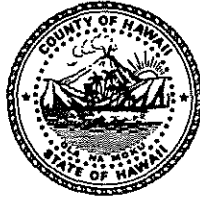


Stephen K. Yamashiro  
Mayor



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 364 320 137

November 8, 1996

Mr. Steven S.C. Lim  
Carlsmith Ball Wichman Case & Ichiki  
121 Waianuenue Avenue  
Hilo, Hawaii 96720

Dear Mr. Lim:

Variance Application WH(VAR 96-66)  
Variance No. 792  
Applicants: Patrick and Karen Quinn  
Variance from Minimum Water System Requirements  
Tax Map Key: 7-3-008: 070

After reviewing your application and the information submitted in behalf of it including comments received from consulting agencies, the Planning Director by this letter hereby certifies the approval of your variance request to allow the creation of a three (3) lot subdivision without meeting the minimum water requirements as required by Chapter 23, Article 6, Division 2, Section 23-84 (1). The variance would allow the private water transmission lines and meters to remain along the Mamalahoa Highway right-of-way, rather than relocating the water meters 700 feet below the highway along the frontage of the proposed three-lot subdivision.

The subject property is situated on the makai side of the Mamalahoa Highway, Lot 4 - Kaloko Farm Lots, Tract 1, Kaloko, North Kona, Hawaii, TMK: 7-3-008:070.

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

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Mr. Steven S.C. Lim  
Page 2  
November 8, 1996

waiver from the minimum requirements to service the proposed three (3) lot subdivision. The Applicant states in a letter dated September 12, 1996 : "As to Criteria (a), Applicants respectfully submit that special or unusual circumstances apply to the Property with respect to the approval of existing off-site water improvements, since: 1) Applicants have already secured the necessary water meters for the three-lot subdivision pursuant to the Kealakekua Source Agreement; 2) Applicants have already installed the appurtenant private water transmission lines connecting the proposed lots to the three water meters installed by the Department of Water Supply along Mamalahoa Highway right-of-way; 3) Applicants have been assessed by the Department of Water Supply for use of the existing three-meter water system since 1994; and 4) Applicants are proposing the best use or manner of development of the Property, namely its subdivision into three lots in accordance with the A-3a zoning for the Property."

"According to the Department of Water Supply record, the first 5/8-inch water meter servicing the property was installed on March 29, 1984, with two additional 5/8-inch water meters being installed on April 4, 1994, upon payment of the installation fees and construction of appurtenant water private water transmission lines from the Mamalahoa Highway to the property by the Applicants."

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 transmission lines and meter requirements. To upgrade to the existing County water system by the individual applicant would not be economically feasible.

As such, the imposition of upgrading the existing private water transmission lines 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.

#### INTENT AND PURPOSE

The subject property consisting of 10.148 acres is located within the County's Agricultural (A-3a) zoned district. Under this zoning designation the minimum building site area is 3 acres. The applicant is proposing a three (3) lot subdivision with area not exceeding the minimum (3) acre lot size requirement of the Zoning Code.

Mr. Steven S.C. Lim  
Page 3  
November 8, 1996

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 water transmission lines and meters is considered adequate for this Agricultural land.

There were two objections from surrounding property owner. The objections referred to the water meters and laterals to the proposed subdivided parcels.

However, 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 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 at the expense of the subdivider:
  - a. The applicant/subdivider agrees and accepts the fact that the water transmission lines will be privately maintained and operated.
  - b. Should an Improvement District or similar arrangements be initiated in the future, for water systems, the property owner shall participate automatically in such an arrangement.
  - c. 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 subdivider lot.

Mr. Steven S.C. Lim  
Page 4  
November 8, 1996

- d. 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.
- e. 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.

Sincerely,

  
VIRGINIA GOLDSTEIN  
Planning Director

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xc: West Hawaii Office  
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