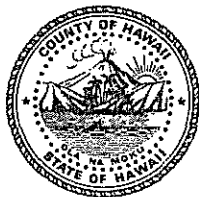


Stephen K. Yamashiro
Mayor



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 MAIL

Z 095 324 953

October 20, 1999

Mr. Hank Correa, Jr.
c/o Mr. Jere A. Henderson
2050 Ainaola Drive
Hilo, HI 96720

Dear Mr. Henderson:

Variance Permit No. 1060 (VAR 99-065)
Applicant: HANK CORREA, JR.
Owner: HENDERSON TIMBERLANDS, LTD.
Request: Variance From Chapter 23, Subdivisions, Article 6,
Division 2, Improvements Required, Section 23-84, Water Supply, (1)
Tax Map Key: 1-3-008:005

After reviewing your variance application and the information submitted, the Planning Director by this letter hereby denies your variance request to allow the creation of a twenty-nine (29) lot subdivision without a water system meeting the minimum requirements of Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply, (1).

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

Special and Unusual Circumstances

There are no special and unusual circumstances that exist which would warrant consideration of and necessitate a variance from the minimum water requirements for the proposed twenty-nine (29) lot subdivision:

009573

OCT 21 1999

Mr. Hank Correa, Jr.
Page 2
October 20, 1999

1. The subject property containing 152.3 acres is Lot 3-A, Being Portion of Grant 3209, Land Court Application 1800 (Map 1), situated at Pohoiki, Puna, Hawaii.
2. The subject property is zoned Agricultural (A-5a) by the County and is designated Agriculture "A" by the State Land Use Commission (LUC).
3. The owners have submitted a subdivision application (SUB 98-143) which includes a preliminary plat map dated November 5, 1998, to subdivide the subject TMK property into twenty-nine (29) lots. Further action on the proposed 29-lot subdivision application has been deferred pending consideration of the subject variance application. On July 19, 1999, the applicant and owners filed a variance application and request: "Variance to allow twenty-two (22) lots to be serviced by water catchment".
4. The Department of Finance-Real Property Tax memorandum dated August 9, 1999 states in part:

"Property receiving agricultural use value."

"Possible rollback taxes"

"Pursuant to HCC Sec. 19-53 (f)(2), a rollback or deferred tax shall be imposed upon the subdivision of the land into parcel (sic) of five acres or less."

"Current Real Property taxes are paid through 12/31/99."
5. The State Department of Health (DOH) memorandum dated August 11, 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 connection or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year.

Mr. Hank Correa, Jr.

Page 3

October 20, 1999

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 catchments systems for drinking purposes."

6. The Department of Water Supply (DWS) memorandum dated August 24, 1999 states in part:

"We have reviewed the subject application and the comments in our memorandum of January 5, 1999 still stand. (A copy is attached.)"

The attached DWS memorandum dated January 5, 1999 states in part:

"We have reviewed the subject application for the proposed subdivision and have the following comments.

Please be informed that water in the area is limited to 7 units of water at 600 gallons per unit per day, or 4,200 gallons of water per day for appropriately zoned existing lots of record. Further, water is not available for change of zone or boundary amendments.

In other words, the Department's existing water system facilities cannot support the proposed subdivision at this time. Extensive improvements and additions are required, which may include the construction of source, storage, transmission, booster pumps, and distribution facilities. Currently, sufficient funding is not available and no time schedule is set."

7. The proof of mailing of notice to the surrounding property owners within 300 feet of the perimeter boundary of the subject property was not submitted by the applicant or authorized representative. One objection letter from the Puna Outdoor Circle dated August 24, 1999 was received on August 27, 1999 and was incorporated into the subject variance file.

Therefore, considering the above facts, information submitted by the applicants, and agency comments, the Planning Director has determined that there are no special or unusual circumstances applying to the subject property which exist either to a degree which deprive the

Mr. Hank Correa, Jr.

Page 4

October 20, 1999

applicant or owners 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 the existing water systems and existing infrastructure and any other preliminary plans to improve the surrounding areas. The Hawaii County Subdivision Code requires that all proposed lots be serviced by the existing county water system, and other agency requirements.

In this particular application the water supply requirements for 7 lots can be addressed and satisfied. However, the subdivision code requirement that the owners and applicant address and provide a water system for 22 additional lots is not unreasonable. It appears the applicants did not investigate or address the minimum water requirements and additional costs necessary to provide a water system to the proposed additional 22 lots, especially in light of the situation where an existing 8 inch water line located within the existing right-of-way that fronts and runs along the entire frontage of the existing property. And, although the costs to develop the subject subdivision may be considerable, this analysis and systems cost is not unreasonable given the number of additional being proposed and created.

The owners and applicant's ability to comply with the minimum water requirements is available without a variance given the existing circumstances.

Intent and Purpose- Water Variance

The intent and purpose of requiring a water system for and within the proposed subdivision is to assure that adequate water is available for human consumption and fire protection.

The analysis of existing site conditions, official maps, and rainfall summaries in the DWS and the Planning Department appear to support the rainfall data and information submitted by the applicant. The analysis of available private and public information appears to indicate that there is adequate rainfall within the subject property and surrounding areas to support individual or separate private rain water catchment systems for potable and emergency uses. However, there is an existing 8 inch county water line and fire hydrants within the existing public right-of-way fronting the proposed subdivision. This existing county water line can provide water to 7 of the proposed 29 lots. The existing public water system can and should be utilized to provide water to the remaining 22 lots.

Mr. Hank Correa, Jr.

Page 5

October 20, 1999

DETERMINATION-VARIANCE CONDITIONS

The subject variance application was deemed complete by the Planning Department on July 19, 1999. Please accept our sincere apologies for this slow and tardy communication regarding the requested variance. We have been working with the DWS to understand the current water requirements and other affected agencies to improve the efficiency of the variance process which will hopefully result in more timely responses to future and similar variance applications. Your patience is appreciated.

Based on the foregoing findings, this denial of the subject variance request would be consistent with the general purpose of the zoning district and the intents and purposes of the Zoning Code, Subdivision Code and the County General Plan. Furthermore, the variance requested 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.

Therefore, this variance requested to allow 22 lots of a proposed 29 lot subdivision, to be created 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. The preliminary plat map (SUB 98-143) dated November 5, 1998 to subdivide the existing property into 29 lots is hereby declared null and void.

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 contact this office.

Sincerely,


VIRGINIA GOLDSTEIN
Planning Director

WRY/RK:gp

F:\WP60\WRY\FORMLETT\VARDENY1.HC1

Mr. Hank Correa, Jr.

Page 6

October 20, 1999

xc: Department of Water Supply
SUB 98-143
Puna Outdoor Circle