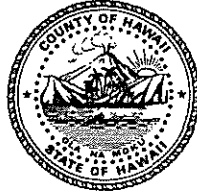


Stephen K. Yamashiro  
Mayor



VAR 039

Virginia Goldstein  
Director

Norman Olesen  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

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

April 3, 1995

Mrs. Chrystal Yamasaki  
75-5749 Kalawa Street  
Kailua-Kona, Hawaii 96740

Dear Mrs. Yamasaki:

Variance Application WH(VAR 95-05)  
Applicant: GEORGE & KIMBERLY MAGOON  
SUBDIVISION APPLICATION 94-136  
Variance from Minimum Subdivision Water Requirements  
Tax Map Key: 7-5-001: 011 and Portion of 009

After reviewing your application and the information submitted in behalf of it, the Planning Director certifies the approval of your variance request No. 639 to allow a 3 lot subdivision without meeting the minimum water requirements as required by Chapter 23 (Subdivision Code), Article 6 (Improvements), Division 2 (Improvements Required), SECTION 23-84 (1)(Water supply).

The subject property is located approximately 2,500 feet on the mauka (east) side of the Mamalahoa Highway at Moeauoa 2nd, North Kona, Hawaii, TMK: 7-5-001: 11 and portion of 009.

The Planning Director has concluded that the variance request from the Subdivision 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 three (3) lot subdivision. The Department of Water Supply stated: "The Department's existing water system facilities cannot support the proposed subdivision at this time. Extensive improvements and additions, including storage transmissions, booster pump, and distribution facilities, must be constructed. Currently, sufficient funding is not available and no

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time schedule is established." As such, all dwellings on the proposed three (3) 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 deprives the applicant of substantial property rights that would otherwise be available or to a degree which obviously interferes with the best use of manner of development of the subject property.

#### 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 other alternative would be to drill wells to create a private water system. However, due to the limited nature (3-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 three (3) lot subdivision would be putting excessive demands upon the applicant when a more reasonable alternative is available.

In addition, the area receives rain annually which can adequately 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 15.068 acres is located within the County's Agriculture 5-acre (A-5a) zoned district. Under this zoning designation the minimum building site area is 5 acres. The applicant is proposing a three (3) lot subdivision with area exceeding the minimum (5) acre lot size requirement of the Zoning Code.

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

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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, and 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.

This 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.


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- 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 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 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, including that of the Department of Finance, Real Property Tax Division relating to Agricultural Dedication.

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 Royden Yamasato of our West Hawaii office at 329-4878.

Sincerely,

  
VIRGINIA GOLDSTEIN  
Planning Director

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1228Q

xc: West Hawaii Office  
Subdivision Application No. 94-136