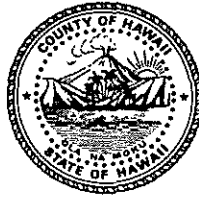


Stephen K. Yamashiro
Mayor



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 364 305 199

September 18, 1997

Mr. and Mrs. Randolph Solomon
PO Box 219
Kapaau, Hawaii 96755

Dear Mr. and Mrs. Solomon:

Variance Permit No.854 (VAR 97-033)

Applicant: RANDOLPH SOLOMON, ET AL.

Owner: RANDOLPH SOLOMON, ET AL.

Request: Variance From Chapter 23, Subdivisions, Article 6, Division 2,
Improvements Required, Section 23-84 Water Supply, (1)

Tax Map Key: 5-4-001:012

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 two (2) lot subdivision without a water system meeting with the minimum requirements of the Department of Water Supply (DWS) as required by Article 6, 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.

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 two (2) lot subdivision of the subject property:

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1. The subject property is Lot C, Grant 13,086, Situated at Kaauhuhu Homesteads, Third Series, Kaauhuhu, North Kohala, Island and County of Hawaii. Lot C, containing 44.808 acres, is more commonly identified by the tax map key (TMK) parcel number (TMK: (3) 5-4-001:012).
2. The subject parcel was zoned Agricultural (A-20a) by the County in 1967 and is designated Agriculture "A" by the State Land Use Commission (LUC).
3. The owners/applicants submitted a preliminary subdivision plat map, dated February 26, 1994, to the Planning Department proposing to further subdivide the subject property into two (2) lots or parcels; Parcel C-1 and Parcel C-2. The subdivision application (SUB 94-35) is being deferred pending consideration of the subject variance application.
4. The Department of Water Supply (DWS) memorandums dated June 6, 1997 and July 13, 1997 in file (VAR 97-033) state the following:

June 6, 1997:

"The Department is currently assessing water system improvements affecting the subject property. Currently the subject property is serviced by an existing 5/8-inch meter.

We request additional time until June 13, 1997 to submit our comments concerning the proposed variance application..."

June 13, 1997:

"Since our memo to you of March 14, 1994, water can be available to the proposed subdivision from an existing 4-inch waterline along Kynnersley Road upon the completion of an ongoing booster pump improvement project. Further, for your information, the subject property is currently serviced by an existing 5/8-inch meter.

Therefore, we recommend that the subject application be denied and that subdivision approval be contingent on the following:

1. Installation of 2.350 feet of 4-inch waterline along the Homestead Road from Kynnersley Road to the subject parcel in accordance with approved plans.
 2. Installation of a service lateral to accommodate a 5/8-inch meter to service the additional lot.
 3. Payment of the prevailing facilities charge..."
5. The State Department of Health (DOH) memorandum dated May 19, 1997, in file (VAR 97-032) 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 15, 1997, in file (VAR 97-033) indicate the real property taxes for TMK: 5-4-001:012 are paid through June 30, 1997."
7. The applicant submitted "APPLICANT'S REASONS REQUESTING A VARIANCE FROM THE MINIMUM WATER REQUIREMENTS OF THE SUBDIVISION CONTROL CODE" in variance file (VAR 97-033).

(Please refer to applicant's statements and reasons in the subject variance file)

8. No objections to the variance request were received from the surrounding property owners.

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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 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.

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. 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

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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 pursuant to a telephone conversation with the applicant's representative, Inaba Engineering, Inc., an extension of time until September 30, 1997, to render a decision on the subject variance application was mutually agreed upon.

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, and shall comply with all stated conditions of variance application (VAR 97-033) and the conditions of tentative subdivision approval in file (SUB 94-35).
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 94-35 containing the following deed language, being covenants, condition, and restrictions which affect the entire property and/or the specific lot or parcel arising from the approval of pending subdivision (SUB 94-35) 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 proposed or affected lot or parcel created by subdivision application (SUB 94-35).
 - 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 the affected lot or parcel created by SUB 94-35 which is not serviced by a County water system and shall pay their share of the water system improvements and other requirements should the Department of Water Supply (DWS) install a water system.

- c. The permitted dwellings, accessory structures and permitted uses not serviced by a County water system constructed on the affected property or lot/parcel or portions thereof, shall construct 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 affected land or property 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 or parcel.
- f. In the event that the affected lot or parcel created by SUB 94-35 is 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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- g. All lots or parcels 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

VKG/WRY:pak
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xc: Department of Water Supply
SUB 94-35