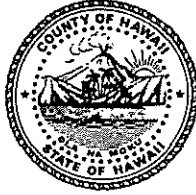


Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Russell Kokubun
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-8742

CERTIFIED LETTER

Z 472 692 323

July 23, 1999

Ms. Chrystal Thomas Yamasaki
Wes Thomas Associates
75-5749 Kalawa Street
Kailua-Kona, Hawaii 96740

Dear Ms. Yamasaki:

Variance Application WH(VAR 99-037)
Variance No. 1032
Applicant: ROBERT A. PETERSON
Owner: ROBERT A. PETERSON
Request: Variance from Water Requirements of Subdivision Code
Tax Map Key: 7-3-008:071

After reviewing your application and the information submitted in behalf of it including comments received from consulting agencies, the Planning Director by this letter hereby denies your variance request to allow the creation of a three (3) 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.

Please accept our sincere apologies for this tardy communication regarding the requested variance. We have been working within the department to improve the efficiency of this process which will hopefully result in more timely responses to future applications. Your patience is appreciated.

The subject property is situated at Kaloko Farm Lots, Lot 6, Tract 1, Being a Portion of R.P. 8214, L.C. Aw. 1715, Ap. 11 to Lota Kamehameha, at Kaloko, North Kona, Hawaii, Tax Map Key: 7-3-008: 071.

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

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are no special and unusual circumstances that exist which would warrant or necessitate a waiver from the minimum requirements to service the proposed three (3) lot subdivision.

1. The applicant submitted a subdivision application (SUB 99-015) and preliminary plat map dated January 22, 1999, proposing to subdivide Lot 6, a 10.257 acre parcel into 3 lots. Further action on the proposed three (3) lot subdivision application is being deferred pending consideration of the subject water variance application.

2. Department of Health memo dated May 24, 1999 states:

"The Department of Health's authority on drinking water quality is based on the definition of a "public water system". A "public water system" means a system for the provision to the public of piped water for human consumption, if such system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year.

Past episodes of water quality concerns for lead, copper, algae and microbial contaminations in private rain catchment systems have identified the need for design standards. Without these control standards the Department of Health would not be able to support the use of these private rain catchment systems for drinking purposes."

3. Department of Public Works, Engineering Division memo dated June 3, 1999 Memo states:

"We have reviewed the subject request and offer no comments."

"If you have any questions please contact Thomas Pack of our Kona office at 327-3530."

4. Department of Public Works, Engineering Division memo dated March 2, 1999 states:

"We have reviewed the preliminary plat and have the following comments.

"1. §23-64. Identify all watercourses and drainage ways and designate areas within as 'approximate areas of flood inundation.'

"2. §23-46. The Planning Department to determine the future road widening setback fronting Kohana Iki Homestead Road.

"3. Access to the subdivision is via a portion of Kohana Iki Homestead Road that is not maintained by the County. §23-87. As a minimum, the DPW recommends improving the right-of-way with a 20-ft wide agricultural pavement within a minimum 50-ft wide right-of-way conforming to Std. Det. R-39 from the northern boundary of parcel 7-3-08:018 to the driveway of Lot 6-A.

"4. Access to subdivision from Mamalahoa is via Road Lot 11, TMK: 7-6-002:033 (private right-of-way). Construct 16-ft wide nondedicable pavement from Mamalahoa Hwy. to the proposed driveway of Lot 2-B, conforming to Std. Det R-39. Recommend that the applicant shall follow-up with construction right-of-entry over the private road.

"5. §23-79. Submit construction plans and drainage report for review and comment.

a. §23-92. Additional storm runoff due to development shall be disposed within the subdivision and shall not be discharged onto adjacent properties or roadways. For planned drywells, satisfy DOH drywell requirements, including issuance of an underground injection control (UIC) permit to the subdivider.

b. §23-93 Install signs and pavement markings as required by the Traffic Division.

Questions may be referred to Cres Rambayon or Kelly Gomes at ext. 8327."

