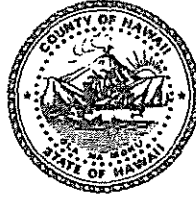


Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED® AP
Deputy Director

County of Hawaii
PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-4224
(808) 961-8288 • FAX (808) 961-8742

September 7, 2007

Mr. Morton Carter, Sr.
General Partner
E Ho'okumu
334 Huali Way
Hilo, HI 96720

Dear Mr. Carter:

Nullification of Tentative Subdivision Approval dated March 11, 1994

Nullification of Variance No. 575

Subdivider & Applicant: E Ho'okumu

Proposed Subdivision of Lot 22, Grant 4266,
Into Lots 22-A to 22-E, Inclusive and Road Lot,

TMK: 2-5-002:005; Kaumana Homesteads, South Hilo, Hawaii (SUB-93-000163)

A review of our files shows that tentative approval for the subject subdivision was granted on March 11, 1994. For the reasons as discussed below, we hereby deem the tentative approval dated March 11, 1994 null and void. We will keep this file active for the next month or so until we hear from you as to whether you wish to pursue this subdivision that has remained pending with our office for about 14 years.

Section 23-67 of the Subdivision Control Code states that: "The final plat shall be prepared and completed within one year following the tentative approval given on the preliminary plat by the director. If the final plat has not been filed within this period, the tentative approval of the preliminary plat shall be deemed void. A time extension, for good cause may be granted as provided under Section 23-72." To date, we have not received the final plat map nor was there a timely filing for an extension of time prior to the filing deadline.

Furthermore, Section 23-62(d) states that "The subdivider shall complete all requirements specified as conditions for approval of the preliminary plat (tentative approval) within three years of said approval. An extension of not more than two years may be granted by the director upon timely written request of the subdivider. At the end of said three year period or its approved extension, unless all said conditions are completed, the approval of the preliminary plat shall expire and shall be of no further force or effect, or shall be subject to the technical review of the applicable agencies for compliance with current Code and rule requirements. This subsection shall be applied to all subdivision applications which have received tentative

Mr. Morton Carter, Sr.
General Partner
E Ho'okumu
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September 7, 2007

subdivision approval and which have not completed subdivision improvements, provided the three year period, and extension, if applicable, shall be taken from December 4, 1992 and not from the date of preliminary plat (tentative) approval. Therefore, Final Subdivision Approval should have been secured no later than March 11, 1997.

Variance No. 575 was issued in March 43, 1994, to allow for the proposed 5-lot subdivision without a County-approved water system. Since this variance was issued in support of the Tentative Subdivision Approval dated March 11, 1994, and which is now declared null and void, Variance No. 575 is likewise declared null and void.

We also note a Phoebe De Luz and a John Fernandez as landowners of this property. Please provide us proper written authorization from these individuals should you wish to pursue this subdivision action.

Please feel free to contact Daryn Arai of this office should you have any questions regarding this matter. We wish to emphasize that should we not hear from you within one month, we will take action to officially withdraw this application from our active files.

Sincerely,


CHRISTOPHER J. YUEN
Planning Director

DSA

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xc: Manager, DWS
 Director, DPW
 District Environmental Health Program Chief, DOH
 District Engineer, DOT
 John D. Fernandez, P.O. Box 1612, Keaau, 96749
 E Ho'okumu, 1845 S. Hale O Kea Street, Hilo 96720

VAR 575

CERTIFIED MAIL

March 4, 1994

Mr. Morton A. Carter, Sr.
334 Huali Way
Hilo, HI 96720

NULL & VOID SEP 07 2007

Dear Mr. Carter:

Variance Application (VAR 94-11)
Applicant: Morton A. Carter, Sr.
Request: Variance From Minimum Water Requirements
of Subdivision Control Code
Tax Map Key: 2-5-2:5; Subd. No. 93-163

After reviewing your application and the information submitted on behalf of it, including comments received from consulting agencies, the Planning Director, by this letter, hereby certifies the approval of your variance request to allow the creation of a five (5)-lot subdivision without a water system meeting the minimum water requirements of the County Department of Water Supply as required by Article 6, Division 2, Section 23-84 (1) of the Subdivision Control Code.

