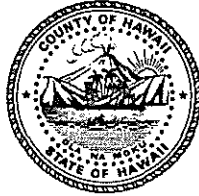


Stephen K. Yamashiro
Mayor



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 364 305 216

September 22, 1997

Mr. Robert Mason
1970 Kalaniana'ole Street
Hilo, HI 96720

Dear Mr. Mason:

Variance Permit No. 860 (VAR 97-38)

Applicants: ROBERT MASON

Owners: ROBERT MASON

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

Tax Map Key: 1-9-004:003

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 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.

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 eight (8) lot subdivision of the subject property:

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1. The subject property is Lot 12 A, Block B, Grant 5562, Portion of Olaa Summer Lots, Olaa, Island and County of Hawaii. The subject property is more commonly identified by the tax map key (TMK) parcel number (TMK: (3) 1-9-004:003) and contains 4.174 acres.
2. The subject parcel was zoned Single-Family Residential (RS-20) and is designated Urban "U" by the State Land Use Commission (LUC).
3. The applicant submitted a subdivision application (SUB 97-047) and preliminary plat map dated May 5, 1997, showing a proposed subdivision of Lot 12 A into eight (8) lots. Further action on the proposed 8-lot subdivision application is being deferred pending consideration of the subject water variance application.

The Department of Water Supply (DWS) memorandum dated August 1, 1997, in file (VAR 97-051) states in part:

"Please refer to our memorandum of May 14, 1997, for our comments and requirements. We are enclosing a copy for your information."

The copy of the DWS memorandum dated May 14, 1997, states in part:

"Please be informed that the subject property is not within the service limits of the Department's existing water system facilities.

The nearest Department of Water Supply's water system facility is at the end of an existing 4-inch waterline along the Mamalahoa Highway approximately 8.5 miles from the property."

4. The State Department of Health (DOH) memorandum dated July 29, 1997, in the variance file (VAR 97-051) 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 applicant submitted "Application for Variance from Minimum Water Requirements" in variance file (VAR 97-051).

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

6. The letter and concerns stated in a letter dated August 10, 1997, from Ms. Cynee Gillette-Wenner, Chairperson, Volcano Community Association, Long Range Planning Committee, was received on August 14, 1997.
7. No objections were received from the surrounding property owners situated within 300 feet of the subject property.

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, 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.

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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 eight (8) 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. 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. Jon Gomes. Pursuant to a September 16, 1997, with Mr. Gomes, the decision date for the Planning Director to render a decision on the subject variance was extended to September 30, 1997.

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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 97-051) and the conditions of tentative subdivision approval in file (SUB 97-047).
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 97-047 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 97-047) 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 97-047).
 - 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 97-047.
 - 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 or 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 97-047 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.
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 your patience and understanding during our review.

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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

WRY:cjf
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xc: DWS
SUB 97-047
Volcano Community Association