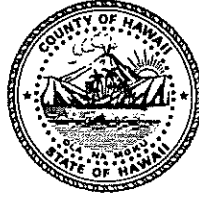


Stephen K. Yamashiro
Mayor



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 095 324 141

April 24, 1997

Mrs. Joella B. Nakamura
P.O. Box 337
Volcano, HI 96785

Dear Mrs. Nakamura:

Variance Permit No. 820 (VAR 96-79)
Applicant: Joella B. Nakamura
Request: Variance From Chapter 23, Subdivisions, Art. 6, Div. 2,
Improvements Required, Section 23-84 Water Supply
Tax Map Key: 1-9-004:002

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 an 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:

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1. The subject property is Lot 13, Block B, Grant 6424 to H.H. Morehead, Oloo Summer Lots, Oloo, Puna, Island and County of Hawaii. Lot 13, containing 4.959 acres, is more commonly identified by the tax map key (TMK) parcel number (TMK: (3) 1-9-004:002).
2. The subject parcel was zoned Residential (RS-20) by the County in 1967 and is designated Urban "U" by the State Land Use Commission (LUC).
3. The owners/applicants submitted a preliminary subdivision plat map, dated June 14, 1996, to the Planning Department proposing to further subdivide the subject property into eight (8) lots. The subdivision application (SUB 96-072) is being deferred pending consideration of the subject variance application.
4. The Department of Water Supply (DWS) memorandum dated July 16, 1996, in file (SUB 96-072) states:

"For your information, the subject property is not within the service limits of the Department of Water Supply's existing water system facilities.

The nearest Department water system is at the end of a 4-inch waterline along the Mamalahoa Highway, approximately 5.80 miles from the property."

The Department of Water Supply (DWS) memorandum dated December 19, 1996, in file (VAR 96-079) states in part:

"...Please refer to our memorandum of July 16, 1996, for our comments and requirements regarding the proposed subdivision".

5. The State Department of Health (DOH) memorandum dated December 18, 1996, in file (VAR 96-79) 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.

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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 comments dated January 23, 1997, in file (VAR 96-079) indicate the real property taxes for TMK: 1-9-004:001 is current and the real property taxes for TMK: 1-9-004:002 is delinquent.
6. The following statements are extracted from the "ATTACHMENT TO" in variance file (VAR 96-079):

"...On behalf of the applicant, Joella B. Nakamura, we submit the following data/guidelines relating to annual rainfall statistics, as extracted from various sources:

Attached herewith, please find a reduced map of "Water-Resources Investigations Report 95-4212" denoting Active rain-gaging stations and mean annual rainfall contours.

We have indicated thereon the approximate project site and its proximity to the closest active rain gage:

VOLCANO HAUNANI (State Key No. 55)

We also submit the State KLNR annual records for VOLCANO HAUNANI derived from Department of Commerce (USA) NOAA Climatology of the United States No. 81.

We submit the following (Annual) Active Rain Gage readings in order to calculate the yearly available water...

Assuming a family of four (4) using 50 gallons per day per person, the expected requirement would amount to 73,000 Gallons per year.

Therefore, even in the driest year, the catchment capacity exceeds demand by a reasonable factor-for-all vital needs: drinking, cooking and bathing.

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In view of the above, there are special and unusual circumstances applying to the subject property which deprives the applicant of substantial property rights that would otherwise be available, or, to a degree, would obviously interfere with he (sic) best use or manner of the subject property.

Regulations of the Department of Water Supply (DWS), effective June 1, 1984, fire protection (fire hydrants) is not a mandatory water standard requirement. The analysis of private and public information appears to indicate that there is adequate rainfall within the subject property and the surrounding area to support a private roof water catchment system for fire fighting uses..."

Therefore, based on the foregoing findings, and the information submitted by the applicant and representations made by the applicants, 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 the 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 prorated 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 be available for human consumption and fire protection.

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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 letter dated December 5, 1996, and by subsequent discussion with Mr. James Murray, RPLS, of Murray Smith and Associates, Ltd., the decision date by the Planning Director on the subject variance would be extended to May 1, 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 paying all real property taxes, penalties, and interest due the County of Hawaii and shall comply with all stated conditions of variance application (VAR 96-079) and the conditions of tentative subdivision approval in file (SUB 96-072).

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 96-072 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 96-072) 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 96-072).
 - 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 96-072.
 - 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.

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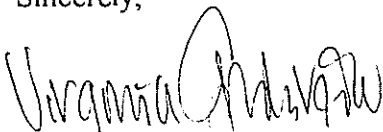
- e. In the event that there are any amendments or changes to the subdivision after the agreement is signed, the petitioner/owner/subdivider shall be responsible for informing the County Planning Department of the amendments or changes so that the agreement can reflect the amendments or changes. Further, 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 96-072 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.

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

WRY:mlm

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xc: DWS

SUB 96-072

Murray Smith and Associates, Ltd.