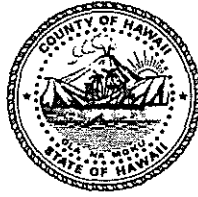


Stephen K. Yamashiro
Mayor



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) 961-8742

CERTIFIED MAIL

Z 179 517 468

December 3, 1997

Mr. William Rex Livingston
c/o Don McIntosh Consulting
P.O. Box 58
Kailua-Kona, HI 96745-0058

Dear Mr. Livingston:

Variance Permit No. 875 (VAR 97-70)
Applicant: WILLIAM REX LIVINGSTON
Owners: WILLIAM REX LIVINGSTON
Request: Variance From Chapter 23, Subdivisions, Article 6, Division 2,
Improvements Required, Section 23-84, Water Supply, (1)
Tax Map Key: 9-4-005:045

After reviewing your application and the additional information submitted, 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 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 six (6) lot subdivision of the subject property:

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1. The subject property is identified as TMK: (3) 9-4-005:045 and contains approximately 90.6 acres.
2. The subject parcel is zoned Agricultural (A-5a) by the County and designated Agriculture "A" by the State Land Use Commission (LUC).
3. The applicant submitted a subdivision application (SUB 96-111) and preliminary plat map dated September 21, 1996 showing a proposed subdivision of Lot 7-B into six (6) lots. Further action on the proposed 6-lot subdivision application is being deferred pending consideration of the subject water variance application.
4. The Department of Water Supply (DWS) memorandum dated November 7, 1997 in file (VAR 97-70) states in part:

"Please refer to our memorandum of November 29, 1996 for our comments and requirements. We are enclosing a copy for your information.

For your information, there is no service to this parcel."

The DWS memorandum dated November 29, 1996 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 considered. Currently, sufficient funding is not available and no time schedule is set.

The preliminary plat map shall be revised to show the existing 5-foot waterline easement along the common boundary of proposed Lot Nos. 7-B-3, 7-B-4, and 7-B-5 and shall be noted as "A 5-foot waterline easement," not "A consumer pipeline easement."

5. The State Department of Health (DOH) memorandum dated October 21, 1997 in the variance file (VAR 97-70) 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

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human consumption, if such system has at least fifteen (15) service connection or regularly serves an average of at least twenty-five (25) individuals daily 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 applicant submitted "VARIANCE REQUEST From Providing a Standard County Water System And Allowing for a Water Catchment & Storage System" in variance file (VAR 97-70).

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

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.

ALTERNATIVES

There are no other reasonable alternatives in resolving the difficulty of the petitioner.

The first alternative, requires the owner to provide the necessary dedicable water system improvements in accordance with the standards required by DWS. The second alternative would be to drill and develop private wells and install the necessary water system improvements in accordance with the standards required by DWS.

The pro rata 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

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a public or private water system for the proposed six (6) lot subdivision would be putting excessive demands upon the 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 is available for human consumption and fire protection.

The analysis of existing site conditions, official maps and rainfall summaries in DWS and the Planning Department appears to support the information regarding rainfall data submitted by the owners. 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 private rain catchment system(s) for potable uses. The State Department of Health has no specific rules or regulations relating to the utilization, construction or inspection of private rain catchment systems.

The analysis of the applicant's statements appears to indicate that there is adequate rainfall within the subject property to support a private rain catchment system for emergency and fire fighting purposes. Provisions for fire protection will be addressed and provided by the owner 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.

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 Code, Subdivision Code and the County General Plan. The approval of the variance 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 owner, his assigns or successors shall be responsible for complying with all stated conditions of Variance Permit 875.

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2. The owner, 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 96-111 that shall contain 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 96-111). This agreement 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 owner:
 - a. The owner 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 the subject subdivision application.
 - b. The owner 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 the subject subdivision application.
 - c. The permitted dwellings and accessory structures not serviced by a County water system shall be provided with and maintain 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 private rain 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. Each permitted farm dwelling shall be provided with and maintain a private water supply system which includes an additional water storage capacity 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 the Hawaii County Fire Department.
 - e. In the event that there are any amendments or changes to the subdivision after the agreement is signed, the owner shall be responsible for informing the County Planning Department of such amendments or

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changes so that the agreement can be amended thusly. Further, the written agreement shall be considered as a condition and covenant running with the land and shall be binding upon the owners, 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 96-111 are provided with 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 owner, his successors or assigns shall comply with all other applicable State and County rules and regulations pertaining to subdivisions and land use.

Thank you for your 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 96-111