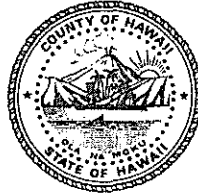


Harry Kim
Mayor



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

April 16, 2001

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

Dear Mr. Mooers:

VARIANCE PERMIT NO. 1196 (VAR 01-16)
Applicant: GREGORY R. MOOERS
Owner: JACK RAMOS RANCH, INC.
Request: Variance from Chapter 23, Subdivisions Article 6,
Division 2, Improvements Required, Section 23-84, Water Supply, (1)
Tax Map Key: 3-5-003:027 & 3-5-004:008 (VAR 01-16) (SUB 99-064)

After reviewing your variance application and the information submitted, the Planning Director certifies the approval of your variance from Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply, (1). Variance Permit No. 1196 is hereby issued to allow the creation of a ten (10) lot subdivision without a water system meeting with the minimum requirements of the Department of Water Supply (DWS).

The Planning Director has concluded that the variance from the minimum subdivision water system requirements be approved based on the following findings.

1. The subject property containing 128.60 +/- acres, is a portion of Grant 908 and a portion of Grant 904, being also a portion of the Roadway Subdivision, Papaaloa and Kaiwilahilahi, North Hilo, Hawaii.
2. The subject property is zoned Agricultural (A-10a and A-20a by the County and is designated Urban "U" by the State Land Use Commission (LUC). Approximately 31 acres is zoned A-20a and approximately 97 acres is zoned A-10a. A maximum of 10 lots could be created.

003379

APR 17 2001

Mr. Gregory R. Mooers
Mooers Enterprises, LLC
Page 2
April 16, 2001

3. The owners of the subject property originally submitted a subdivision application (SUB 99-064) on May 28, 1999 to subdivide the property into (10) lots. Pursuant to Planning Department letter dated July 6, 1999, further action to consider the 10-lot subdivision was deferred. The applicant filed the subject variance application on February 8, 2001; and, further action on the pending 10-lot subdivision application has been deferred pending consideration of the subject variance application.
4. The Department of Water Supply (DWS) memorandum, dated June 10, 1999, states in part:

"Please be informed that lot Nos. 2 through 9 are not within the service limits of the Department's existing water system facilities. In other words, lot Nos. 2 through 9 are at an elevation where water will not be available at adequate pressure and volume under peak-flow conditions."

"Please refer to our memorandum of August 20, 1998 to you for our comments and requirements."

The August 20, 1998 memorandum states in part:

"Although water can be made available from existing six (6) and eight (8) inch waterlines within Papaaloa Avenue and the easement to our reservoir (Tax Map Key 3-5-003:075), the applicant should be aware that several of the proposed A-10 zoned lots will be outside the service limits for a valid subdivision. Therefore, in order to comply with this limitation, the applicant should either reconfigure the lots or construct water system improvements to service these lots that would include, but not limited to, booster pump, transmission/distribution waterlines, and a reservoir at suitable elevation."

Mr. Gregory R. Mooers
Mooers Enterprises, LLC
Page 3
April 16, 2001

5. The State Department of Health (DOH) memorandum dated March 9, 2001 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 catchment systems for drinking purposes since the quality may not meet public water standards."

6. The Department of Finance-Real Property Tax memorandum dated March 8, 2001, referring to Tax Map Key: 3-5-003-027; 3-5-004-028, states in part that "the Property is receiving agricultural use value; Possible rollback taxes; and Real Property taxes are paid through June 30, 2000."
7. The proof of mailing of notices to the surrounding property owners was received on March 7, 2001.
8. In support of the Application, the Applicant states in part:
"The goal of this subdivision is to create ten 10-acre lots in compliance with the existing zoning. When the subdivider acquired this property it was zoned for a much higher density (RS-10) and was anticipated to be a support housing area for the sugar industry in Hamakua. With the demise of sugar, the need for such housing no longer exists. There is a need for affordable ten-acre parcels for diversified agriculture in this area. The applicant sought to amend the previous zoning designation and on May 4, 1999 Mayor Yamashiro signed this newly amended Ordinance No. 166 designating this property to A-10a.

Mr. Gregory R. Mooers
Mooers Enterprises, LLC
Page 4
April 16, 2001

There is a Department of Water Supply reservoir on the site and water lines are integrated through out the proposed subdivision. The applicant presently has two one inch meters servicing the agricultural activities on the site, which includes pasturing cattle for the applicant's ranching activities.

While water can be made available to each of the proposed lots from these two meters, and there is adequate source from the DWS, the pressure may be inadequate under peak-flow conditions, as suggested by the DWS letters to Planning. The subdivider would like to make this water available to the lot owners and supplement this water with the individual catchment systems for all lots above the pressure zone."

