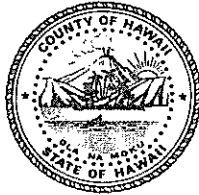


Harry Kim
Mayor



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 29, 2002

Mr. Gregory R. Mooers
c/o MOOERS ENTERPRISES, LLC
P. O. Box 1101
Kamuela, HI 96743

Dear Mr. Mooers:

Variance Permit No. 1272 (VAR 02-001)

Applicant: GREGORY R. MOOERS

Owners: CHARLES A. ANDERSON, ET AL.

**Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required,
Section 23-84, Water Supply, (1) (2)**

Tax Map Key: 4-4-011:053, Lot 35-C (SUB 01-0147)

After reviewing the subject variance application and 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) (2), to allow the creation of a three (3) lot subdivision of the existing TMK property and allow 2 lots to be created 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:

FINDINGS AND BACKGROUND INFORMATION

1. **Property Location.** The subject property, Lot 35-C consisting of 15.318 acres, is a portion of Grant 4244 to Marcellino Perreira and portion of Lot 36, and situated at Kaapahu Homesteads, Hamakua, Hawaii.

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Mr. Gregory R. Mooers
c/o MOOERS ENTERPRISES, LLC
Page 2
April 29, 2002

2. **Zoning.** The subject property (Lot 35-C) is zoned Agricultural (A-5a) by the County and is designated Agriculture ("A") by the State Land Use Commission (LUC).
3. **Subdivision Application/PPM.** The applicant (Mooers Enterprises, LLC) also submitted a subdivision application (SUB 01-0147) which includes a preliminary plat map (PPM), October 24, 2001, prepared by Truth North Surveys, Inc. to subdivide Lot 35-C into three (3) lots. Further action on the proposed 3-lot subdivision application has been deferred pending consideration of the subdivision variance request and resolve of the water requirements to allow the proposed subdivision.
4. **Variance Request/Application.** Mooers Enterprises, LLC, submitted the variance request and subject variance application to the Planning Department.
5. **Agency Comments and Requirements (VAR 02-001):**
 - a. The Department of Water Supply (DWS) memorandum, dated January 7, 2002, states in part:

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

Please refer to our memorandum of July 30, 2001, to you for our comments and requirements. We are enclosing a copy for your information.

Should there be any questions, the applicant may contact our Water Resources and Planning Branch at 961-8070.”

The copy of the attached DWS memorandum, dated July 30, 2001, states in part:

“We have reviewed the preliminary plat map dated July 3, 2001, for the proposed subdivision and have the following comments.

Mr. Gregory R. Mooers
c/o MOOERS ENTERPRISES, LLC
Page 3
April 29, 2002

The existing parcel has service with the Department through a 5/8-inch meter that was installed in 1960. The Department would not allow this meter to serve both the existing parcel and the proposed parcel.

Please be informed that the Department's existing system facilities cannot support the proposed subdivision at this time. Extensive improvements and additions, including source, storage, transmission, booster pumps and distribution facilities, must be constructed. Currently, sufficient funding is not available and no time schedule is set.

Should there be any questions, please call our Water Resources and Planning Branch at 961-8070."

- b. The County of Hawaii Fire Department (HCFD) memorandum dated February 15, 2002 states in part:

"Fire apparatus access roads shall be in accordance with UFC Section 10.207:

Fire Apparatus Access Roads

Sec. 10.207. (a) General. Fire apparatus access roads shall be provided and maintained in accordance with the provisions of this section.

(b) **Where Required.** Fire apparatus access roads shall be required for every building hereafter constructed when any portion of an exterior wall of the first story is located more than 150 feet from fire department vehicle access as measured by an unobstructed route around the exterior of the building.

EXCEPTIONS: 1. When buildings are completely protected with an approved automatic fire sprinkler system, the provisions of this section may be modified.

2. When access roadways cannot be installed due to topography, waterways, nonnegotiable grades or other similar conditions, the chief may require additional fire protection as specified in Section 10.301 (b).

Mr. Gregory R. Mooers
c/o MOOERS ENTERPRISES, LLC
Page 4
April 29, 2002

3. When there are not more than two Group R, Division 3 or Group M Occupancies, the requirements of this section may be modified, provided, in the opinion of the chief, fire-fighting or rescue operations would not be impaired.

More than one fire apparatus road may be required when it is determined by the chief that access by a single road may be impaired by vehicle congestion, condition of terrain, climatic conditions or other factors that could limit access.

For high-piled combustible storage, see Section 81.109.

(c) **Width.** The unobstructed width of a fire apparatus access road shall meet the requirements of the appropriate county jurisdiction.

(d) **Vertical Clearance.** Fire apparatus access roads shall have an unobstructed vertical clearance of not less than 13 feet 6 inches.

EXCEPTIONS: Upon approval (sic) vertical clearance may be reduced, provided such reduction does not impair access by fire apparatus and approved signs are installed and maintained indicating the established vertical clearance.

