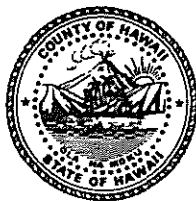


Stephen K. Yamashiro  
Mayor



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

CERTIFIED MAIL  
Z 095 323 531

July 19, 1996

Ms. Betty Leong Tabora  
7059 Sedan Avenue  
West Hills, CA 91307

Dear Ms. Tabora:

Variance Permit No. 763 (VAR 96-1)  
Applicant: Ruth Leong  
Request: Variance From the Minimum Water and Road  
Requirements of Chapter 23, Subdivision Control Code  
Tax Map Key: 1-9-11:20, Lot 4

WATER VARIANCE: After reviewing your application and the information submitted on behalf of it, the Planning Director certifies the approval of your variance request to allow the creation of a two (2) lot subdivision without a water system meeting with the minimum requirements of the Department of Water Supply (DWS) as required by Division 2, Section 23-84 (1) of the Subdivision Code.

The Planning Director has concluded that the variance from the minimum subdivision water requirements be approved based on the following findings.

#### SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances that exist which would warrant consideration of and necessitate a variance from the minimum water requirements to the proposed two (2)-lot subdivision:

1. The subject property is portion of Grant 5362, situated at Olaa, Puna, Island and County of Hawaii. The subject property is commonly identified by the tax map key (TMK) parcel number (TMK: (3) 1-9-011:020) and contains 7.7847 acres +/-.

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2. The subject parcel was zoned Agricultural (A-5a) and Single Family Residential (RS-10) by the County in 1967 and is designated Agriculture "A" and Urban "U", respectively, by the State Land Use Commission (LUC).
3. The applicant, Betty Leong Tabora, submitted the subject variance application on behalf of her mother, Ruth Leong, owner/subdivider. The Leong Trust (Ms. Ruth Lee Leong) submitted a preliminary plat map dated June 20, 1995, prepared and certified by Austin, Tsutsumi & Associates, Inc. and subdivision application for a 2-lot subdivision on June 22, 1995. Further action on the proposed 2-lot subdivision application (SUB 95-082) has been deferred pending consideration of the subject variance application.

The Department of Water Supply (DWS) memorandum dated July 12, 1995 in (SUB 95-082) states in part:

"Please be informed that the subject property is not within the service limits of the Department of Water Supply's existing water system facilities. The end of the Department of Water Supply's water system facilities is located on the Volcano Highway approximately 12 miles east of the subject property."

4. The State Department of Health (DOH) memorandum dated January 25, 1996 in (VAR 96-1) states in part:

"The subject lot is located in a Critical Wastewater Disposal Area. A lot size of one (1) acre or more is required for the use of a cesspool to serve 1,000 gallons per day or 5 bedrooms. Only one (1) cesspool would be allowed on the lot. A septic tank system would be needed if a second disposal system is needed on this lot."

5. The following is extracted from the letter received from the applicant Betty Leong Tabora on January 5, 1996 in variance file (VAR 96-1):

"I am representing my mother, Ruth Leong, in requesting that a variance from the water and road requirements for subdivision of her property (tax map key 1-9-11: 20, lot 32 located in Olaa, Puna, Hawaii). The closest

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county water supply is located approximately 12 miles away, but residents in the area have always depended on rainwater catchment for the water supply. This water supply has been more than sufficient for residential use. There is some question as to whether the responsibility for the road adjoining the property belongs to the county or the residents. This is a narrow and unimproved road that the county has had little to do with. Historically the neighborhood residents have maintained the road, providing both funds and labor. Since the proposal is to divide the 7.78 into two parcels of approximately equal size, further development of the property is limited to one additional home, if any. This would put very little strain on the existent road.

My parents have owned and paid taxes on this property for approximately 20 years. 3 acres of this property is zoned agricultural. There are two structures currently on this portion of land. The remaining 5 acres is zoned as RS-10 and is currently undeveloped. RS-10 zoning provides for 1 residence for every 10,000 square feet or 4 structures per acre. This means that they have been paying taxes on land that can legally be subdivided into 20 parcels, each with a home. We are aware of the rural nature of the area and want to preserve the unique character which makes this area so desirable. We are not proposing a subdivision of that magnitude. My father passed away 1 year ago. My mother's financial resources are limited. There may come a time when she needs to sell the property to meet her financial obligations. My brother, Chui Leong, has lived on the property for many years. He does not have the financial resources to buy the property from her. She does not want to sell the property intact since it would mean that her son would have to leave a home that he has lived in for over 15 years. Even if the property is subdivided, there is a possibility that it may not be sold, and remain in its present undeveloped state. We would just like to have the option of being able to sell it if and when the occasion calls for it. If it is not sold, it will remain part of the family trust, and will be the property of the other siblings or grandchildren.

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As stated earlier, we are not planning to change the character of the area. All my mother wants are her rights and needs as an individual and a taxpaying property owner to be considered. We proposed to subdivide the property into two lots. Lot 32A would be 4.31 acres, with approximately 430 feet of road frontage. The existing structures are on this portion of the property. Lot 32B would be 3.47 acres, with 200 feet of road frontage. The planned frontage of Lot 32B greatly impairs further subdivision and hopefully result in a single family residence, if developed. This is the property which may be sold or remain in the family trust, depending on financial need."

