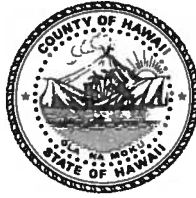


Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Russell Kokubun
Deputy Director

CERTIFIED MAIL

7099 3220 0000 4869 9255

May 5, 2000

County of Hawaii

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-8742

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

Dear Mr. Mooers:

Variance Application WH(VAR 99-095)
Variance No. 1097
Applicant: SUNSTONE REALTY PARTNERS V, LLC
Owner: SUNSTONE REALTY PARTNERS V, LLC
Subdivision No. 99-125
Variance from Water Requirements of Subdivision Code
Tax Map Key: 8-7-011:001

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 an 28-lot subdivision without meeting the minimum water requirements as required by Chapter 23, Article 6, Division 2, Section 23-84 (1).

Please accept our sincere apologies for this tardy confirmation of the approval of this variance application. We have been working within the department to improve the efficiency of this process which will hopefully result in more timely responses to future applications. Your patience is appreciated.

The subject property is situated at Kukuioape 2nd, South Kona, Hawaii, Tax Map Key: 8-7-011:001.

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 twenty-eight (28) lot subdivision.

1. The applicant submitted a subdivision application (SUB 99-125) and preliminary plat map dated September 20, 1999 proposing to subdivide Kukuioape 2nd, a

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270 acre parcel into 26 lots. Further action on the proposed twenty-six (26) lot subdivision application was deferred pending consideration of the subject water variance application.

2. Department of Health memo dated November 23, 1999 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 18, 1999 states:

"We have reviewed the subject application for the proposed subdivision and have the following comments.

Please refer to our memorandum of October 22, 1999 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."

5. Department of Water Supply memo dated October 22, 1999 states:

"We have reviewed the subject application and have the following comments. Please be informed that the subject property is not within the service limits of the Department existing water system facilities. The nearest Department of Water Supply water system facility is at the end of an existing 8-inch waterline along Mamalahoa Highway, approximately 5.3 miles from the property.

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

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4. The Department has received the following objection from an adjacent land owner stating his objection to the variance.

- A. Mr. Damien A. Eater: (See Exhibit A - letter dated December 7, 1999).

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 to a degree which obviously interferes with the best use or manner of development of the subject property. Therefore the Planning Director hereby approves the variance without meeting the minimum water requirements for the following twenty-eight (28) lots:

Lot 1	5.00 acres
Lot 2	5.00 acres
Lot 3	5.00 acres
Lot 4	5.00 acres
Lot 5	5.00 acres
Lot 6	5.00 acres
Lot 7	5.00 acres
Lot 8	5.00 acres
Lot 9	5.00 acres
Lot 10	5.00 acres
Lot 11	5.00 acres
Lot 12	5.00 acres
Lot 13	5.00 acres
Lot 14	5.00 acres
Lot 15	5.00 acres
Lot 16	76.00 acres
Lot 17	7.50 acres

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Lot 18	5.00 acres
Lot 19	34.00 acres
Lot 20	5.00 acres
Lot 21	5.00 acres
Lot 22	5.00 acres
Lot 23	5.00 acres
Lot 24	5.00 acres
Lot 25	5.00 acres
Lot 26	5.00 acres
Lot 27	5.00 acres
Lot 28	5.00 acres

ALTERNATIVES

There are no reasonable alternatives in resolving the required water system requirements. To upgrade the existing County water system by the individual applicant would not be economically feasible. The applicant states that storage, pressure and transmission improvements would cost in excess of five million (\$5,000,000) dollars to install. This assumes that there is an adequate source to provide water to this property.

The other alternative would be to drill wells to create a private water system. However, due to the limited nature the approved twenty-eight (28) lot subdivision not serviced by County water system, 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 twenty-eight (28) lot subdivision would be putting excessive demands upon the applicant when a more reasonable alternative is available.

The State's Commission on Water Resource Management map indicates that the nearest rain gauge in this area is at Opihiale 2, rain gauge State Key No. 24.1. The rainfall data indicates that the mean annual rainfall for the area is 50 inches. This report appears to indicate that the area receives adequate rainfall to support a private rain water catchment system.

The U.S. Department of Interior, U.S. Geological Survey Map delineates the topography of

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the project site. The ahupuaa, Kukuiope 2 is located on the Kauluo Point Quadrangle. The vegetation line ends at the approximate 520 foot elevation. The natural vegetation above the 520 foot elevation would indicate a sufficient rain water to supply rain water catchment tanks. The Planning Director's task is one of determining whether there is sufficient rainfall to keep the minimum supply of rain water high enough in order to not impair consumption necessary for health and public safety. It is with this reasoning that the Planning Director has determined that the minimum amount of rain water supply at elevations above 520 feet are high enough to support a rain water catchment system and thus would not impair health and public safety.

INTENT AND PURPOSE

The subject property consisting of 270 acres is located within the County's Agricultural (A-5a) zoned district. Under this zoning designation the minimum building site area is 5 acres. The Planning Director would allow a twenty-eight (28) lot subdivision with each lot not exceeding the minimum (5) acre lot size requirement of the Zoning Code.

The intent and purpose of the minimum water requirements is to ensure that minimum safety standards relating to health, fire protection, sewage disposal, etc., are provided for in concern with the Goals, Policies and Standards of the General Plan and the Subdivision Code. It is the County's General Plan policy and standard that water system improvements and extensions shall promote the County's desired land use development pattern, that all water systems shall be designed and built to Department of Water Supply standards, that fire prevention systems shall be coordinated with water distribution systems in order to ensure water supplies for fire protection purposes, and that water systems meet the requirements of the Department of Water Supply.

In this situation, the substitute private water catchment system is considered adequate for this Agricultural land as depicted in the aerial photograph submitted on February 11, 2000.

DETERMINATION - VARIANCE CONDITIONS

This variance request is therefore approved for a twenty-eight (28) lot subdivision, subject to the following conditions:

1. The owner, assigns or successors shall be responsible for complying with stated conditions of approval.
2. No farm dwelling or any other structure designed for human habitation shall be constructed below the vegetation line as indicated on the proposed subdivision

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map dated September 20, 1999 which depicts the 520 foot elevation line.

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 or in the foreseeable future able to service 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 the subdivision.
 - c. No farm dwelling or any other structure designed for human habitation shall be constructed below the vegetation line on Lots 16, 17 or 19 as indicated on the proposed subdivision map dated September 20, 1999 which depicts the 520 foot elevation line.
 - d. Any existing and/or future dwellings not serviced by County water system constructed on the property 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.
 - e. 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.
 - f. 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

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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 subdivider lot.

- g. In the event that any of the lots are provided with a water service (individual meter) from the Department of Water Supply or an approved private water system, the above covenants for the specific property will no longer be in effect.
- h. No variance from the minimum water requirements for the proposed lots shall be applied for in the future.
- i. 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 Eleanor Mirikitani of this department.

Sincerely,


VIRGINIA GOLDSTEIN
Planning Director

EMM: rld
a:\87011001\Sunstone.app

xc: ~~West Hawaii Office~~
✓ Subdivision File

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bcc: Russell Kokubun, Deputy Director