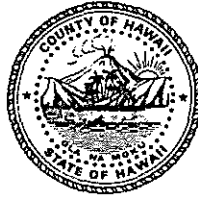


Stephen K. Yamashiro
Mayor



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 179 517 491

March 2, 1998

Mr. and Mrs. Richard Carvalho
P.O. Box 432
Kapaau, Hawaii 96755

Dear Mr. and Mrs. Carvalho:

Variance Permit No. 903 (VAR 97-90)
Applicants: RICHARD CARVALHO, ET AL.
Owner: RICHARD CARVALHO, ET AL.
Request: Variance From Chapter 23, Subdivisions, Article 6,
Division 2, Improvements Required, Section 23-84, Water Supply, (1)
Tax Map Key: 5-5-011:031

Please accept our sincere apologies for this tardy confirmation of the variance approval to allow the requested variance. As you are aware, this office has been working within and with other participating County Departments to improve the efficiency of the variance process which will hopefully result in timely responses to future variance applications. Your understanding and patience is appreciated.

After reviewing your variance application and the information submitted, 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 Chapter 23, Division 2, Section 23-84, (1), of the Subdivision Code.

The Planning Director has concluded that the variance from the minimum subdivision water system 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 for the proposed two (2) lot subdivision:

1. The subject property is Lot 3-A-2 containing an area of approximately 1.16 acres. The subject lot or parcel consists of Portions of Lot 3 of Hualua Homesteads and Grant 4180, Situated at Hualua, North Kohala, Hawaii.
2. The subject property is zoned Single-Family Residential (RS-15) by the County and is designated Urban "U" by the State Land Use Commission (LUC).
3. The owners have submitted a subdivision application (SUB 96-108) which includes a preliminary plat map dated September 24, 1996, to further subdivide the Lot 3-A-2 into two (2) lots. Further action on the proposed 2-lot subdivision application has been deferred pending consideration of the subject variance application.
4. The Department of Water Supply (DWS) memorandum dated December 29, 1997 states in part:

"Please be informed that the property has a water commitment in effect for two (2) additional units that will expire on July 31, 2000.

We are requesting that the variance application be denied and final subdivision approval be granted only upon either:

"The applicant complying with the requirements in our letter of July 23, 1997 to Mr. Richard Carvalho. We are enclosing a copy for your information; or

The applicant delaying the subdivision until the Department of Parks and Recreation installs the required 6-inch waterline within Hualua Road fronting the property, satisfying Item 1a of our letter of July 23, 1997 to Mr. Carvalho. The rest of the requirements in our letter remain unchanged."

5. The Department of Finance-Real Property Tax memorandum dated December 16, 1997, states in part:

"There are no rollback taxes. No objection of the variance; and

Taxes are delinquent from 1994-95 to present in the amount of \$6,467.65 which includes tax, penalty and interest up to 12/31/97."

6. The Department of Parks and Recreation has related in discussion that the waterline to service the new proposed park in the vicinity of the subject parcel is intended to be completed when funding is finalized. This park is being developed in coordination with community volunteer efforts with the waterline being the responsibility of the Department of Parks and Recreation. Completion of the park is anticipated within 18 months according to the department.
7. Other than comments received from the affected agencies, no objections to the variance application were received from the surrounding property owners.

Therefore, considering the above facts, information submitted by the applicants, and agency comments, 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 owners 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 applicant. The first alternative requires the applicants to improve the existing county water system and provide the necessary dedicable water system improvement in accordance with DWS standards. However, the Department of Parks & Recreation is intending to install the waterline in the near future which will also allow the owners to access a county water system. The second alternative would be to design, drill and develop private wells and install the necessary water system improvements in accordance with DWS standards.

As such, the imposition of improving the existing public water system or providing an approved alternative water system for the proposed subdivision would be putting excessive demands upon the applicants when a more reasonable alternative is available.

Intent and Purpose- Water Variance

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The intent and purpose of requiring a water system for and within the proposed 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 the DWS and the Planning Department appear to support the rainfall data and information submitted by the applicant. The analysis of available private and public information appears to indicate that there is adequate rainfall within the subject property and surrounding areas to support individual or separate private rain water catchment systems for potable and emergency uses.

The State Department of Health has no specific rules or regulations relating to the utilization, construction or inspection of private roof catchment water systems for potable or emergency uses.

Additional provisions for water storage, water distribution, and construction of private rain water catchment system(s) on the property or proposed lots may be necessary and will be addressed by the applicant or future lot owner.

DETERMINATION-VARIANCE CONDITIONS

The subject variance application was deemed complete by the Planning Department by letter dated November 28, 1997.

Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district and the intents and purposes of the Zoning Code, Subdivision Code and the County General Plan. Furthermore, the variances requested 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 variance requested to allow a proposed subdivision without water system meeting DWS standards is approved subject to the following conditions:

1. The owners, their assigns, or successors shall be responsible for complying with all conditions of Variance Permit No. 903, effective, March 2, 1998.
2. WATER VARIANCE: The owners, their 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 96-108. This written agreement shall contain the following deed language, being covenants, conditions, and

restrictions which affect the proposed Lot 3-A-2-A arising from the approval of pending subdivision application 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 owners:

- a. The owners agree and accept the fact that a County dedicable public water system is not now able to service the existing property or the proposed LOT 3-A-2-A created by SUB 96-108.
- b. The owners agree and accept the fact that the County will not, at this time, bear the responsibility of supplying public water to LOT 3-A-2-A created by SUB 96-108.
- c. Any dwelling(s) not serviced by a County water system constructed on LOT 3-A-2-A shall be provided with and maintain a private potable rain catchment system which includes a minimum 6,000-gallon for domestic consumption or potable uses. This catchment system shall adhere to the Department of Public Works, Building Divisions'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 dwelling shall be provided with and maintain a private water supply system which includes an additional minimum 3,000 gallon water storage capacity for fire fighting and emergency purposes. The emergency water supply system, including the necessary compatible connector system and location of the water storage capacity on the property, 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 applicant shall be responsible for informing the County Planning Department of such amendments or changes so that the agreement can be amended thusly. Further, the written or recorded agreement shall be binding upon the owner(s), their successors or assigns and shall be incorporated as an exhibit and made part of each agreement of sale, deed, lease, or similar documents affecting the title or ownership of the existing property or approved subdivided lots.

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- f. In the event that any of the lots created by SUB 96-108 are provided with water service (individual meter) from the Department of Water Supply or an approved water system, the lots shall utilize said water service and the owners shall assume pro-rata costs for such improvements as determined by the Department of Water Supply.
4. The owners, their assigns or successors shall comply with all other applicable State and County rules and regulations pertaining to subdivisions and land use.

Should any of the foregoing stated conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Thank you for your understanding and patience during our review.

Sincerely,


VIRGINIA GOLDSTEIN
Planning Director

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xc: Department of Water Supply
SUB 96-108