMOND SAXBY
REQUEST: VARIANCIES FROM MINIMUM WATER AND ROAD
REQUIREMENTS OF SUBDIVISION CONTROL CODE
SUBDIVISION NO.94-47
TAX MAP KEY: 1-7-17:128

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.

The subject property is located off South Road, A portion of Olaa Reservation Lots, Keaau, 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 two (2)-lot subdivision.

15638

DEC 25 1994

Mr. Malcolm Raymond Saxby
Page 2
December 23, 1994

The Department of Water Supply stated "That its existing water system facilities cannot support the proposed subdivision at this time without extensive improvements and additions, including source storage, transmission booster pump, and distribution facilities being constructed. The added that sufficient funding is not available and no time schedule is established to do these improvements." As such, all dwellings on the two (2) 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 not be economically feasible. The other alternative would be to drill wells to create a private water system. However, due to the limited nature two (2) -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 two (2) -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 58,862 acres is located within the County's agricultural 20-acre zoned district. Under this zoning designation, the minimum building site area is twenty (20) acres. The applicant is proposing a two (2)-lot subdivision with area exceeding the minimum twenty (20) acre lot size requirements of the Zoning Code.

Mr. Malcolm Raymond Saxby
Page 3
December 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 agricultural 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 character 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 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.

- 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. 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-half (1/2) mile from Huina road. The existing private gravel road right-of-way is forty (40) feet and twenty (20) feet to Huina road, in lieu of the required fifty (50) foot right-of-way with twenty (20) foot pavement. The roadway is not considered to be a major through fare or a secondary arterial.

ALTERNATIVES

There are no other reasonable alternatives in resolving the minimum road requirements. To upgrade approximately one-half (1/2) mile of the substandard private roadway by the substitute

Mr. Malcolm Raymond Saxby
Page 5
December 23, 1994

would not be economically feasible. The imposition of these off-site improvements to the petitioner alone is unfair and unreasonable as others who stand to benefit are not contributing on the cost of the improvements.

Based on the above circumstances, the off-site requirement is determined to be financially infeasible and would place unnecessary burden and hardship on the petitioner for this limited (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 approximately 58:862 acres is located within the County's agricultural 20 acre zoned district. Under this zoning designation, the minimum building site area is twenty (20) lot subdivision with areas exceeding the minimum twenty (20) area lot size requirement of the zoning code.

The existing substandard roadway 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 roadway standards of the subdivision control code are met; meaning no further variance will be considered for this roadway.

Based on the foregoing findings this variance 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's 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 properties.

The roadway is approved, subject to the following conditions:

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 variance.
3. The subdivider shall submit a deed covenant identifying the State and County from any liability related to

Mr. Malcolm Raymond Saxby
Page 6
December 23, 1994

vehicular access to be recorded with the new deeds, including a provision which would prohibit "ohana" dwelling approval.

4. Provide one-half (1/2) street roadway improvements fronting the subject subdivision in compliance with the department of Public Works non-dedicable agricultural standards. Submit construction for approval buy the appropriate agencies.
5. 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/dms
5774D

xc: Subdivision No. 94-97
Department of Public Works