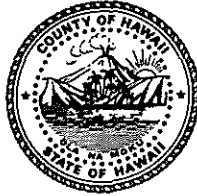


Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Norman Olesen
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-9615

CERTIFIED MAIL
Z 416 229 158

August 2, 1995

Mr. Joel La Pinta
Pangloss Limited Partnership
391 Kilauea Avenue
Hilo, HI 96720

Dear Mr. La Pinta:

Variance No. 671 (VAR 95-30)
Applicant: Pangloss Limited Partnership
Request: Variance From Minimum Water Requirements
of the Subdivision Control Code
Tax Map Key: 1-8-06:01, Lot 78

After reviewing your application, including comments received from other public agencies, the Planning Director approves your variance request for the creation of a six (6)-lot subdivision without a water system meeting the minimum water requirements of the County Department of Water Supply as required by Subdivision Control Code Sec. 23-84 (1).

Location Description. Parcel 01 is a corner lot with the north-east property line fronting North Kulani Road and the south-east property line fronting Cross Road, according to subdivision map (11/30/94), at Olaa New Tract Lots, portion of Olaa Reservation Lots, Olaa, Puna, Hawaii.

Land Use Designation; Minimum Building Site Area. Parcel 01 consists of 48.642 acres and is located within the County's Agricultural 5 acre zone district and the state land use "Agriculture" district. The county zoning designation permits a minimum building site area of five (5) acres. Each parcel of the proposed six (6) lot subdivision is designed to comply with the required minimum five (5) acre building site area.

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Mr. Joel La Pinta
Page 2
August 2, 1995

Variance from Minimum Water Requirements. The variance request from the Subdivision Control Code minimum water requirements is 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 six (6)-lot subdivision. According to Department of Water Supply comments dated December 27, 1994, the existing DWS water system facilities cannot support the proposed subdivision at this time; extensive improvements must be constructed for source, storage, transmission, booster pump, and distribution facilities. Finally, current sufficient funding is not available and no time schedule is set.

Consequently, all dwellings on the six (6)-lots will be provided with water catchment systems for domestic consumption as well as fire-fighting purposes.

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.

INTENT AND PURPOSE

The intent and purpose of requiring a water system in this case is to assure that an adequate water system is available for domestic consumption and fire protection. In this situation, the substitute private water catchment system is considered adequate for the subject agricultural land. The variance would allow the property to be accorded the same treatment as other adjacent and nearby properties. The proposed subdivision would be in accord with the area's character, and according to the applicant, would not be detrimental to the public welfare.

ALTERNATIVES

There are no reasonable alternatives in resolving the required water system. Upgrading the existing County water system by the individual applicant is cost prohibitive and not economically feasible. Another alternative requires the drilling of wells to create a private water system. This option, however, is also not cost effective for the proposed subdivision and there is no assurance that adequate water would be found.

To impose upgrading the existing public water system or to construct a private water system would place an excessive demand upon the applicant when a more reasonable alternative is available.

Mr. Joel La Pinta
Page 3
August 2, 1995

According to the applicant, the upper Puna district has a history of adequate annual rainfall providing a source of water for human consumption and fire protection through the use of individual storage and catchment facilities. If necessary, the applicant can also purchase water for the private water catchment system.

According to the applicant/landowner, they agree to file a written water agreement with the Planning Department before receiving final subdivision approval; the agreement shall be considered a covenant running with the land; the agreement would encompass all concerns relating to adequate storage facilities for human consumption and fire protection, provisions prohibiting ohana (or second dwellings), and other reasonable conditions that are considered necessary.

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. Comply with All Conditions. The applicant, his assigns, or successors shall be responsible for complying with all stated conditions of approval.
2. Requirement of Written Agreement - Stipulations and Covenants. Preparation of Covenants, Recordation, and Payment of Filing Fees Requirement. The applicant/subdivider/landowner, his assigns, or successors shall prepare and file a written agreement with the Planning Department; the agreement shall be submitted to the Planning Department before receiving final subdivision approval; the Planning Department shall record the agreement with the Registrar, Bureau of Conveyances - State of Hawaii; the applicant/subdivider/landowner shall pay for all recordation fees and costs; and, the agreement shall state the deed restrictions and covenants, provided below.
 - 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. Domestic Consumption Rain Catchment Water System. 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. Fire-fighting Water Supply System. 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. For 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 the agreement can state the amendments or changes. The written agreement shall be considered as a condition and covenant that runs 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. When any of the lots are provided water service (individual meter) from the Department of Water Supply or from an approved private water system, the above covenants will no longer be in effect.
- g. Requirement of Covenant Prohibiting a Second or Ohana Dwelling. The applicant/subdivider agrees to record a covenant to prohibit any second dwelling or ohana dwelling on the six individual lots of the proposed subdivision. The deed restriction shall limit the number of dwellings to only one dwelling per lot.
- h. Covenants to Run with Land Requirement. The deed restrictions shall be covenants running with the land. The covenants shall be binding upon the subdivider and landowner, his heirs, executors, administrators or assigns, and successors and assigns and shall be incorporated as an exhibit and made a part of each agreement of sale, deed, lease or other similar

Mr. Joel La Pinta
Page 5
August 2, 1995

documents affecting the title or ownership of each of the six subdivided lots created by Subdivision Application No. 95-03.

- i. 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.

Review of Director's Action; Interested Party. Zoning Code Sec. 25-27(a)(3), provides that an "interested party" may request Planning Commission review of the director's action. The request must be made in writing within ten (10) working days after notice of the director's decision. Consequently, the variance becomes effective after the ten day appeal period has passed; and, an interested party does not request a review of the director's action. Should a request be made, we will inform you of the procedures that must be complied with.

Sincerely,



VIRGINIA GOLDSTEIN
Planning Director

EML:mjs
6696D

xc: Department of Water Supply
Department of Public Works
Subdivision No. 94-03