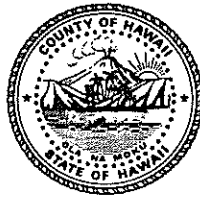


Stephen K. Yamashiro  
Mayor



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**

P 364 320 064

July 28, 1997

Mr. Gregory R. Mooers  
Mooers Enterprises  
P.O. Box 1101  
Kamuela, HI 96743

Dear Mr. Mooers:

Variance Permit No. 843 (VAR 97-38)  
Applicants: MARIAH PARTNERSHIP  
Owners: MARIAH PARTNERSHIP  
Request: Variance From Chapter 23, Subdivisions, Article 6, Division 2,  
Improvements Required, Section 23-84, Water Supply, (1)  
Tax Map Key: 4-3-011:006

**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,(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.

**WATER VARIANCE-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 29, Grant 5342 to Filesberta Ramos, Pohakea, Hamakua, Island and County of Hawaii. The subject property is more commonly identified by the tax map key (TMK) parcel number (TMK: (3) 4-3-010:001) and contains 67 acres.
2. The subject parcel was zoned Agricultural (A-5a) and is designated Agriculture "A" by the State Land Use Commission (LUC).
3. The applicants/owners submitted the subject variance application on May 29, 1997 and; prior to the submission of the variance application, submitted a subdivision application (SUB 97-022) together with a preliminary plat map showing a proposed subdivision of the subject property or lot containing 67 acres into six (6) lots. Further action on the proposed 6-lot subdivision application is being deferred pending consideration of the subject water/road variance application.

The Department of Water Supply (DWS) memorandum dated June 18, 1997 in file (VAR 97-38) 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."

4. The State Department of Health (DOH) memorandum dated June 17, 1997 in the variance file (VAR 97-38) states:

"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 comments dated June 16, 1997 in file (VAR 97-38) indicates or states in part:

"...Property receiving agricultural use value

Possible rollback taxes

Subdivision to 5.000 ac. or less will result in retroactive taxes. The subdivision plot plan shows 5-5 ac. lots.

Current property taxes are paid through June 30, 1997..."

6. The following is extracted from the "APPLICANT'S STATEMENT" in variance file (VAR 97-38) which states in part:

"There are special and unusual circumstances that exist which would warrant or necessitate a waiver from the minimum water requirements to service the proposed six (6) lot subdivision.

The Department of Water Supply stated in their letter to you dated March 24, 1997, that its existing water system facilities cannot support the proposed subdivision at this time without extensive improvements and additions, including source storage, transmission, booster pump, and distribution facilities being constructed. They added that sufficient funding is not presently available and there is no timetable for these improvements.

Since the Department of Water Supply cannot provide the water service, we propose to provide water to all dwellings on these lots with water catchment systems for domestic consumption as well as for fire-fighting purposes.

The area receives adequate rainfall, 70" -100" annually, to support a private water catchment system. Rainfall data was collected from An Inventory of Basic Water Resources Data: Island of Hawaii (State of Hawaii, Department of Land and Natural Resources) Report R-34. The nearest rain gauge with long term reports is the Paaulo (office) rain gauge State Key No. 221. The median annual rainfall is 95.01 inches, with a maximum of 213.22 inches and a minimum of 30.95 inches. The applicant can also purchase water, if necessary, to supplement the private water catchment systems. There are many homes in the area that depend on catchment systems to provide their potable water.

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

#### ALTERNATIVES

An alternative would be for the applicants to make substantial improvements to the DWS system. These improvements, according to DWS' letter to you of March 24, would include expanded source, storage, transmission, booster pump, and distribution facilities. It is not economically feasible for this applicant to make such extensive improvements to the DWS system for a sic lot subdivision.

Thus the imposition of requiring a water system for the proposed subdivision would be creating excessive demands on the petitioner when a more reasonable alternative is available.

#### INTENT AND PURPOSE

The subject property, consisting of 67.0 acres, is located in the County's Agricultural 5-a(sic) zoned district. Under this zoning designation, the minimum building site area is five (5.0) acres. The applicants are proposing a sic (6) lot subdivision with each lot area being five (5.0) acres or larger, meeting the requirements of the zoning code.

The intent and purpose of requiring a water system is to assure that an adequate water system is available for domestic consumption and fire protection. Regulations of the Department of Water Supply, effective June 1, 1984, fire-protection (fire hydrants) are not a mandatory water standard requirement. The analysis of rainfall information for this area indicates in this situation there is adequate rainfall for the proposed private catchment system for these two purposes..."

Therefore, considering the above facts and information submitted with the applicant's variance application, 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 owner/subdivider of substantial property rights that would otherwise be available,

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or to a degree which obviously interferes with the best use or manner of development of the subject property.

#### WATER VARIANCE-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 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 six (6) lot subdivision would be putting excessive demands upon the petitioner/subdivider/owner when a more reasonable alternative is available.

#### WATER VARIANCE-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 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.

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Provisions for fire protection will be privately addressed by the petitioner/owner/subdivider and provided by the petitioner/owner/subdivider on the subject property.

#### DETERMINATION-VARIANCE CONDITIONS

No objections to the subject variance were received from the surrounding property owners and the participating government agencies.

Additional time to consider the subject variance and render a decision by Planning Director was required and discussed with the applicant's representative, Mr. Gregory R. Mooers of Mooers Enterprises. Pursuant to a July 23, 1997, telephone conversation with Mr. Gregory R. Mooers, the decision date for the Planning Director to render a decision on the subject variance was extended to July 31, 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.

The water 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 97-38) and the conditions of tentative subdivision approval in file (SUB 97-022).
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 97-022 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 97-022) 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 97-022).

- 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 97-022.
- 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 97-022 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.

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3. The applicant/owner/subdivider, his assigns or successors shall comply with all other applicable State and County rules and regulations pertaining to subdivisions and land use.

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: DWS  
SUB 97-022