5. Department of Water Supply: (See Exhibit A - April 8, 1999 and May 28, 1999 Memos)

The Department has received the following objections from adjacent and surrounding landowners:

6. Robert E. Lee Jr. - Letter dated June 7, 1999 states: "Reference variance application 99-037 Robert Peterson TMK 7-3-008:071.

"I suggest not to approve unless access is from the Mamalahoa Hwy. Present access is from Kohanaiki Road which is a single lane road that is not maintained by the County or State. We do not need more traffic on Kohanaiki Road. Thank you."

7. James W. Best - Letter dated June 15, 1999 states: "I do not want the subdivision approved unless some or all of these conditions are met.

"1. The access to the property is from Mamalahoa highway and the lower access is closed.

"2. Kohanaiki Rd is improved by widening the paved portion from Hamiha to the property to be subdivided and paving the section of road that fronts the property to be divided.

"3. The water is brought in and a fire hydrant is put at the end to improve public safety in this area.

"4. A stipulation is made that only one house or dwelling is allowed on this property no CPR in the future which would affect the density in this area."

8. Richard A. Decker - Letter dated June 15, 1999 states:

"My wife Amy and I would like to take this opportunity to register our opposition to the proposed subdivision by Mr. Peterson. In specific, we are opposed to any variance that would allow catchment water on the proposed subdivided properties.

"In Mr. Peterson's application, he states that there are no water meter facilities available. This is not correct as Mr. Peterson's property has county water, with a water meter located on Mamalahoa Highway. It is my understanding that subdivided lots carry water rights of the 'parent' lot.

"Few if any of the lots in the surrounding Kohanaiki subdivision have catchment water. We feel that catchment water reduces the value of properties in the area and is not consistent with the character of the area.

"We ask that you reject this application and its associated variance."

9. Nadja and Jeffery A. Glauber letter dated June 8, 1999 states:

"We recommend not to approve unless access is from Mamalahoa Hwy. Present access is from Kohanaiki Road, which is a single lane road, that is not maintained by the County or State. We do not need any more traffic on Kohanaiki Road, since it is already very busy and not safe. Thank you."

10. R. Lee Armbruster - (See Exhibit B - June 15 and June 25, 1999 - Letters)

There are no special and unusual circumstances that exist which would warrant or necessitate a waiver from the minimum requirements to service the proposed three (3) lot subdivision. The Applicant states in a letter dated April 29, 1999 : "1) Applicant has already secured two water meters for two of the three lots; 2) Applicant has already installed the appurtenant private water transmission lines connecting two of the proposed lots by the water meters installed by the Department of Water Supply along the Mamalahoa Highway right of way; 3) Applicant has been assessed by the Department of Water Supply for use of the existing two-meter water system; and 4) Applicant is proposing the best use or manner of development of the property, namely its subdivision into three lots in accordance with the A-3a zoning.

"As to Criteria (b) the Applicant respectfully submits that no public benefit would be gained for requiring him to excavate and remove the existing private water lines leading to the proposed lots and to replace same with the County dedicable standard water mains, since the Department of Water Supply is already collecting bi-monthly assessments based on water usage measured by the two meters in place along Mamalahoa Highway, rather than relocating them some 2,000 feet from the end of the existing water system in Hamiha Street. The Applicant submits that approval of the existing off-site water improvements is a reasonable alternative to providing water from a source that is 2,000 feet from the property. With two of the lots being granted use of the two existing meters, the third dwelling and lot can be retro-fitted for a catchment water system. This area of Koloko receives between 40 to 60 inches of rainfall annually, and it has been common practice for the Planning Department to grant approval of subdivisions based on the use of catchment."

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However, the Department of Water Supply issued the following statements:

Department of Water Supply memo dated April 8, 1999 states in part:

In accordance with the Department's 'Water Commitment Guidelines Policy,' a water commitment for the proposed development in the amount of 600 gallons per day or one additional unit of water is hereby granted until April 30, 2002.