ALTERNATIVES

The first alternative requires the applicants to improve the existing county water system and provide the necessary dedicable water system improvements in accordance with DWS standards. The second alternative would be to design, drill and develop private wells and install the necessary water system improvements in accordance with DWS standards.

SPECIAL AND UNUSUAL CIRCUMSTANCES

In considering the above facts, information submitted by the applicants, and agency comments, the Planning Director has determined that there are special or unusual circumstances applying to the subject property which exist either to a degree which deprive the 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.

The applicant proposes to create 10 new lots from the existing lot, which is 128 acres in area. The Zoning Code allows a maximum of 10 new lots to be created in accordance with the requirements of the Subdivision Code.

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.

Although the Department of Water Supply has a system in the area, the system can not provide service to the Project. Additional water can be made available if new improvements (booster pump, transmission/distribution waterlines and a reservoir) are completed. The Department of Water Supply does not have the necessary funds for these improvements at this time and no time schedule has been set. These improvements are estimated to cost several hundreds of thousands of dollars.

Mr. Gregory R. Mooers
Mooers Enterprises, LLC
Page 5
April 16, 2001

The applicant could construct on-site improvements (source, storage, transmission, booster pumps and distribution facilities). An estimated \$3 million would be required for such a system.

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 rainwater catchment systems for potable and emergency uses.

The State Department of Health has no specific rules or regulations relating to the utilization, construction or inspection of private roof catchment water systems for potable or emergency uses.

There are no other reasonable alternatives in resolving the difficulty of the applicant. As such, the imposition of improving the existing public water system or providing an approved alternative water system for the proposed subdivision would be putting excessive demands upon the applicants when a more reasonable alternative is available.

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, 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.

DETERMINATION-VARIANCE CONDITIONS

The variance requested to allow a proposed ten (10) lot subdivision of the subject property without a water system meeting DWS standards is approved subject to the following conditions:

1. The owners, their assigns, or successors shall be responsible for complying with all conditions of Variance Permit No. 1196.

Mr. Gregory R. Mooers
Mooers Enterprises, LLC
Page 6
April 16, 2001

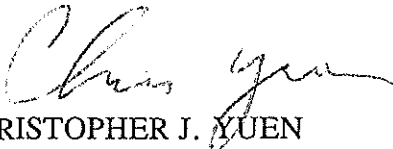
2. The owners, their assigns, or successors shall file a written agreement or approved written document with the Planning Department within one (1) year from the issuance of tentative subdivision approval and prior to receipt of final subdivision approval of SUB 99-064. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions, which affect the proposed lots arising from the approval of pending subdivision application and shall be duly recorded at the Bureau of Conveyances of the State of Hawaii by the Planning Department at the 158cost and expense of the owners:
 - a. The owners agree and accept the fact that a County dedicable public water system is not now able to service the existing property or the proposed lots created by SUB 99-064.
 - b. The owners agree and accept the fact that the County will not, at this time, bear the responsibility of supplying public water to proposed lots created by SUB 99-064. No further subdivision of the lots created by SUB 99-064 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
 - c. Any dwelling(s) constructed on the proposed lots not serviced by a County water system shall be provided with and maintain a private potable rain catchment system which includes a minimum 6,000-gallon for domestic consumption or potable uses. 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. Each permitted dwelling shall be provided with and maintain a private water supply system which includes an additional minimum 3,000 gallon water storage capacity for fire fighting and emergency purposes. The emergency water supply system, including the necessary compatible connector system and location of the water storage capacity on the property, shall meet with the approval of the Hawaii County Fire Department. The Hawaii County Fire Department also advises as a precautionary measure for other uninhabited agricultural structures that consideration be given to the provision of a similar water storage system for fire fighting and emergency purposes.

Mr. Gregory R. Mooers
Mooers Enterprises, LLC
Page 7
April 16, 2001

- e. In the event that there are any amendments or changes to the subdivision after the agreement is signed, the applicant shall be responsible for informing the County Planning Department of such amendments or changes so that the agreement can be amended thusly. Further, the written or recorded agreement shall be binding upon the owner(s), their successors or assigns and shall be incorporated as an exhibit and made part of each agreement of sale, deed, lease, or similar documents affecting the title or ownership of the existing property or approved subdivided lots.
 - f. In the event that any of the lots created by SUB 99-064 are provided with water service (individual meter) from the Department of Water Supply or an approved water system, the lots shall utilize said water service and the owners shall assume pro-rata costs for such improvements as determined by the Department of Water Supply.
3. The owners, their assigns or successors shall pay any outstanding real property taxes and comply with all other applicable State and County rules and regulations pertaining to subdivisions and land use.

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

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

RKN:cps
P:\WP60\RODNEY\2001-2\LVARRamos01-16.doc

xc: Department of Water Supply
SUB 99-064