The subject property is located approximately 4,000 feet off Saddle Road approximately eight (8) miles from Hilo, Kaumana and Ponahawai Homesteads, South Hilo, Hawaii.

The Planning Director has concluded that the variance request from the Subdivision Control Code minimum water requirements should be approved based on the following:

02935

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Mr. Morton A. Carter, Sr.
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SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances that exist which would warrant or necessitate a waiver from the minimum requirements to service the proposed five (5)-lot subdivision. The Department of Water Supply stated "The proposed subdivision is not within the service limits of the Department's existing water system facilities." As such, all dwellings on the five (5) lots will be provided with water catchment systems for domestic consumption as well as fire-fighting purposes.

Therefore, considering the foregoing issues, it has been determined that there are special and unusual circumstances applying to the subject property which exist either to a degree which deprive the applicant of substantial property rights that would otherwise be available or to a degree which obviously interfere with the best use or manner of development of the subject property.

ALTERNATIVES

There are no reasonable alternatives in resolving the required water system requirement. To upgrade the existing County water system by the individual applicant would not be economically feasible. The other alternative would be to drill wells to create a private water system. However, due to the limited nature (five (5)-lot subdivision not serviced by County water system) of the subdivision, 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 proposed five (5)-lot subdivision would be putting excessive demands upon the applicant when a more reasonable alternative is available.

In addition, the area receives adequate annual rainfall to support a private water catchment system. The applicant can also purchase water, if necessary, for the private water catchment system.

INTENT AND PURPOSE

The subject property consisting of 116 acres is located within the County's Agricultural 20-acre zoned district. Under this zoning designation, the minimum building site area is twenty (20) acres. The applicant is proposing a five (5)-lot subdivision with area exceeding the minimum twenty (20) acre lot size requirements of the Zoning Code.

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The intent and purpose of requiring a water system in this case is to assure that a adequate water system is available for domestic consumption and fire protection. In this situation, the substitute private water catchment system is considered adequate for this agricultural land.

Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning and Subdivision Control Codes and the County General Plan, 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.

The variance request is, therefore, approved subject to the following conditions:

1. The applicant, his assigns, or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant, his 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 by the Department at the cost and expense of the subdivider:
 - a. The applicant/subdivider agrees and accepts the fact that a County dedicable public water system is not now or in the foreseeable future able to service the subdivision.
 - b. The applicant/subdivider agrees and accepts the fact that the County will not, at any time, bear the responsibility of supplying public water to the subdivision.
 - c. Any existing and/or future dwellings not serviced by County water system constructed on the property shall have a minimum 6,000-gallon water storage facility for domestic consumption for water catchment. 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.

Mr. Morton A. Carter, Sr.

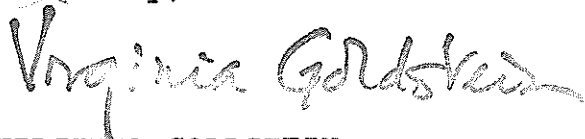
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- d. Provide a water supply system sufficient for fire-fighting consisting of a minimum 3,000 gallons of water per existing and/or proposed future dwelling on the property meeting with the approval of the Hawaii County Fire Department. If dwellings are spaced closer than 50 feet apart, 4,000 gallons of water per dwelling will be required.
- e. In the event that there are any amendments or changes to the subdivision after the agreement is signed, the applicant/subdivider 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 agreement shall be considered as a condition and covenant running with the land and shall be binding upon the applicants/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 subdivided lot.
- f. In the event that any of the lots are provided by 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.
- g. Comply with all other applicable State and County rules and regulations.

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

Sincerely,



VIRGINIA GOLDSTEIN
Planning Director

EC:mjs
2878D

xc: Subdivision No. 93-163
Department of Water Supply