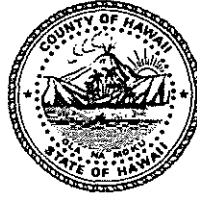


Stephen K. Yamashiro
Mayor



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

P 417 370 188

January 19, 1999

Kohala Group, LLC.
c/o Mr. Ivan Esterle
P.O. Box 1217
Kapaau, Hawaii 96755

Dear Mr. Esterle:

Variance Application WH(VAR 98-070)
Variance No.975
Applicant: KOHALA GROUP, LLC.
Owner: KOHALA GROUP, LLC.
Subdivision Application No. 98-102
Request: Variance from Water Requirements of Subdivision Code
Tax Map Key: 5-2-005: 013

After reviewing your application and the additional information submitted, the Planning Director by this letter hereby certifies the approval of 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 Code.

Please accept our sincere apologies for this tardy confirmation of the approval granted to allow 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 Lot 52, Map 16, Land Court Application 1332, Niulii North Kohala, Hawaii, Tax Map Key: 5-2-005: 013.

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

000858

JAN 28 1999

Kohala Group, LLC
c/o Mr. Ivan Esterle
Page 2
January 19, 1999

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances that exist which would warrant or necessitate a variance from the minimum water requirements to service the proposed three (3) lot subdivision.

1. The applicant submitted a subdivision application (SUB 98-102) and preliminary plat map dated August 27, 1998, proposing to subdivide Lot 52, a 60 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 November 16, 1998 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 December 1, 1998 states:

"We have reviewed the subject request and have no comment."

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

4. Department of Water Supply memo dated November 13, 1998 states:

"We have reviewed the subject application and the comments in our memorandum of September 23, 1998 still stand. (A copy is attached.)"

Kohala Group, LLC
c/o Mr. Ivan Esterle
Page 3
January 19, 1999

If you have any questions please contact our Water Resources and Planning Branch at 961-8660.

5. Department of Water Supply memo dated September 23, 1998 states:

We have reviewed the subject application and have the following comments.

Please be informed that the subject property is not within the service limits of the Department's existing water system facilities.

The nearest Department of Water Supply water system facility is at the end of an existing 6-inch waterline along the Government Main Road approximately 3,500 feet from the property.

6. The Department has not received any objections from adjacent or surrounding landowners.

Therefore, considering the foregoing issues, the Planning Director has determined that there are special and 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

There are no reasonable alternatives in resolving the required water system requirements. 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 (3-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 three (3) lot subdivision would be putting excessive demands upon the applicant when a more reasonable alternative is available.

The applicant's report states that the area receives approximately 109.3 inches of rainfall annually. This report appears to indicate that the area receives adequate rainfall to support a

Kohala Group, LLC
c/o Mr. Ivan Esterle
Page 4
January 19, 1999

private rain water catchment system. The applicant can also purchase water if necessary to supplement the private rain water catchment system.

INTENT AND PURPOSE

The subject property consisting of 60 acres is located within the County's Agricultural (A-20a) zoned district. Under this zoning designation the minimum building site area is 20 acres. The applicant is proposing a three (3) lot subdivision with each lot not exceeding the minimum (20) acre lot size requirement of the Zoning Code.

The intent and purpose of requiring a water system is to assure that an adequate water system is available for domestic consumption and fire protection. In this situation, the substitute private rain water catchment system is considered adequate for this Agricultural land.

DETERMINATION - VARIANCE CONDITIONS

Based on the foregoing findings, this 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, this variance 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.

This variance request is therefore approved, subject to the following conditions:

1. The owner, assigns or successors shall be responsible for complying with stated conditions of approval.
2. The owner, 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 at the expense of the subdivider:
 - a. The owner agrees and accepts the fact that a County dedicated public water system is not now or in the foreseeable future able to service the subdivision.
 - b. The owner agrees and accepts the fact that a County dedicated public water system shall not at any time bear the responsibility of supplying public water to the subdivision.

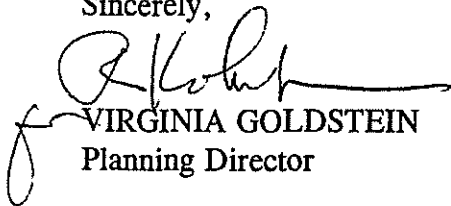
- c. Any existing and/or future dwellings not serviced by County water system constructed on the property shall be provided with and maintain a private rain water catchment system with a minimum 6,000 gallon water storage facility for domestic consumption. This catchment system shall adhere to the Department 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. Any existing and/or future dwellings shall be provided with and maintain a private water supply system which includes an additional water storage capacity at a minimum of 3,000 gallons of water for fire fighting and emergency purposes. The design, including appropriate connector system, and location of the additional water storage capacity shall meet with the approval of the Hawaii County Fire Department. The Fire Department also advises as a precautionary measure for other uninhabited agricultural structures that consideration be given to the provision of similar water storage system for fire fighting and emergency purposes.
- e. In the event that there are any amendments or changes to the subdivision after the agreement is signed, the owner 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 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 subdivider lot.
- f. In the event that any of the lots are provided with 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. The owner, assigns or successors shall comply with all other applicable State and County rules and regulations pertaining to subdivisions and land use.

Kohala Group, LLC
c/o Mr. Ivan Esterle
Page 6
January 19, 1999

Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Should you have any questions, please feel free to contact Royden Yamasato of this department.

Sincerely,


VIRGINIA GOLDSTEIN
Planning Director

EMM: rld
a:\52005013\kohala.app

xc: West Hawaii Office
Subdivision File