(e) **Permissible Modifications.** Vertical clearances or widths be required by this section may be increased when, in the opinion of the chief, vertical clearances or widths are not adequate to provide fire apparatus access.

(f) **Surface.** Fire apparatus access roads shall be designated and maintained to support the imposed loads of fire apparatus and shall be provided with a **surface** so as to provide all-weather driving capabilities. (20 tons)

(g) **Turning Radius.** The turning radius of a fire apparatus access road shall be as approved by the chief. (45 feet)

Mr. Gregory R. Mooers
c/o MOOERS ENTERPRISES, LLC
Page 5
April 29, 2002

(h) **Turnarounds.** All dead-end fire apparatus access roads in excess of 150 feet in length shall be provided with approved provisions for the turning around of fire apparatus.

(i) **Bridges.** When a bridge is required to be used as access under this section, it shall be constructed and maintained in accordance with the applicable sections of the Building Code and using designed live loading sufficient to carry the imposed loads of fire apparatus.

(j) **Grade.** The gradient for a fire apparatus access road shall not exceed the maximum approved by the chief. (15%)

(k) **Obstruction.** The required width of any fire apparatus access road shall not be obstructed in any manner, including parking of vehicles. Minimum required widths and clearances established under this section shall be maintained at all times.

(l) **Signs.** When required by the fire chief, approved signs or other approved notices shall be provided and maintained for fire apparatus access roads to identify such roads and prohibit the obstruction thereof or both.

Water supply shall be in accordance with UFC Section 10.301:

(c) **Water Supply.** An approved water supply capable of supplying required fire flow for fire protection shall be provided to all premises upon which buildings or portions of buildings are hereafter constructed, in accordance with the respective county water requirements. There shall be provided, when required by the chief, on-site fire hydrants and mains capable of supplying the required fire flow.

Water supply may consist of reservoirs, pressure tanks, elevated tanks, water mains or other fixed systems capable of providing the required fire flow.

Mr. Gregory R. Mooers
c/o MOOERS ENTERPRISES, LLC
Page 6
April 29, 2002

The location, number and type of fire hydrants connected to a water supply capable of delivering the required fire flow shall be protected as set forth by the respective county water requirements. All hydrants shall be accessible to the requirements of Section 10.207.”

- c. The State Department of Health memorandum dated January 30, 2002 states in part the following:

“The Safe Drinking Water Branch of the Department of Health has no comments at this time.”

- 6. **Notice to Surrounding Property Owners.** The applicant submitted a copy of a notice(s) and affixed postal receipt(s) to the Planning Department on January 29, 2002.
- 7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received. Several objection letters from surrounding property owners/community group citing the impact of proposed subdivision on the existing public water line and road infrastructure were received. The following objection letters to the subject or respective variance application(s) and letters from the applicant responding to these objections, issues, and community concerns were received:
 - a. Original and copy(s) of a letter(s) dated February 1, 2002, signed by Stanley P. Gollaher, and Kathy L. Gollaher, Et al., objecting to VAR 02-001 and VAR 02-002.
 - b. Certified letter dated February 1, 2002, signed by K. Kuaka’a Jones, Et al., objecting to VAR 02-001 and VAR 02-002.
 - c. Letter dated February 1, 2002, signed by David Anderson, President, Paauilo Mauka Kalopa Community Association, objecting to VAR 02-001 and VAR 02-002.
 - d. Letter dated February 10, 2002, signed by Valerie Taylor, objecting to VAR 02-001 and VAR 02-002.

Mr. Gregory R. Mooers
c/o MOOERS ENTERPRISES, LLC
Page 7
April 29, 2002

- e. Letter dated February 8, 2002, signed by Stephen and Annette Chapman, objecting to VAR 02-001 and VAR 02-002.
- f. Fax letter dated February 6, 2002, signed by David and Pauline M. Caccia, received on February 15, 2002 objecting to VAR 02-001 and VAR 02-002.
- g. Copy of letter dated February 14, 2002 from applicant (Mooers Enterprises, LLC) addressed to Stanley and Kathy Gollaher, Et al. responding to concerns.
- h. Copy of letter from applicant dated February 19, 2002 from applicant (Mooers Enterprises, LLC) addressed to David Anderson, President, Paaulo Mauka Kalopa Community Association, responding to concerns.

Therefore, after considering the above facts, information submitted by the applicants, agency comments, and comments received from the surrounding property owners/community, 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.

ALTERNATIVES

There are no other reasonable alternatives in resolving the difficulty of the applicant. 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.

As such, the imposition of improving the existing public water system for 2 additional lots 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.

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.

Mr. Gregory R. Mooers
c/o MOOERS ENTERPRISES, LLC
Page 8
April 29, 2002

The analysis of existing site conditions, official maps, and rainfall summaries in the DWS and the Planning Department appear 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. According to the applicant, Department and Land and Natural Resources (DLNR-State of Hawaii) publication, An Inventory of Basic Water Resources Data: Island of Hawaii, and rainfall data collected from the nearest active rain gage, the property and surrounding area receives 95.01 (mean) inches of rainfall yearly.

