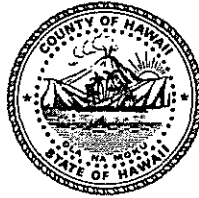


Stephen K. Yamashiro
Mayor



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
P 364 305 164

October 2, 1996

Mr. Christopher A. Brilhante
Ms. Lynn M. Nagata
1342 Kilauea Avenue
Hilo, HI 96720

Dear Mr. Brilhante and Ms. Nagata:

Variance Permit No. 781 (VAR 96-51)
Applicant(s): Christopher A. Brilhante and Lynn M. Nagata
Request: Variance From Chapter 23, Subdivisions, Article
Division 2, Improvements Required, Section 23-843,
Water Supply
Tax Map Key: 1-9-004:009

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 eight (8) 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 subdivision of the subject property:

1. The subject property is Lot 7, Block B, Grant 5684 to A.M. Cabrinha, Olaa Summer Lots, Olaa, Puna, Island and County of Hawaii. The subject property is more

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commonly identified by the tax map key (TMK) parcel number (TMK: (3) 1-9-004:009) and contains 5.281 acres.

2. The subject parcel was zoned Village Commercial (CV-7.5) and Residential (RS-20) by the County in 1967 and is designated Agriculture "U" by the State Land Use Commission (LUC).
3. The applicants/owners submitted the subject variance application on July 19, 1996. The applicants/owners of the subject property, prior to the submission of the variance application, had submitted a subdivision application (SUB 95-120) and preliminary plat map showing a proposed subdivision of the existing property containing 5.281 acres into eight (8) lots. Further action on the proposed 8-lot subdivision application is being deferred pending consideration of the subject water variance application.

The Department of Water Supply (DWS) memorandum dated October 18, 1995 in file (SUB 95-120) states in part:

"The proposed subdivision is not within the service limits of the Department of Water Supply's water system facility. The end of the Department's water system facility is located along the Volcano Highway approximately five miles east of the subject property."

4. The State Department of Health (DOH) memorandum dated August 13, 1996 in file (VAR 96-51) states in part:

"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 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."

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5. The Department of Finance-Real Property Tax comments dated September 26, 1996 in file (VAR 96-51) indicate the real property taxes are current.
6. The following is extracted from the "ATTACHMENT TO" in variance file (VAR 96-53) which states in part:

"The analysis of published public information and calculations submitted herewith appear to indicate that there is adequate rainfall within the subject property to support a private roof water catchment system for potable uses.

The subject property contains 5.281 Acres and is located in an area designated as a Urban Zoned District by State LUC.

The proposed subdivision conforms to the Zoning Code.

The requested variance would allow the property to be accorded the same treatment as other adjacent and nearly (sic) properties."

Therefore, considering the above facts and information submitted with the applicant's variance application, 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.

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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.

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 applicants and official maps and rainfall summaries in the DWS and the Planning Department appear to support the information submitted by the applicants/owners/subdividers. The analysis of available 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(s) 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 of the applicant's statements and proposed land uses within the proposed subdivision and the analysis of the rainfall information submitted for the subject property appear to indicate that there is adequate rainfall within the subject property to support a private roof water catchment system for emergency and 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.

No objections were received from the surrounding property owners and the participating government agencies.

The subject variance application was deemed complete by the Planning Department on July 19, 1996 and by subsequent discussion with the applicant(s), Ms. Lynn M. Nagata, the decision date by the Planning Director on the subject variance would be extended to October 4, 1996.

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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 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.

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 variance application (VAR 96-51) and the conditions of tentative subdivision approval in file (SUB 95-120).
2. The applicant/owner/subdivider, his assigns, or successors shall file a written agreement or approved written document with the Planning Department within one (1) year from the issuance of tentative subdivision approval and prior to receipt of final subdivision approval of SUB 95-120 containing the following deed language, being covenants, condition, and restrictions which affect the entire property and/or the proposed lots arising from the approval of pending subdivision (SUB 95-120) and 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 existing property or the proposed lots created by subdivision application (SUB 95-120).
 - 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 those lots created by SUB 95-120.
 - c. The permitted dwellings, accessory structures and permitted uses not serviced by a County water system constructed on the existing property or

lots or portions thereof, shall consist of a private potable catchment system which includes a minimum 6,000-gallon water storage tank or equivalent facility for domestic consumption or potable uses. The potable or private water 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. For each permitted dwelling or farm dwelling, provide and maintain a private water supply system which includes a separate water storage tank containing a minimum of 6,000 gallons of water for fire fighting and emergency purposes. The design and location of the separate water storage tank shall meet with the approval of Hawaii County Fire Department.
- 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 the subject property or the subdivided lot.
- f. In the event that any lots created by SUB 95-120 are provided by a water service (individual meter) from the Department of Water Supply or an approved private water system, the recorded conditions and covenants will no longer be in effect.
- g. All lots shall comply with all other applicable State and County rules and regulations.

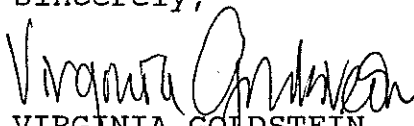
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3. All other applicable State and County rules and regulations shall be complied with.

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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xc: SUB 95-120