"Final subdivision approval is subject to compliance with the following conditions:

- "1. Construct necessary water system improvements, which shall include, but not be limited to:
 - "a. extend approximately 2,000 feet of 4-inch diameter waterline from the end of the existing 8-inch waterline along Hamiha Street to the property so water can be provided to the proposed subdivision at adequate pressure and volume under peak-flow conditions.
 - "b. cut and plug the existing service lateral at the main upon water service being granted to the subdivision, and
 - "c. install service lateral that will accommodate a 5/8-inch size meter to each lot."

Department of Water Supply letter dated May 28, 1999 states in part:

- "1. The applicant shall provide the lot number and respective account number for the two proposed lots that will continue to receive water from the Department of Water Supply.
- "2. The applicant understands and agrees that the existing meters to the two lots that will have County water are for the existing dwellings only.
- "3. The applicant shall provide the lot number for the third proposed parcel that will not receive water from the Department of Water Supply."

With these improvements the dwellings on the proposed three (3) lots would be provided with county water systems for domestic consumption as well as fire fighting purposes.

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Therefore, considering the foregoing issues, it has been determined that there are no special or unusual circumstances applying to the subject property which exist 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

Section 23-23 of the Subdivision Code requires that subdivisions shall conform to the County general plan and shall take into consideration preliminary plans made in anticipation thereof. Subdivisions shall conform to the requirements of State law, County Department of Public Works, State Department of Health, State Department of Transportation, and County Department of Water Supply requirements and the standards established by this chapter.

Meeting the water supply requirements of the Subdivision Code is not unreasonable. The applicant has stated in his letter dated April 29, 1999, the following: "The existing structures on the property are serviced by two water meters on the Mamalahoa Highway, with the service lines following existing easements to the property. These water meters were granted by the Department of Water Supply for the dwellings that are described earlier. The existing meters have been in use by the property since their installation, with the Department of Water Supply collecting bi-monthly assessments on the existing two-water meter system for the entire period of time."

The applicants ability to comply with the minimum water requirements is available without a variance. Although it will involve costs for the applicant, it is not expected to be an unreasonable option due to the circumstance.

INTENT AND PURPOSE

The subject property consisting of 10.257 acres is located within the County's Agricultural (A-3a) zoned district. Under this zoning designation the minimum building site area is 3 acres. The applicant is proposing a three (3) lot subdivision with areas not exceeding the minimum (3) acre lot size requirement of the Zoning Code.

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. A County dedicated public water system is able to service the subdivision and is considered adequate for this Agricultural land.

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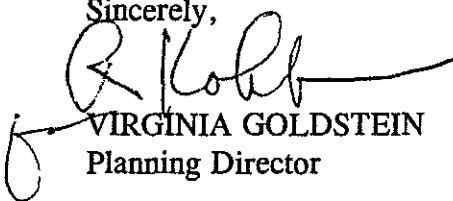
Based on the foregoing findings, this variance request would be inconsistent with the general purpose of the zoning district, the intent and purpose of the zoning and Subdivision Control Codes and the County General plan, and will be materially detrimental to the public's welfare; and will cause substantial adverse impact to the area's character and to adjoining properties.

Therefore, this variance request to allow the creation of a three (3) 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 is hereby denied.

HOWEVER, EFFECTIVE MARCH 3, 1999, THE HAWAII COUNTY BOARD OF APPEALS WILL BE REQUIRED TO HEAR AND DETERMINE APPEALS FROM FINAL DECISIONS OF THE PLANNING DIRECTOR. THIS IS PURSUANT TO A RECENT AMENDMENT TO THE COUNTY CHARTER AS ADOPTED BY THE VOTERS OF THE COUNTY OF HAWAII AT THE GENERAL ELECTION HELD ON NOVEMBER 3, 1998.

Should you have any questions, please feel free to contact Eleanor Mirikitani of this department at 327-3510.

Sincerely,


VIRGINIA GOLDSTEIN
Planning Director

EMM: rld
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xc: West Hawaii Office
Subdivision File