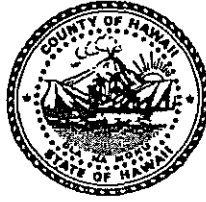


Harry Kim
Mayor



Christopher J. Yuen
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 2060

January 19, 2001

Mr. Hank Correa, Realtor
2050 Ainaola Drive
Hilo, HI 96720

Dear Mr. Correa:

Variance Permit No. 1175 (VAR 00-095)
Applicant: HENRY CORREA, REALTOR
Owners: WILLIAM KENISON, ET AL.
Request: Variance From Chapter 23, Subdivisions, Article 6,
Division 2, Improvements Required, Section 23-84, Water Supply, (1)
Tax Map Key: 2-4-007:098, Lot 1715-B (SUB94-158)

After reviewing your variance application and the information submitted, and other Subdivision and Variance files in this office and the Department of Water Supply (DWS), the Planning Director by this letter hereby denies your variance request to further subdivide the subject property into eleven (11) lots without a water system meeting the minimum requirement of Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply, (1).

The Planning Director has concluded that the subject variance request should be denied based on the following findings.

SPECIAL AND UNUSUAL CIRCUMSTANCES/FINDINGS

There are no special and unusual circumstances that exist which would warrant consideration of a variance from the minimum water requirements for the proposed eleven (11) lot subdivision of the subject property:

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1. The subject property containing 72 +/- acres, is a Portion of Grant 7115 to Manuel R. Lucas, Waiakea Homesteads, Third Series, Situated at Waiakea, South Hilo, Hawaii. The subject property was formerly a portion of TMK: (3) 2-4-007:008.

It appears that the subject property, Lot 1715-B, containing 72.0063 acres, was created by a 2-lot subdivision (SUB 5780) of TMK: (3) 2-4-007:008 on June 8, 1989, by the Planning Department. Reference is made to a Final Subdivision plat map dated April 27, 1989; showing approved Lot(s) 1715-A and 1715-B on June 8, 1989, in the approved subdivision file (SUB 5780).

Pursuant to subdivision file (SUB 5780), Lot(s) 1715-A and 1715-B are subject to six (6) requirements contained in "NOTICE OF GRANT OF VARIANCE" recorded at the State of Hawaii Bureau of Conveyances, dated June 13, 1989, Liber 23287, Page 591.

The approved lots, Lot 1715-A and Lot 1715-B, are subject to the following requirements or recorded covenants affecting future building improvements or development:

"1. That a County dedicable public water system is not now or in the foreseeable future available to service the subdivision, and that no portion of the subject property may be further subdivided without first having a water system meeting with the standards of the Department of Water Supply, County of Hawaii.

2. That the County will not at any time bear the responsibility of supplying public water to the subdivision.

3. That any future dwellings constructed on the property shall have a minimum of One Thousand Five Hundred (1,500) square feet of roof catchment surface with a minimum of Ten Thousand (10,000) gallon water storage facility.

4. That this notice shall be duly recorded at the Bureau of Conveyances of the State of Hawaii by Planning at the cost and expense of Applicants.

5. That any amendments or changes to the subdivision after date of this agreement shall be reported to Planning by the Applicants and are incorporated and made part of this notice by reference thereto.

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6. That this notice shall be considered a legal covenant running with the land and shall be binding upon the Applicants, their heirs, personal representatives or assigns or its successors and assigns, and shall be incorporated by reference as an exhibit and made part of each agreement of sale, deed, lease or other similar documents affecting the title of ownership of each subdivided lot."

2. Lot 1715-B is zoned Agricultural (A-3a) by the County and is designated Agriculture "A" by the State Land Use Commission (LUC).
3. Subsequent to the approval of SUB 5780, effective June 8, 1989 and subject to the recorded requirement and legal covenants, the owners of the subject property (Lot 1715-B) submitted another subdivision application (SUB 94-158) on October 31, 1994 to subdivide the property into six (6) lots. Pursuant to Planning Department letter dated January 24, 1994, further action to consider the 6-lot subdivision was deferred to March 24, 1995. Subsequently, a revised preliminary plat map dated October 7, 2000, was submitted by Henry Correa (applicant) to subdivide the subject property into eleven (11) lots. Further action on the proposed 11-lot subdivision application was deferred by Planning Department letter dated November 15, 2000. The applicant (Correa) filed the subject variance application on November 21, 2000; and, further action on the pending 11-lot subdivision application has been deferred pending consideration of the subject variance application.

The applicant submitted the subject variance application on November 21, 2000 and included a written explanation with the variance application. Reference is made to "ATTACHMENT TO", dated "11/15/00" in the subject variance file.

The written explanation or "ATTACHMENT TO" does not address or include information regarding the previous subdivision approval (SUB 5780) or recorded deed restrictions affecting the subject property (Lot 1715-B).

4. The Department of Water Supply (DWS) memorandum, dated December 26, 2000, states in part:

"We have reviewed the subject application and the comments in our memorandum of November 17, 1994, and October 23, 2000 still stand.

