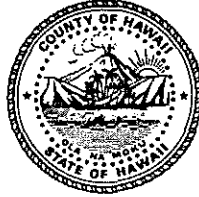


Stephen K. Yamashiro
Mayor



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 095 323 648

December 3, 1996

Ms. Johannette Rowley
531 Hahaione Street, #6B
Honolulu, Hawaii 96825

Dear Ms. Rowley:

Variance Permit No. VAR 794
Applicant: Johannette Rowley
Request: Variance From Chapter 23, Subdivisions, Article
Division 2, Improvements Required, Section 23-84,
Water Supply
Tax Map Key: 1-1-007:122

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 subdivision of the subject property:

1. The subject property is Lot 8433-A of Land Court Application 1053 as shown on Map 174, Keaau, Puna,

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Island and County of Hawaii. The parcel is more commonly identified by the tax map key (TMK) parcel number TMK: (3) 1-1-007:122.

The subject property, containing 40,000 square feet, is the combined aggregate area of two (2) original lots, Lot 134 and Lot 135, of Land Court Application 1053, Kilauea Vacation Lots, as shown on Map 12, dated November 19, 1945.

2. Subsequent to the approval the subdivision in 1945, the County approved an application for the consolidation of three (3) lots: 100, 134, and 135, into one (1) lot, LOT 8390, containing 59,815 square feet. The consolidation map or final plan map submitted with the consolidation application, dated April 10, 1962, was approved by the County on August 21, 1963 as Subdivision Consolidation No. 37.
3. Subsequent to the approval of the consolidation "37" in 1963, a Land Court subdivision map dated September 26, 1972, for a subdivision of "LOT 8433", as shown on "MAP 92" into "LOT 8433-A" containing 40,000 square feet and "LOT 8433-B" containing 19,815 square feet was submitted by the applicant with the variance application. The copy of the approved Land Court subdivision map, dated September 26, 1972 or Map 174, which was authorized and approved by order of the Land Court dated on April 8, 1974.
4. The subject property, containing 40,000 square feet, is included and further identified as "LOT 8433 (MAP 92) Remainder 146 40,000 Sq. Ft. or 0.918 Ac." on the approved final subdivision plat map dated April 17, 1974 in SUB 3382 CC in the County Planning Department.
5. Subsequent to the approval of the original Land Court Application or subdivision in 1945 and County approval of the consolidation in 1963, the subject lot(s) or property was designated Urban "U" by the State Land Use Commission and zoned Single Family Residential (RS-20) by the County.
6. The applicants/owners of the subject property have submitted a subdivision application (SUB 96-056) and preliminary plat map showing a proposed 2-lot subdivision of Lot 8433-A, containing 40,000 square feet into "LOT 8433-A-1" and "LOT 8433-A-2", each lot, being 100' x 200' and containing 20,000 square feet,

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respectively. The applicants/owners submitted the subject water variance application on July 19, 1996. Further action on the proposed 2-lot subdivision application is being deferred pending consideration of the subject water variance application.

The Department of Water Supply (DWS) memorandum dated May 29, 1996 in file (SUB 96-056) states:

"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 nearest water system is located along the Volcano Highway, approximately 8 miles from the property."

The Department of Water Supply (DWS) memorandum dated September 12, 1996 in file (VAR 96-63) states:

"We have reviewed the subject application for the proposed subdivision.

Please refer to our memorandum of May 29, 1996 to you for our comments and requirements."

7. The State Department of Health (DOH) memorandum dated September 9, 1996 in file (VAR 96-63) 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."

8. The Department of Finance-Real Property Tax records and comments dated October 18, 1996 in file (VAR 96-63) state in part:

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"Current Real property taxes paid up to December 31, 1996."

9. The following statements are taken from the transmittal letter from Robert T. Shirai, PLS, dated August 21, 1996, in variance file (VAR 96-63):

"As per the Department of Water Supply's letter dated 05/29/96, the lot is not within the existing water system. The average monthly rainfall in this area is approximately 10 inches with an overall total of 100 inches per year. It ranges from a low of 4 inches in June to a high of 13 inches in March. This is at an elevation of approximately 3600 feet above sea level. These data are from the "Atlas of Hawaii, 2nd Edition".

Using the map that is enclosed, the lot is located on the north side of First Street off of Jade Avenue within Mauna Loa Estates being approximately 1200 lineal feet from the Volcano Highway.

Please note that this subdivision is only to reestablish the lot line of a consolidation that was previously made."

Therefore, considering the above facts and information submitted with the applicant's variance application, the Planning Director understands the purpose of the subdivision is to subdivide the consolidated property, containing 40,000 square feet, into the original two (2) lot configuration; each lot consisting of 20,000 square feet, and, 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

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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 into the original 2-lot configuration 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 the subdivision is to reestablish the original or 1945 lot Land Court configuration by subdividing the consolidated Land Court property, containing 40,000 square feet, into the original two (2) lots; each lot consisting of 20,000 square feet.

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.

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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 surveyor, Mr. Robert Shirai, PLS, the decision date by the Planning Director on the subject variance would be extended to December 6, 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 variance application (VAR 96-63) and the conditions of tentative subdivision approval in file (SUB 96-056).
2. The applicant/owner/subdividers, his assigns or successors shall contact the County's Real Property Office and pay all delinquent real property taxes, penalties and interest, and any other fees due the County.
3. 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 96-056 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 96-056) 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 96-056).

- 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 96-056.
- 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.


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- f. In the event that any lots created by SUB 96-056 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.
4. 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 96-056