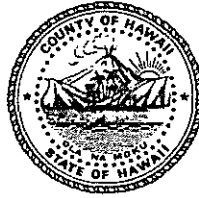


Stephen K. Yamashiro
Mayor



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

P 417 370 123

September 11, 1998

Ms. Chrystal Thomas Yamasaki
Wes Thomas Associates
75-5749 Kalawa Street
Kailua-Kona, Hawaii 96740

Dear Ms. Yamasaki:

Variance Application WH(VAR98-041)
Variance No. 945
Applicant: MS. CHONG YEUNG AHN
Owner: CREATE 21 CHOU, INC.
Subdivision No. 98-047
Variance from Water Requirements of Subdivision Code
Tax Map Key: 9-4-002: 003

After reviewing your application and the additional information submitted, the Planning Director by this letter hereby certifies the approval of your variance request to allow the creation of a ten (10) lot subdivision without a water system meeting the minimum water requirements of the County Department of Water Supply as required by Article 6, Division 2, Section 23-84(1) of the Subdivision Code.

Please accept our sincere apologies for this tardy confirmation of the approval granted to allow the requested variance. We have been working within the department to improve the efficiency of this process which will hopefully result in more timely responses to future applications. Your patience is appreciated.

The subject property is situated at Grant 2658 to Puukaua, at Mahaiula, Papohaku 1st, 2nd and 3rd and Puumakaa, Kau, Hawaii, Tax Map Key: 9-4-002: 003.

The Planning Director has concluded that the variance request from the Subdivision Code minimum water requirements should be approved based on the following:

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SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances that exist which would warrant or necessitate a variance from the minimum water requirements to service the proposed ten (10) lot subdivision.

1. The applicant submitted a subdivision application (SUB 98-047) and preliminary plat map dated March 31, 1998, proposing to subdivide Grant 2658, a 263 acre parcel into 10 lots. Further action on the proposed ten (10) lot subdivision application is being deferred pending consideration of the subject water variance application.

2. Department of Health memo dated July 4, 1998 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 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."

3. Department of Public Works, Engineering Division memo dated May 12, 1998 states in part:

"We have reviewed the preliminary plat and have the following comments:

- "1. §23-64. Identify all watercourses and drainage ways and designate areas within as 'approximate areas flood inundation.
- "2. §23-65. Provide common access easement encumbering the side-by-side poles of all flag lots. Identify easements by azimuths/distances on the final plat. DPW recommends that the access poles of all flag lots intersect Ka'alu'alu Road at right angle.

"3. Access to the subdivision is via Ka'alu'alu Road. The County maintained portion of the road ends at the northeast corner of the subject parcel. DPW recommends improving the portion of Ka'alu'alu Road fronting the subdivision with a 20-ft wide private agricultural pavement conforming to Std Det R-39.

"a. Because this is a private road standard, the subdivider shall record a deed covenant stating that the County of Hawaii does not provide maintenance of the roadway and shall be held harmless from any liabilities and maintenance.

"b. Requirements for any work within the homestead road right-of-way (Ka'alu'alu Road) fronting the subdivision shall be referred to the County, Finance Department.

"c. §23-79. Submit construction plans and drainage report for review and comment.

§23-92. Additional storm runoff due to development shall be disposed within the subdivision and shall not be discharged onto adjacent properties or roadways. For planned drywells, satisfy DOH drywell requirements, including issuance of an underground injection control (UIC) permit to the subdivider.

"Questions may be referred to Cres Rambayon at 961-8327."

4. Department of Public Works, Engineering Division memo dated July 24, 1998 states:

"We have reviewed the subject request and have no comment."

"If you have any questions please contact Thomas Pack of our Kona office at 327-3530."

5. Department of Water Supply memo dated July 31, 1998 states:

"We have reviewed the subject application. Please refer to our memorandum of May 11, 1998 for our comments and requirements. We are enclosing a copy for your information.

“Should there be any questions, please call our Water Resources and Planning Branch at 961-8660.”

6. Department of Water Supply memo dated May 11, 1998 states:

“We have reviewed the subject application for the proposed subdivision and have the following comments.

“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 pumps, and distribution facilities must be constructed. Currently, sufficient funding is not available and no time schedule is set.

“Should there be any questions, please call our Water Resources and Planning Branch at 961-8660.”

7. The Department has received the following objections from adjacent landowners:

- A. Mr. Chauncey Carter letter dated August 6, 1998 states:

“These are my comments on the proposed ten lot subdivision for tax Map Key parcel 9-4-002:003, and the variance sought to allow such:

“(1) Rainfall in the area is insufficient for catchment, agriculture or ranching needs. Given that Mark Twain and Green Sands subdivisions which are mauka of this parcel are not served directly by county water, it would seem imprudent, if not reckless, to expand the inadequately served community. As it stands, the residents of the above mentioned subdivisions must install their own lines from Wakea road or the highway. This results in a thick tangle of plastic water lines stretching along both sides of winding Ka’alu’alu Road for a mile or more, one line per resident. Leaks are frequent and identification is difficult. Fights and bitter feuds often result over lines that are shared and sabotage is often threatened, if not carried out.

“(2) Access to the proposed subdivision would be via Wakea Road or Ka’alu’alu Road, or both. Discovery Harbor and Mark Twain residents would protest increased traffic on Wakea, and Green Sands residents

Ms. Chrystal Yamasaki
Page 5
September 11, 1998

would deeply resent the increased traffic on narrow, winding, partially unpaved Ka'alu'alu Road.