The DWS memorandum, dated November 17, 1994, states in part:

"Please be informed that the proposed subdivision is not within the service limits of the Department's existing water system facilities." (Note: Original subdivision's preliminary plat map proposing a 6-lot subdivision).

The DWS memorandum dated October 23, 2000, states in part:

"We have reviewed the revised preliminary plat map. Please refer to our memorandum of November 17, 1994 for our comments and requirements."
(Note: Subdivision's revised preliminary plat map, dated October 7, 2000, proposing an 11-lot subdivision).

5. The State Department of Health (DOH) memorandum dated December 27, 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 connection or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. All public water systems are regulated by the Department of Health and shall be in compliance with the Hawaii Administrative Rules, Title 11, Chapter 20.

Past episodes of water quality concerns for lead, copper, algae and microbiological and chemical contaminations in private rain catchment systems have identified the need for self-monitoring. The Department of Health does not support the use of these private rain catchment systems for drinking purposes since the quality may not meet potable water standards."

6. The Department of Finance-Real Property Tax memorandum dated January 18, 2001, "Tax Map Key: (3) 2-4-007-098" states in part:

"Property is receiving agricultural use value"

"Possible rollback taxes"

"Current"

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“Remarks: Real Property taxes are paid through December 31, 2000.”

7. The proof of mailing of notices to the surrounding property owners was received on December 15, 2000.

Comments regarding the subject variance application were received from Mr. Paul M. DeSilva on December 20, 2000. The Planning Director received the following letters responding to Mr. DeSilva's comments:

1. Letter from Ms. Jan Mahuna, Realtor, representing William and Sunday Kenison, dated January 11, 2001;
2. Letter from Mr. William P. Kenison, dated January 11, 2001; and,
3. Letter from the Applicant, Mr. Henry “Hank” Correa, dated January 12, 2001.

The above comments and letters received have been incorporated into the subject variance file for the record.

Therefore, considering the above facts and recorded requirements and covenants affecting SUB 5780 and Lot(s) 1715-A and 1715-B, the Planning Director has determined that Lot 1715-B may not be further subdivided without a water system meeting with the standards of the Department of Water Supply, (DWS), County of Hawaii.

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

Pursuant to the recorded requirements/covenants affecting Lot 1715-B, any further subdivision requires the applicant's to improve the existing county water system and provide the necessary dedicated water system improvements in accordance with DWS standards. Otherwise, an alternative would be to design, drill and develop private wells and install the necessary water system improvements in accordance with DWS standards.

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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.

DETERMINATION-VARIANCE CONDITION

Based on the foregoing findings, the subject variance to allow a proposed eleven (11) lot subdivision of the subject property (Lot 1715-B) without a water system meeting with the minimum improvements pursuant to the Hawaii County Code, Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply, (1) is hereby denied.

Therefore, the preliminary plat map dated October 7, 2000, and subdivision application (SUB 94-158) proposing to further subdivide Lot 1715-B into eleven (11) lots without a water system meeting with the minimum improvements pursuant to the Hawaii County Code, Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply, (1) is hereby denied and declared null and void.

APPEAL OF DECISIONS BY PLANNING DIRECTOR

In accordance with a recent charter amendment on November 3, 1998, and Ordinance No. 99-112, effective October 18, 1999, you may appeal the director's decision and request the following:

- (a) Any person aggrieved by the decision of the director in the administration or application of this chapter, may, within thirty days after the date of the director's written decision, appeal the decision to the board of appeals.
- (b) A person is aggrieved by a decision of the director if:
 - (1) The person has an interest in the subject matter of the decision that is so directly and immediately affected, that the person's interest is clearly distinguishable from that of the general public: and
 - (2) The person is or will be adversely affected by the decision.

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- (c) An appeal shall be in writing, in the form prescribed by the board of appeals and shall specify the person's interest in the subject matter of the appeal and the grounds of the appeal. A filing fee of \$250 shall accompany any such appeal. The person appealing a decision of the director shall provide a copy of the appeal to the director and to the owners of the affected property and shall provide the board of appeals with the proof of service.
- (d) The appellant, the owners of the affected property, and the director shall be parties to an appeal. Other persons may be admitted as parties to an appeal. Other persons may be admitted as parties to an appeal, as permitted by the board of appeals.

The board of appeals may affirm the decision of the director, or it may reverse or modify the decision, or it may reverse or modify the decision or remand the decision with appropriate instructions if based upon the preponderance of evidence the board finds that:

- (1) The director erred in its decision; or
- (2) The decision violated this chapter or other applicable law; or
- (3) The decision was arbitrary or capricious or characterized by and abuse of discretion or clearly unwarranted exercise of discretion.

In view of the above, we have enclosed GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR.

Should you have any questions on the above, please feel free to contact this office at (808) 961-8288.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

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Enclosure

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xc: Department of Water Supply
SUB 94-158