Therefore, considering the above facts and information submitted, the Planning Director has determined that there are special or unusual circumstances applying to the subject property which exist either to a degree which deprive the applicant or owner/subdivider 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.

#### ALTERNATIVES

There are no other reasonable alternatives in resolving the difficulty of the petitioner. The first alternative, requires the petitioner/subdivider/owner of the proposed subdivision application to pay appropriate facilities charges and fees to the DWS and improve the existing water system and provide the necessary dedicable water system improvement in accordance with the Rules and Regulations and the Standards prescribed by DWS. The second alternative would be to plan, explore, design, and drill private wells and install the necessary water system improvements in accordance with the Rules and Regulations and the Standards prescribed by the DWS.

The prorata cost per lot for the water system design and construction of an approved dedicable or private water system is economically cost prohibitive. As such, the imposition of requiring a public or private water system for the proposed subdivision would be putting excessive demands upon the petitioner/subdivider/owner when a more reasonable alternative is available.

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INTENT AND PURPOSE

The intent and purpose of requiring a water system within a subdivision is to assure that adequate water is available for human consumption and fire protection.

The analysis of existing site conditions and rainfall data information submitted by the petitioner/owner/subdivider and official maps and rainfall summaries in the DWS appear to support the information submitted by the owner/subdivider. The analysis of private and public information appears to indicate there is adequate rainfall within the subject property and the surrounding areas to support a private roof water catchment system for portable uses. The State Department of Health has no building regulations, specific rules or regulations relating to the utilization and construction of private water catchment systems, and inspection of private roof catchment water systems.

The analysis <sup>of</sup> recent zoning changes within Volcano Village and permitted development appear to indicate there is adequate rainfall within the subject property and the surrounding area to support a private roof water catchment system for fire fighting uses. Provisions for fire protection will be privately addressed by the petitioner/owner/subdivider and provided by the petitioner/owner/subdivider on the subject property.

The objections received from the surrounding property owners will subject to the procedures and provisions stipulated in Chapter 23, Subdivisions. Otherwise, there were no other objections received from other participating government agencies.

The subject variance application was deemed complete by the Planning Department on January 8, 1996 and by subsequent discussion with the applicant, the decision date by the Planning Director on the subject variance would be extended to July 19, 1996.

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 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.

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This variance request is approved subject to the following conditions:

1. The applicant/owner/subdividers, his assigns or successors shall be responsible for complying with all stated conditions of tentative subdivision approval.
2. The approval of this variance shall be included in the conveyance document for the subject property, and a copy of the recorded conveyance document shall be submitted to the Planning Department within one (1) year from the effective date of approval of this variance.

The applicant/owner/subdivider, his assigns, or successors shall file a written agreement or approved written document with the Planning Department prior to receipt of final subdivision approval containing the following deed language, being covenants, condition, and restrictions which shall be duly recorded at the Bureau of Conveyances of the State of Hawaii by the Planning Department at the cost and expense of the applicant/owner/subdivider:

- a. The applicant/owner/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/owner/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. The permitted dwellings, accessory structures and permitted uses not serviced by a County water system constructed on the property shall have a minimum 6,000-gallon water storage tank or equivalent 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.

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- d. Provide a water supply system sufficient for fire-fighting consisting of a minimum 3,000 gallons of water per future farm dwellings on the property meeting with the approval of Hawaii County Fire Department. If dwellings are spaced closer than 50 feet apart, 4,000 gallons of water per farm dwelling will be required.
  - e. In the event that there are any amendments or changes to the subdivision after the agreement is signed, the petitioner/owner/subdivider shall be responsible for informing the County Planning 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/owners/ subdividers, 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 and an approved water system, the recorded conditions and covenants will no longer be in effect.
  - g. Comply with all other applicable State and County rules and regulations.
3. All other applicable State and County rules and regulations shall be complied with.

ROAD VARIANCE: After reviewing the minimum subdivision road requirements and your application for a variance from the minimum subdivision road requirements and memorandum from the Department of Public Works (DPW), dated July 1, 1996 the Planning Director has found a variance or waiver from the minimum roadway requirements is not required.

In view of the DPW memorandum dated July 1, 1996, which states in part:

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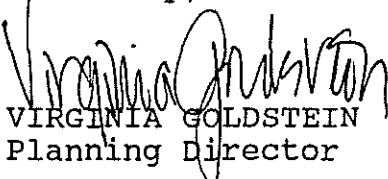
"This is to inform you that the Department of Public Works does not recommend half-street improvements, along a single property frontage, for an existing roadway. DPW generally recommends reconstruction of the entire right-of-way to meet State and Federal Standards."

The Planning Director has concluded that the comments and the recommended subdivision road requirements in the pending subdivision will not be required, and therefore, in consideration of the DPW memorandum and a recent approval of subdivision with similar water and road conditions, the component of the subject variance application requesting a variance from the minimum road requirements is not necessary and is hereby deleted from further consideration.

Thank you for understanding and patience during our review.

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

Sincerely,

  
VIRGINIA GOLDSTEIN  
Planning Director

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