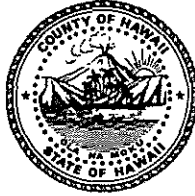


Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Norman Olesen
Deputy Director

County of Hawaii

CERTIFIED MAIL

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-9615

VAR 625

December 27, 1994

Mrs. Crystal Yamasaki
75-5722 Kalawa Street
Wes Thomas & Associates
Kailua-Kona, HI 96740

Dear Mrs. Yamasaki:

Variance Application (VAR 94-60)

Applicant: Kelso Ku

Request: Variance from minimum subdivision water & minimum
building site average width requirement

Tax Map Key: 8-7-010:010

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 two (2)-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 on the mauka side of the Mamalahoa highway, approximately 3,000 feet south of the Kaohe road/Mamalahoa highway, intersection in Kukuipoe, South Kona, 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:

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 two (2)-lot subdivision. The Department of Water Supply stated "That the proposed subdivision is not within the service limits of the department existing water system facilities."

15822

DEC 29 1994

As such, all dwellings on the two (2) 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 two (2)-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 two (2)-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 12.3 acres is located within the County's unplanned zoned district. Under this zoning designation, the minimum building site area is five (5). The applicant is proposing a two (2)-lot subdivision with area exceeding the minimum five (5) acres lot size requirements of the Zoning Code.

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.
 - 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.

In addition, this letter hereby certifies the approval of your Variance request to allow the creation of two (2)-lot additions with a minimum building site average width of 200 feet in lieu of the minimum building site average width of 280 feet as required by article 18 (U) unplanned District, Section 25-235 (minimum building site average width).

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances applying to the subject property which deprives the applicant of substantial property rights that would otherwise be available, and further, interfere with the best use or manners of development of the property, the property is pre-existing non-conforming lot only 220 wide which is already below the required 280 feet poor the unplanned zoned district building site average width.

ALTERNATIVES

There are no other reasonable alternatives to satisfy the minimum average width requirement in light of the fact that the property is pre-existing non-conforming parcel at only 220 wide. The applicant would be advised substantial property rights to create an additional parcel that would otherwise be permitted by the zoning density of the unplanned (U) zoned district, if the variance is not approved.

INTENT AND PURPOSE

All other requirements including zoning setbacks and lot size can be met by the proposed subdivision plan. There is sufficient land use for two (2) single family dwellings to be constructed on the property without altering the existing character of development in the area. Approval of the variance request will allow the applicant to make the best use of the subject property, consistent with the manner of development of surrounding properties.

Mrs. Crystal Yamasaki
Page 5
December 27, 1994

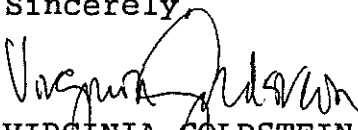
Based on the foregoing, the variance request is consistent with the general purpose of the zoning district, the intent and purpose of the zoning code and the County general plan

The request is approved subject to the following conditions:

1. The applicant, his assigns or successors, shall be responsible for complying with all stated conditions of the approval.
2. That no variance from the minimum setback requirements for the proposed lot shall be applied for in the future. This condition shall be stipulated in the deed of the property and recorded with the Bureau of Conveyances.
3. All other applicable State and County rules, regulations and requirements shall be met.

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/dms
#5777D

xc: Subdivision No. 89-80
Kelso Ku