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.

Additional provisions for water storage, water distribution, and construction of private rain water catchment system(s) on the property for the proposed additional 2-lots will be necessary and addressed by the applicant or future lot owner(s).

The subject variance application was acknowledged by letter dated December 28, 2001. Additional time to incorporate agency comments, respond to objections from surrounding property owner(s), and consider community input was necessary.

Based on the information provided by the applicant and findings above, 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.

VARIANCE DECISION-CONDITIONS

The variance requested to allow the creation of a proposed 3-lot subdivision of the subject TMK property and allow 2 proposed lots to be created 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 stated conditions of approval.

Mr. Gregory R. Mooers
c/o MOOERS ENTERPRISES, LLC
Page 9
April 29, 2002

2. Prior to final subdivision approval, the subdivider/owner, applicant, or assigns shall designate the lot that will receive one (1) unit of water from the Department of Water Supply (DWS). The subdivider or owner(s) of this lot must pay the appropriate facilities charge and install or participate in the construction of any required off-site water line improvements before said lot can use their one (1) unit of water. Each unit of water is limited to a daily maximum use of six-hundred (600) gallons per unit. The subdivider will be required to comply and meet all DWS requirements before final subdivision approval is granted to SUB 01-0147.
3. WATER VARIANCE: 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 01-0147. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions, which affect the proposed 2-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 cost 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 two (2) of the proposed lots created by SUB 01-0147. Should the Council adopt a Unified Impact Fees Ordinance setting forth criteria for the imposition of exactions or the assessment of impact fees, conditions included herein shall be credited towards the requirements of the Unified Impact Fees Ordinance.
 - b. Any dwelling constructed on lots created by SUB 01-0147 shall be a farm dwelling. Farm dwelling is defined according to State Law, Section 205-4.5 (a) (4) or Hawaii County Zoning Code "means a single-family dwelling located on or used in connection with a farm, or if the agricultural activity provides income to the family occupying the dwelling".
 - c. The owners agree and accept the fact that the County will not, at this time, bear the responsibility of supplying public water to any lots created by SUB 01-0147 not serviced by a County water system.

Mr. Gregory R. Mooers
c/o MOOERS ENTERPRISES, LLC
Page 10
April 29, 2002

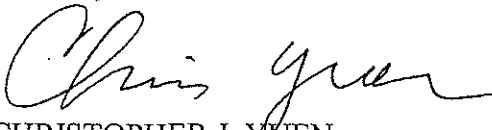
- d. Any farm dwelling constructed on the proposed lot not serviced by a County water system shall be provided with and maintain a private potable rain catchment system which includes a minimum 6,000-gallon water storage capacity for domestic consumption or potable uses. This private water catchment 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.
- e. Each permitted farm 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 location and capacity of the emergency water supply system, including the necessary compatible connector system, 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.
- f. In the event that there are any amendments or changes to the subdivision after the agreement is signed, the applicant or lot owner(s) shall be responsible for informing the County Planning Department of such amendments or changes so that the agreement can be amended concomitantly. 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.
- g. In the event that the County notifies the owners of the lots created by SUB 01-0147 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 01-0147, the owners of the lots created by SUB 01-0147 shall participate in such improvement district or shall pay their pro-rata share of the upgrade and installation of laterals, as determined by the Department of Water Supply.

Mr. Gregory R. Mooers
c/o MOOERS ENTERPRISES, LLC
Page 11
April 29, 2002

- h. The subject property was created by subdivision of a larger parcel pursuant to a variance from the water supply requirement in Section 23-84 of the Hawaii County Code. The subdivider or grantee, the assigns or successors acknowledges that there are no special or unusual circumstances existing on the property, and therefore, there are no grounds for the subdivider or grantee, the assigns or successors to request a further variance from the water supply requirements to permit further subdivision of the subject property.
4. The subdivision's (SUB 01-0147) final plat map shall meet all other requirements of the Hawaii County Zoning Code and Subdivision Code not covered by this variance.
5. Each lot created by SUB 01-0147 shall have no more than one dwelling. No ohana "additional farm dwelling" or second farm dwelling shall be permitted on any lot created by SUB 01-0147 for the reason that this variance is granted based on minimal increase in the number of users.
6. The subdivider, owner(s), their assigns or successors shall pay any outstanding real property taxes and comply with all other applicable State statutes and County ordinances pertaining to building improvements and land use.

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

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

WRY/RRT:cps
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Enclosures

Mr. Gregory R. Mooers
c/o MOOERS ENTERPRISES, LLC
Page 12
April 29, 2002

xc: DWS-Engineering Branch
SUB 01-0147
Planning Dept. – Kona
Stanley P. Gollaher, Et al.
K. Kuaka'a Jones, et al.
David Anderson, President-PMKCA
Stephen Chapman, et al.
Valarie Taylor
David Caccia, et al.