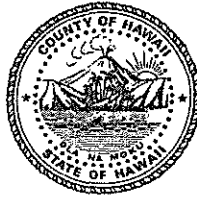


Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Russell Kokubun
Deputy Director

County of Hawaii

CERTIFIED MAIL

7000 0600 0024 2904 6808

PLANNING DEPARTMENT

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

December 4, 2000

Mr. Gregory R. Mooers
Mooers Enterprises LLC
P.O. Box 1101
Kamuela, Hawaii 96743

Dear Mr. Mooers:

Variance Application WH(VAR 00-083)
Variance No. 1167
Applicant: GREGORY R. MOOERS
Owners: LAUPAHOEHOE PROPERTIES, LLC
Subdivision Application No. 2000-0112
Variance from Water Requirements of Subdivision Code
Tax Map Key: 8-7-002: 007 & 008

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 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 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 properties are a Portion of Grant 1974 to Lumilumi situated at Pahoehoe 1st - 4th, South Kona, Hawaii, Tax Map Key: 8-7-002:007 & 008.

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

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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 2000-0112) on July 21, 2000, with a preliminary plat map dated April 7, 2000, proposing to subdivide 14.664 acres, identified as Tax Map Key: 8-7-002:007 & 008, into 2 lots. Further action on the proposed two (2) lot subdivision application is being deferred pending consideration of the subject water variance application.

2. Department of Health memo dated October 24, 2000, 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 Water Supply memo dated October 20, 2000, states:

"We have reviewed the subject application and the comments in our memorandum of August 3, 2000 still stand. (A copy is attached.)

"Should there be any questions, please call our Water Resources and Planning Branch at 961-8665."

4. Department of Water Supply memo dated August 3, 2000, states:

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

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"Please be informed that the proposed subdivision is not within the service limits of the Department's existing water system facilities. The nearest Department of Water Supply's water system facility is at the end of an existing 8-inch waterline along the Mamalahoa Highway, approximately 2.3 miles from the property.

"Should there be any questions, please call our Water Resources and Planning Branch at 961-8665."

5. The Department has not received any objections from the public or adjacent 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 a well to create a private water system. However, due to the limited nature (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.

The subject properties are comprised of approximately 14.664 acres and are located on the eastern side of the Mamalahoa Highway, just north of the Kona Paradise subdivision.

The Soil Conservation Service Soil Survey Report classifies soils in the area of the subject property as Kaimu extremely stony peat, 6 to 20 percent slopes (rKED). The Kaimu series consists of well-drained, thin organic soils over Aa lava. These are gently sloping to moderately steep soils on uplands at an elevation ranging from near sea level to 1,000 feet. They receive from 40 to 60 inches of rainfall annually, and their mean soil temperature is

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between 72° and 74° F. This report appears to indicate that the area receives adequate rainfall to support a private rain water catchment system.

The Department of Land and Natural Resources' An Inventory of Basic Water Resources Data: Island of Hawaii indicates that the area of the subject property receives adequate annual rainfall to support a private water catchment system. The nearest rain gauge with long term reports is the Pahoehoe rain gauge, State Key No. 25.0, which indicates that the median annual rainfall for this area is 51 inches.

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

INTENT AND PURPOSE

The subject properties consisting of 14.664 acres are located within the County's Agricultural-5 acres (A-5a) zoned district. Under this zoning designation the minimum building site area is 5 acres. The applicant is proposing a two (2) lot subdivision with each lot not exceeding the minimum five (5) 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:

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- 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. Hawaii County Fire Department's recommendation that accessory agricultural structures should also be considered for emergency fire protection.
- 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 subdivided lot.
- f. In the event that any of the lots are provided with water service from the Department of Water Supply or an approved private water system, the owners shall connect and utilize such approved water system and comply with Department of Water Supply rules and regulations.

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- g. No variance from the minimum water requirements for the proposed lots shall be applied for in the future.
- h. The owner, assigns or successors shall comply with all other applicable State and County rules and regulations pertaining to subdivisions and land use.

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 Pamela Harlow of this department at 327-3510.

Sincerely,


VIRGINIA GOLDSTEIN
Planning Director

PLH: rld

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xc: West Hawaii Office
Subdivision File