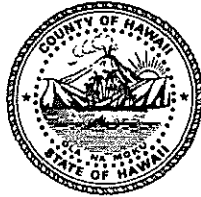


Stephen K. Yamashiro  
Mayor



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 008 113 037

September 27, 1996

Westley & Associates, Inc.  
P.O. Box 667  
Hilo, HI 96720

Gentlemen:

Variance Permit No. 780 (VAR 96-53)  
Applicant(s): Westley & Associates  
Request: Variance From the Minimum Water Requirements of  
Chapter 23, Subdivision Control Code  
Tax Map Key: 1-8-009:012

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 nine (9) 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:

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1. The subject property is Lot 332, being a Portion of Grant 6585, Olaa Reservation Lots, Olaa, Puna, Island and County of Hawaii. The subject property or Lot 332 is commonly identified by the tax map key (TMK) parcel number (TMK: (3) 1-8-009:012) and contains 46.508 acres.
2. The subject parcel was zoned Agricultural (A-5a) by the County in 1967 and is designated Agriculture "A" by the State Land Use Commission (LUC).
3. The applicant, Westley & Associates, Inc., submitted the subject variance application on behalf of the owners of the subject property. On April 11, 1996, the property owners, Westley & Associates, Inc., prepared and submitted a preliminary plat map for a nine (9) lot subdivision with their subdivision application (SUB 96-041). Further action on the proposed 9-lot subdivision application (SUB 96-041) has been deferred pending consideration of the subject water variance application.

The Department of Water Supply (DWS) memorandum dated April 29, 1996 in file (SUB 96-041) states in part:

"For your information, the subject property is not within the service limits of the Department's existing water system facilities. The nearest water system is located along the Volcano Highway approximately 3.5 miles from the property."

4. The State Department of Health (DOH) memorandum dated August 13, 1996 in file (VAR 96-53) 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."

5. The Department of Finance-Real Property Tax memorandum dated August 8, 1996 in file (VAR 96-53) states:

"At the present time, there are no delinquent taxes on this property. This property is in the agricultural use program. As such, should this property be subdivided into parcels which are 5.000 acres or less, deferred (rollback) taxes will be imposed. Deferred taxes would also be imposed if the land use classification is changed to rural or urban by the Land Use Commission upon the request of the owner."

6. The following is extracted from the "ATTACHMENT TO" in variance file (VAR 96-53) which states in part:

"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 (nine (9)-lot subdivision not serviced by the County water system) of the subdivision, this alternative would be cost prohibitive. Also, there are no assurances that adequate water would be found, especially located at approximately 2360 feet above sea level as noted on a USGS Map, Volcano Triangle, coordinates N1922.5 and W15507.5.

The only reasonable alternative is water catchment. Glenwood is historically known for more-than-adequate annual rainfalls. Average annual rainfall is approximately 184.1 inches per year, as described on the attached National Weather Service sheets (Exhibit-A) at an elevation of only 2,131 feet above sea level (below our lot). See attached County R&D cover sheet (Exhibit-B).

The imposition of providing a public or private water system for a nine (9) lot agricultural subdivision would create excessive demands on the applicant, when a more reasonable alternative is readily available."

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.

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 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 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 11, 1996 and by subsequent discussion with the applicant, the decision date by the Planning Director on the subject variance would be extended to September 20, 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.

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 or tentative subdivision approval.

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 affect the proposed lots arising from the approval of pending subdivision (SUB 96-041) 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 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 those lots created by SUB 96-041.
- 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.
- d. Provide a water supply system sufficient for fire-fighting consisting of a minimum 6,000 gallons of water per future farm dwellings on the property meeting 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 each subdivided lot.
- f. In the event that any lots created by SUB 96-041 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.

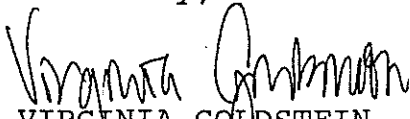
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- g. All lots shall comply with all other applicable State and County rules and regulations.
- 3. All other applicable State and County rules and regulations shall be complied with.

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 96-041