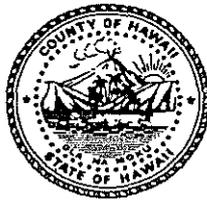


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
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

7000 0600 0024 2904 8482

April 30, 2001

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

Dear Mr. Mooers:

Variance Application WH(VAR 00-087)
Variance No. 1197
Applicant: GREGORY R. MOOERS
Owner: PETER POMERANZE
Subdivision Application No. 2000-0094
Variance from Water Requirements of Subdivision Code
Tax Map Key: 5-2-8: Portion of 2

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 of the requested variance. Section 23-18 of the Subdivision Code states, in part, "The director shall, within sixty days after the filing of a proper application or within a longer period as may be agreed to by the applicant, deny the application or approve it subject to conditions." For the record, we confirm that you have agreed to several time extensions to allow the department to process the subject application.

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The subject property is comprised of portions of Lot 9-A-7-B-2 (Map 12) and Exclusion 10 of Land Court Application 1332 situated at Niulii, North Kohala, Hawaii, Tax Map Key: 5-2-008: Portion of 002.

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

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 two (2) lot subdivision.

1. The applicant submitted a subdivision application (SUB 2000-0094) on June 20, 2000, with a preliminary plat map dated June 14, 2000, proposing to subdivide a 15-acre portion of a 23.110-acre parcel of land identified as Tax Map Key: 5-2-008:002 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 November 8, 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 November 6, 2000, states:

"We have reviewed the subject application. Please refer to our memorandum of July 5, 2000 to you for our comments and requirements. We are enclosing a copy for your information.

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

4. Department of Water Supply memo dated July 5, 2000, states:

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

Water can be made available from an existing 6-inch waterline along Niulii-Mahukona Main Government Road fronting Lot B and from the end of the existing 6-inch waterline, approximately 150 feet from Lot A.

Pursuant to the Department's "Water Commitment Guidelines Policy," a copy of which is being forwarded to the applicant, a water commitment may be issued. Based on the one additional unit requested in the proposed 2-unit development, the required water commitment deposit is \$150.00.

Remittance by the applicant of the \$150.00 is requested as soon as possible so that a water commitment may be formally issued. The commitment will be in writing with specific conditions and effective dates stated. Please keep in mind that this letter shall not be construed as a water commitment. In other words, unless a water commitment is officially effected, water availability is subject to change depending on the water situation.

For the applicant's information, final subdivision approval will be subject to compliance with the following requirements:

1. Construct necessary water system improvements, which shall include, but not be limited to:
 - a. approximately 150 feet of 6-inch waterline must be extended from the end of the existing 6-inch waterline along Niulii-Mahukona Main Government to Lot A, and
 - b. service laterals that will accommodate the 5/8-inch sized meters to each lot.

Submit construction plans and design calculations prepared by a professional engineer, registered in the State of Hawaii, for review and approval.

3. Remit the prevailing facilities charge, which is subject to change, of \$3,938.00. This is due and payable upon completion of the installation of the required water system improvements and prior to final subdivision approval being granted.

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4. The appropriate documents shall be submitted, properly prepared and executed, to convey the water system improvements and necessary easements to the Water Commission of the County of Hawaii prior to final subdivision approval being granted. A registered land surveyor shall stamp and certify the metes and bounds description within the conveyance documents. However, prior to water meter services being granted to the development, or any lots within, the conveyance documents shall be accepted by the Water Commission.

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

5. Department of Water Supply memo dated December 27, 2000, states:

"This is an update of our Water Availability Guidelines as it relates to the subject parcel and the associated applications.

As part of the requirements for tentative subdivision approval, as stated in our July 5, 2000 letter, a \$150 deposit was requested of the applicant to secure a water commitment for an additional unit in the proposed 2-lot subdivision. Subsequently, the guidelines, as of September 2000, have changed and a moratorium has been imposed that limits water availability to only a single 5/8-inch meter per each existing lot of record. As a result, since a commitment was never secured, additional water is not available for the proposed subdivision.

This moratorium was imposed because of the vulnerability during droughts of the Murphy Tunnel source and water quality concerns. This is presently the sole source of water for the Makapala Water System. Realizing this, the Department is actively pursuing the development of a well within its existing reservoir site and plans have been completed for the exploratory well. Hopefully, the production well will be completed within 3 years and at that time, the existing moratorium will be relaxed and additional water will be available.

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

6. 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

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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. While it is economically feasible for the individual applicant to upgrade the existing County water system on his property by extending the waterline to service both lots in the proposed subdivision, water cannot be made available by the Department of Water Supply for a second meter until it improves the Makapala Water System by constructing a production well. The Department of Water Supply estimates that this well could be completed within three years.

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 property is comprised of approximately 15.000 acres and is located on the southern side of the Niulii-Mahukona Government Main Road.

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 Niulii Office rain gauge, State Key No. 179.0, which indicates that the median annual rainfall for this area is 57.81 inches.

If necessary, the applicant can also purchase water if necessary to supplement the private rain water catchment system. There are other homes in the area that depend on rain water catchment systems to provide their potable water.

INTENT AND PURPOSE

The subject property consisting of a 15-acre portion of a 23.110-acre parcel is located within the County's Single-Family Residential – 15,000 s.f. (RS-15) and Agricultural-20 acres (A-20a) zoned districts. Under these zoning designations the minimum building site areas are 15,000 square feet and 20 acres, respectively. The applicant is proposing a two (2) lot subdivision by dividing the property based on the two different zoning designations. The Single-Family

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Residential zoned land, identified as Lot "B" in the subdivision map, can be serviced by the existing Department of Water Supply waterline fronting that portion of the property.

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 the Agricultural zoned land, identified as Lot "A" in the subdivision map, which is not currently serviced by the existing Department of Water Supply waterline.

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 install approximately 150 feet of 6-inch waterline from the end of the existing 6-inch waterline along Niulii-Mahukona Main Government to Lot "A", and service laterals that will accommodate the 5/8-inch sized meters to both Lots "A" and "B". The waterline will be a dry line constructed and maintained at the owner's expense until such time as the County Department of Water Supply completes necessary improvements to the Makapala Water System and is able to provide additional water for Lot "A." Prior to installing the dry waterline, the owner shall submit construction plans and design calculations prepared by a professional engineer, registered in the State of Hawaii, for review and approval by the Department of Water Supply. At the time the Department of Water Supply is able to provide additional water to service Lot "A," the owner shall dedicate the waterline to the County in accordance with the Department of Water Supply's rules and regulations.
3. 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 able to service Lot "A" of 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 Lot "A" of the subdivision.
- c. Any existing and/or future dwellings not serviced by County water system constructed on Lot "A" 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. 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,



CHRISTOPHER J. YUEN
Planning Director

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xc: County Department of Water Supply
West Hawaii Office
Subdivision File