“(3) There are archaeological features of considerable significance on parcel 9-4-002:003. Agricultural terraces, enclosures, house platforms, and small he'iau (temples) have been discovered by hikers, some of them with knowledgeable enough to assess the cultural value of these configurations and structures. Hawaiians in the community take strong objection to the desecration of the last vestiges of their cultural heritage.

“In conclusion, it would seem to me that if the County really wants to pen this area to more development, it would expand and improve Ka'alu'alu Road and run a water line down to service the existing and proposed residents. It is my hope, however, that this is not the County's intention, as most of us live in the area prefer the undeveloped, rural character of the place.”

B. Mr. Bruce Raye letter dated August 7, 1998 states:

“Regarding the proposed 10 lot subdivision of TMK: 9-4-02:003:

“Our community is burdened with substandard roads and lack of water facilities. Many problems arise when residents must run their own water lines a mile or more. Another subdivision would add considerably to this burden.

“We tolerate lack of infrastructure here in the interest of preserving the area's rural character. We are opposed to projects that would compromise that. We have three adjacent subdivisions now, and fear that adding more would have a negative impact.

“P.S. I don't consider proposal to depend on water catchment for ag. purposes realistic.”

Therefore, considering the foregoing issues, the Planning Director has determined that there are special and unusual circumstances applying to the subject property which exist either to a degree which deprives the applicant 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.

Ms. Chrystal Yamasaki
Page 6
September 11, 1998

ALTERNATIVES

There are no reasonable alternatives in resolving the required water system requirements. To upgrade the existing County water system by the individual applicant would not economically feasible.

The other alternative would be to drill wells to create a private water system. However, due to the limited nature (10-lot subdivision not serviced by County water system) of the subdivision, this alternative would be cost prohibitive. Also there is no assurance that adequate water would be found.

As such, the imposition of upgrading the existing public water system or the creation of a private water system in this area for the proposed ten (10) lot subdivision would be putting excessive demands upon the applicant when a more reasonable alternative is available.

The Soil Conservation Service Soil Survey Report states that the Kamo Series is at an elevation ranging from 1,000 to 2,000 feet and receives from 40 to 60 inches of rainfall annually. This report appears to indicate that the area receives adequate rainfall to support a private rain water catchment system. The applicant can also purchase water if necessary to supplement the private rain water catchment system.

INTENT AND PURPOSE

The subject property consisting of 263 acres is located within the County's Agricultural (A-20a) zoned district. Under this zoning designation the minimum building site area is 20 acres. The applicant is proposing a ten (10) lot subdivision with each lot not exceeding the minimum (20) acre lot size requirement 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. In this situation, the substitute private rain water catchment system is considered adequate for this Agricultural land.

DETERMINATION - VARIANCE CONDITIONS

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, this 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.

This variance request is therefore approved, subject to the following conditions:

1. The owner, assigns or successors shall be responsible for complying with stated conditions of approval.
2. The owner, assigns or successors shall file a written agreement with the Planning Department prior to receipt of final subdivision approval containing the following stipulations and covenants which shall be duly recorded at the Bureau of Conveyances of the State of Hawaii at the expense of the subdivider:
 - a. The owner agrees and accepts the fact that a County dedicated public water system is not now or in the foreseeable future able to service the subdivision.
 - b. The owner agrees and accepts the fact that a County dedicated public water system shall not at any time bear the responsibility of supplying public water to the subdivision.
 - c. Any existing and/or future dwellings not serviced by County water system constructed on the property shall be provided with and maintain a private rain water catchment system with a minimum 6,000 gallon water storage facility for domestic consumption. This 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. Any existing and/or future dwellings shall be provided with and maintain a private water supply system which includes an additional water storage capacity at a minimum of 3,000 gallons of water for fire fighting and emergency purposes. The design, including appropriate connector system, and location of the additional water storage capacity shall meet with the approval of the Hawaii County Fire Department. If the dwellings are more than 50 feet apart 14,000 gallons of water per dwelling will be required.
 - 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 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 applicant/subdivider or owner, 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 each subdivider lot.

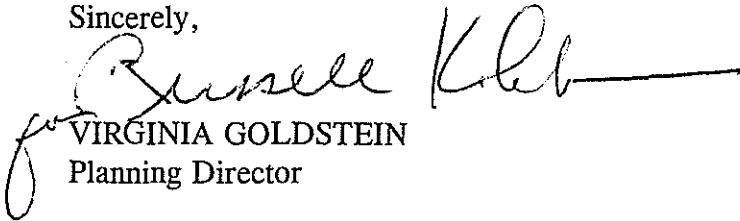
- f. In the event that any of the lots are provided with a water service (individual meter) from the Department of Water Supply or an approved private water system, the above covenants for the specific property will no longer be in effect.
- g. Access to the subdivision is via Ka'alu'alu Road. The County-maintained portion of the road ends at the northeast corner of the subject parcel. DPW recommends improving the portion of Ka'alu'alu Road fronting the subdivision with a 20-ft wide private agricultural pavement conforming to Std Det R-39. Because this is a private road standard, the subdivider shall record a deed covenant stating that the County of Hawaii does not provide maintenance of the roadway and shall be held harmless from any liabilities and maintenance.
- h. Requirements for any work within the homestead road right-of-way (Ka'alu'alu Road) fronting the subdivision shall be referred to the County, Finance Department.
- I. No variance from the minimum water requirements for the proposed lots shall be applied for in the future.
- j. The owner, 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 conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Ms. Chrystal Yamasaki
Page 9
September 11, 1998

Should you have any questions, please feel free to contact Royden Yamasato of this department.

Sincerely,


VIRGINIA GOLDSTEIN
Planning Director

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xc: West Hawaii Office
Subdivision File No. 98-047