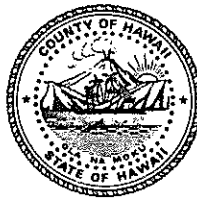


Stephen K. Yamashiro  
Mayor



Virginia Goldstein  
Director  
Russell Kokubun  
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 095 323 404**

July 9, 1997

Mr. Everette Souza  
PO Box 946  
Honokaa, HI 96727

Dear Mr. Souza:

Variance Permit No. 835  
Applicant: EVERETTE SOUZA, ET AL.  
Request: Variance From Chapter 23, Subdivisions, Article 6, Division 2,  
Improvements Required, Section 23-84 Water Supply, (1)  
Tax Map Key: 4-5-003:009 and 125

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 six (6) 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, Water Supply, (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.

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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 49 and Lot 50, Grant 8988, Situated at Kaaohomesteads, Hamakua, Island and County of Hawaii. Lot 14, containing 48.780 acres, is more commonly identified by the tax map key (TMK) parcel number (TMK: (3) 4-5-003:009 and 125).
2. The subject parcel was zoned Agricultural (A-5a) by the County in 1967 and is designated Urban "A" by the State Land Use Commission (LUC).
3. The owners/applicants submitted a preliminary subdivision plat map, dated January 14, 1997, to the Planning Department proposing to further subdivide the subject property into six (6) lots. The subdivision application (SUB 97-008) is being deferred pending consideration of the subject variance application.
4. The Department of Water Supply (DWS) memorandum dated May 15, 1997, in file (VAR 97-028) states:

"...Please refer to our memorandum of January 29, 1997 for our comments and requirements. We are enclosing a copy of this memorandum for your information.

For your added information, there is an existing 5/8-inch meter servicing Parcel 9 and an existing 5/8-inch meter servicing Parcel 25..."

The copy of the Department of Water Supply (DWS) memorandum dated January 29, 1997, in the subdivision file (SUB 97-008) states in part:

"Please be informed that the Department's existing water system facilities cannot support the proposed subdivision at this time. Extensive improvements and additions, including source, storage, transmission, booster pump, and distribution facilities, must be constructed. Currently, sufficient funding is not available and no time schedule is set..."

5. The State Department of Health (DOH) memorandum dated May 19, 1997, in file (VAR 97-028) 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."

6. The Department of Finance-Real Property Tax comments dated May 16, 1997, in file (VAR 97-028) indicate the real property taxes for TMK: 4-5-003:009 & 125 are paid through June 30, 1997. The property is receiving agricultural use value and may be subject to "Retroactive tax if subdivided to 5 Ac. or less".
7. The following statements are extracted from the "APPLICANT'S STATEMENT" in variance file (VAR 97-028):

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

The basis for the yearly available water:

- a. Family of four (4), each using 50 gallons per day.
- b. Catchment Roof (sic) Area of 2,500 square feet.
- c. One cubic foot contains 7.48 gallons.

Station Name: PAAUHAU AIRSTRIP (1957-1983)  
State Key No.: 216.3  
Altitude of Gage: 2,075.....

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

Therefore, considering the foregoing issues, it is the applicants belief that there are special and unusual circumstances applying to the subject property which exist to a degree that would deprive the applicant of substantial property rights that would otherwise be available and to a degree which obviously interfere with the best use or manner of development of the subject property.

### ALTERNATIVES

There are no other reasonable alternatives in resolving the required water system improvements. To upgrade the County water system, the applicant would have to provide extensive improvements, listed in the Department of Water Supply's memo dated January 29, 1997. That even the County budget cannot support. And if the County cannot finance such an improvement how can a average individual family finance the same.

Another alternative would be to create a private water system, which would require the developing of two (2) wells and a storage and transmission system. Even if there was a guarantee that water would be found , the millions of dollars required for such endeavor are unreasonable and not feasible for the proposed six (6) lot subdivision.

As such, the imposition of upgrading the existing public water system or the creation of a private water system for a six (6) lot subdivision would be putting excessive demands upon the applicant when a more reasonable alternative is available.

The area receives adequate annual rainfall to support a private catchment system as listed above under "SPECIAL AND UNUSUAL CIRCUMSTANCES". The applicant can also purchase water, if necessary to supplement his needs...

Based on these facts, it is the applicants opinion that this variance request would be consistent with the general purpose of the Zoning and Subdivision Control Codes and the County General Plan. It is not believed that the proposed private catchment system would be materially detrimental to the public's welfare and will not cause substantial adverse impact to the area's character or to the adjoining properties.

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Given these statements, the applicant asks that you approve this variance request."

Therefore, based on the foregoing findings, and the information submitted by the applicant and representations made by the applicant, 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 deducible 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 deducible 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.

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/subdivider. 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.

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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's certified letter dated May 12, 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/subdivider, 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 97-028) and the conditions of tentative subdivision approval in file (SUB 97-008).
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 97-008 containing the following deed language, being covenants, condition, and restrictions which affect the entire property and/or those specific lots arising from the approval of pending subdivision (SUB 97-008) 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 four (4) of the proposed lots created by subdivision application (SUB 97-008).
- 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 97-008 which are not serviced by a County water system.
- c. The water system serving 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 the applicant/owner/subdivider shall 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/subdivider, 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 97-008 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,



*for* VIRGINIA GOLDSTEIN  
Planning Director

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Enclosure

xc: DWS  
SUB 97-008