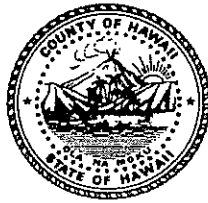


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720
Phone (808) 961-8288 • Fax (808) 961-8742

March 31, 2004

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

Dear Mr. Mooers:

Variance Application No. 1418 (VAR 03-072)
Applicant: GREGORY R. MOOERS
Owner: KAIWIKI PROPERTIES, LLC
**Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required,
Section 23-84, Water Supply, (1) (2)**
Tax Map Key: 9-3-003:072, (SUB 03-0094)

After reviewing the subject variance application and information submitted, the Planning Director denies your variance from Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply, (1), to allow a proposed 4-lot subdivision without providing a water system meeting 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 denied based on the following findings:

BACKGROUND

1. **Location.** The subject property, Lot B-1 consisting of approximately 129 acres +, being a portion of Grant 3720 to Kahalewai, is situated at Mohowae-Waiopua, Kau, Hawaii.
2. **Zoning.** The subject property is zoned Agricultural (A-20a) by the County and designated Agriculture (A) by the State Land Use Commission (LUC).

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3. **Subdivision Request/PPM.** The applicant's client-Kaiwiki Properties, LLC submitted a subdivision application (SUB 02-0094) which includes a preliminary plat map (PPM), dated June 27, 2003, proposing to subdivide subject TMK property (Lot B-1) into four (4) lots. Further action on the proposed 4-lot subdivision application was deferred pursuant to letter dated October 29, 2003 in SUB 02-0094.
4. **Variance Application.** The applicant submitted the variance request and subject variance application on or about October 24, 2003.
5. **Agency Comments and Requirements (VAR 03-072):**
 - a. The Department of Water Supply (DWS) memorandum, dated December 4, 2003, states in part:

“We have reviewed the subject Variance Application and have the following comments.

We do not object to granting the current request for Variance from subdivision code regarding water system improvements. The Department of Water Supply's existing facilities are unable to support the proposed subdivision. However, we understand the applicant is proposing to use catchment systems to provide for all water supply needs associated with the proposed subdivision and therefore will not be requesting any support from County water systems.

Any future requests for County water to this subdivision will necessarily be denied until such time as adequate additional system facilities may be installed. Extensive improvements and additions, which may include source, storage, transmission, and booster pump facilities, must be considered. Currently sufficient funding is not available and no time schedule is set.”
 - b. The State Department of Health (DOH) memorandum is dated December 19, 2003. (Refer to memorandum in variance file).
 - c. No comments were received from the Hawaii County Fire Department.

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6. **Notice to Surrounding Owners.** The applicant's forwarded a copy(s) of a notice dated December 5, 2003 and December 10, 2003 sent to a list of surrounding property owner(s), and other submittals. Pursuant to these submittals, it appears that the respective notice(s) were mailed on or about December 6, 2003 and December 12, 2003, respectively.
7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received. The following objection letter from a surrounding property owner was received:
 - a. Objection letter dated December 12, 2003 to subject application from George B. Pitts Jr. states in part:

“Until the County Water Dept. has the proposed South Point to South Kona Water Plan and there is County Water available, I request that you “do not” grant this or any other variances of this nature to the South Point area (sic).”

INTENT AND PURPOSE-WATER VARIANCE

Section 23-84 of the Subdivision Code requires that all new subdivisions have a water system meeting with the minimum requirements of the Department of Water Supply.

Variances can be granted, but under section 23-15, no variance may be granted unless it is found that:

- (a) There are special or unusual circumstances applying to the subject property which exist either to a degree which deprives the owner or 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 that property; and
- (b) There are no other reasonable alternatives that would resolve the difficulty; and
- (c) The variance will be consistent with the general purpose of the district, the intent and purpose of this chapter, and the County general plan and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or to adjoining properties.

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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.

The analysis of existing rainfall within the subject property utilizing maps at the Planning Department, DPW, and information provided by the applicant show that there is inadequate rainfall within the subject property and surrounding areas to support individual or separate private rainwater catchment systems for potable and emergency uses for the proposed subdivision. According to the applicant and data collected from "An Inventory of Basic Water Resources Data: Island of Hawaii" published by the State of Hawaii, Department of Land and Natural Resources-DLNR, the area receives "41.14 inches" of rainfall. According to a map-Plate 6-WATER-RESOURCES INVESTIGATIONS REPORT 95-4212, the proposed 4-lot subdivision appears to be nearest active rain gage stations "5.1" and "5.2". The analysis of the applicant's submittals together with other published data and rainfall map data shows the subject TMK property receives between 30 and 40 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.

The alternative to a water system proposed by the applicant—rain catchment by the individual lot owner—would not meet the intent and purpose of the Subdivision Code: in this case, that a subdivision have adequate clean safe drinking water for human consumption, and a reliable supply of water for firefighting purposes. The rainfall is too low and too unreliable to support a catchment system. The Subdivision Code, by specifying the need for a water system, represents a policy decision that subdivisions should have on-site water and not rely on hauling in water. As for fire protection, although a variance could include a condition that the lot owner have a second tank for fire fighting purposes, and keep it filled, this condition would be impossible to monitor and if it were breached, the violation would likely be discovered at the worst possible moment, when a fire truck actually tried to get water from the tank. The proposed subdivision could, therefore, be detrimental to the public welfare.

The property was recently acquired by the present owner. It is at least as suitable for its likely beneficial uses (probably ranching) in its present configuration. It is not at all obvious that the best use or manner of development of the subject property is to divide it into four smaller lots.

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In accordance with a recent charter amendment and Ordinance No. 99-112, 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.
- (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 remand the decision with appropriate instructions if based upon the preponderance of evidence the board finds that the decision is:

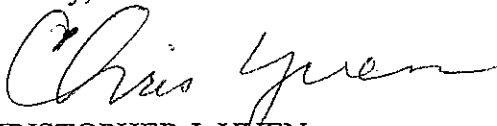
- (1) In violation of the Code or other applicable law; or
- (2) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (3) Arbitrary, or capricious, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

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In view of the above, enclosed is form-**GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR.**

Should you have any questions on the variance decision or the appeal procedure, please feel free to contact our Hilo office at telephone (808) 961-8288.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

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xc: Manager-DWS
SUB 03-0094
Planning Dept. - Kona