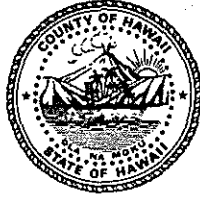


Stephen K. Yamashiro
Mayor



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 095 323 654

January 14, 1997

Mrs. Shirley A. Hussey
c/o Ms. Susan Wells Fischer
P.O. Box 44417
Kawaihae, Hawaii 96743

Dear Mrs. Hussey:

Variance Permit No. VAR 800
Applicant: Shirley A. Hussey
Request: Variance From Chapter 23, Subdivisions, Article 6,
Division 2, Improvements Required, Section 23-84,
Water Supply
Tax Map Key: 1-8-009:005, Lot 315

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 proposed twelve (12) 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 315, being a Portion of Grant 4237, O'laa Reservation Lots, O'laa, Puna, Island and County of Hawaii. The parcel containing 60.322 acres, is commonly identified by the tax map key (TMK) parcel number TMK: (3) 1-8-009:005, por., Lot 315.
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 applicants/owners of the subject property submitted a subdivision application (SUB 95-160) and preliminary plat map, proposing a subdivision of Lot 315 into twelve (12) lots. Further action on the proposed 12-lot subdivision application is being deferred pending consideration of the subject water variance application (VAR 96-75).

The Department of Water Supply (DWS) memorandum dated March 1, 1996, in file (SUB 95-160) states:

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

Please be informed that the subject property is not within the service limits of the Department's existing water system facilities. The end of the nearest Department of Water Supply water system is along the Volcano Highway approximately three miles from the property."

The Department of Water Supply (DWS) memorandum dated December 23, 1996, in file (VAR 96-75) states:

"We have reviewed the subject application. Please refer to our memorandum of March 1, 1996, to you for our comments and requirements."

4. The State Department of Health (DOH) memorandum dated December 23, 1996 in file (VAR 96-75) 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 records and following comments dated December 30 and 31, 1996, respectively, in file (VAR 96-75) state in part:

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

"Please refer to the attached copy of my response to your office dated December 30, 1996. The following additional comments are being offered at this time which inadvertently omitted on yesterday's response.

Because this property has been receiving the preferential per acre pasture land values of the agricultural use program since the 1980's, it is subject to deferred taxes (rollback taxes) if the property is subdivided into new parcels which are 5.000 acres or less. Deferred taxes cannot be assessed for a period of ten years. Basically, deferred taxes are calculated by taking the difference between the highest and best value of any year and the agricultural use value for that year, then multiplying this value by the tax rate for that particular year..."

6. The following statements are extracted from the attachment and information submitted with the variance application in file (VAR 96-75):

"SPECIAL and UNUSUAL CIRCUMSTANCES apply to the subject property. The County Department of Water Supply has responded that the proposed subdivision "is not within the service limits of Department's existing water facilities." to provide County water for this subdivision, the Olaa-Mountain View Water System would need to be extended approximately three miles, requiring pumping, transmission, and storage facilities.

Without relief from the water supply requirements, the applicant is unable to utilize the property in a manner consistent with the five acre zoning. The County General projects the development of diversified agriculture, while providing opportunities for homes. The best use or manner of development of the property is being limited.

Other ALTERNATIVES include the drilling of a deep water well. The property's elevation is approximately 2300 feet above sea level. Since drilling would probably be necessary to near sea level, this option would be extremely costly. Creation of a private water system would also require a back-up well.

A REASONABLE ALTERNATIVE is possible due to sufficient rainfall in the Glenwood area, which allows for catchment potential, provided ample catchment and storage are constructed:

The following references are attached:

1. Portion Island of Hawaii Map, United States Geological Survey
2. Monthly and Annual Rainfall Summary, Hawaii, National Weather Service, Hilo Airport
3. Climatological Data Annual Summary, 1995, Hawaii & Pacific, Vol. 91, No. 13, National Oceanic and Atmospheric Administration Pages 8 & 9: monthly & annual rainfall Page 24: location & elevation of station Reference #1 indicates Glenwood's location on the Island of Hawaii, and details the topographical lines, showing the project site as slightly above the 2300 feet above sea level position. Reference #2 provides detailed data for the Glenwood-Helbush station, located at 2300 feet elevation. The annual median rainfall is 184.1". Reference #3, Pages 8 & (

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document monthly & annual data for the South Glenwood station, and Page 24 specifies the S. Glenwood station at 2131'. This station shows annual rainfall at 141.87".

The INTENT AND PURPOSE of the water system requirements for a subdivision is to assure adequate water for human use and fire protection. Annual median rainfall in Glenwood provides adequate catchment opportunities for domestic and agricultural uses.

The variance is CONSISTENT with the general purpose of the Zoning and Subdivision Codes, and the County General Plan. The proposed subdivision will not be detrimental to the community, nor impact adversely the area's character or the adjoining properties. Surrounding land uses include dwellings, agricultural uses and vacant lands. The proposed project is low-density in nature and consistent with the State's and the County's agricultural designations for five acre parcels in this portion of Olaa Reservation lots..."

The above representations, statements, facts, and cited published sources were considered by the Planning Director. In consideration of the hydrological information and published facts presented and submitted with the variance application, the Planning Director has determined 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 deep 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 meeting DPW standards is economically cost prohibitive. As such, the imposition of requiring an approved public or private water system for the proposed subdivision of the existing lot into the proposed 12-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 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 public and private information appears to indicate there is adequate rainfall within the subject property and the surrounding areas to support individual 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, facts, and published information concerning past precipitation within the existing lot and surrounding areas and the analysis of the published rainfall information submitted with the subject variance application and other similar variance applications, it appears there is adequate rainfall within the subject property and the immediate surrounding area 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 December 5, 1996 and by subsequent discussion with the applicant's representative, Ms. Susan Wells Fischer, the decision date by the Planning Director on the subject variance would be extended to January 17, 1997.

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 96-75) and the conditions of tentative subdivision approval in file (SUB 95-160).
2. The applicant/owner/subdividers, his assigns or successors shall contact the County's Real Property Office and pay any additional real property taxes 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 95-160 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 95-160) 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 95-160).
 - 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 95-160.

- 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 95-160 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.

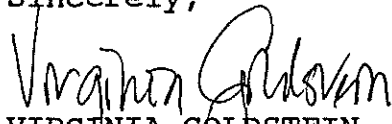
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4. All other applicable State and County rules and regulations shall be complied with.

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 95-160
Department of Water Supply