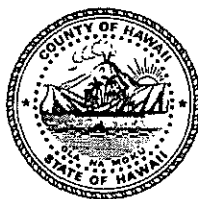


Stephen K. Yamashiro
Mayor



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 417 370 198

January 28, 1999

Mr. Sidney Fuke
100 Pauahi Street, Suite 212
Hilo, Hawaii 96720

Dear Mr. Fuke:

Variance Application WH(VAR98-077)

Variance No. 979

Applicant: KONA MOUNTAIN COFFEE/WALL RANCH

Owners: WALL RANCH, INC. AND KATHLEEN LASSITER

Subdivision Application No. 98-115

Variance from Water, Minimum Right-of-Way and Pavement Widths Requirements of the Subdivision Code

Tax Map Key: 7-9-002:001

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 a 2-lot subdivision without meeting the minimum water requirements as required by Chapter 23 (Subdivision Code), Article 6 (Improvements), Division 2 (Improvements Required), Section 23-84(1) (Water supply), and Article 3 (Design Standards) Division 4 (Street Design), Section 23-41 (Minimum Right of Way and Pavement Widths).

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 Honuaino 3rd and 4th, and Hokukano 1st and 2nd, North Kona, Hawaii, Tax Map Key: 7-9-002: 001.

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

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 two (2) lot subdivision.

1. The applicant submitted a subdivision application (SUB 98-115) proposing to subdivide the property, a 460 acre parcel into 2 lots. Further action on the proposed two (2) lot subdivision application is being deferred pending consideration of the subject water variance application.

2. Department of Health memo dated December 8, 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 December 31, 1998 states:

"We have reviewed the subject request and offer the following comments.

1. Hawaii County Code Sections 23-41 and 23-87 require a 20 foot gravel roadway within a 50 foot right of way.

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

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4. Department of Water Supply (December 10, 1998 Memo):

We have reviewed the subject application and the comments in our memorandum of October 9, 1998 still stand. (A copy is attached.)

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

5. Department of Water Supply memo dated October 9, 1998 states:

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

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 water system facility is at the end of an existing 8-inch waterline along the Mamalahoa Highway, approximately 3,500 feet from the property. Further, the property is located at an elevation beyond the pressure limits of the Department's existing water system facility. Therefore, extensive improvements and additions, including 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.

6. The Department has not received any objections from adjacent or surrounding landowners.

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.

ALTERNATIVES

There are no reasonable alternatives in resolving the required water system and minimum right-of-way and pavement width requirements. To upgrade the existing County water system

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and require the minimum right-of-way and pavement widths by the individual applicant would not be economically feasible.

The other alternative would be to drill wells to create a private water system. However, due to the limited nature (2-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 three (2) lot subdivision would be putting excessive demands upon the applicant when a more reasonable alternative is available.

The applicant's report states that over the past 75 years, the mean, maximum and minimum rainfall for the area was approximately 71.05, 93.75 and 50.55 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.

The applicant's report also states that the applicant leased a 30+ acre area to plant coffee in 1986. This leased area is part of a 460+acre parcel. Although the lease was never approved for a subdivision by the County Planning Department, it was recorded in the State Bureau of Conveyances and assigned a separate tax map key. An adjoining 47+ acre area was leased and planted in coffee. This area was never recorded with the State Bureau of Conveyances and was not assigned a separate tax map key number. The applicant applied for a subdivision request to create a legal lot for the area consisting of a total of 78.894 acres.

Access to the lot is via an existing easement that varies from 15 to 20 feet. The 3,000 foot easement is paved to about 8-12 feet and maintained by the County of Hawaii up to the Kainaliu Diversion System. The balance of the easement is gravel. The area is designed for agricultural purposes rather than residential purposes. The usual type of vehicle to service the farm is a truck. As such, the graveled access and partially paved section is sufficient for access by the users. For over 10 years the applicant has been using this access in its present state without any adverse impacts to the neighbors or public welfare.

INTENT AND PURPOSE

The subject property consisting of 460+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 two (2) lot subdivision with each lot not exceeding the minimum (20) acre lot size requirement of the Zoning Code.

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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.

Chapter 23, Article 3, Section 23-40 states that the location, width, and grade of a street shall conform to the County general plan and shall be considered in its relation to existing and planned streets, to topographical conditions, to public convenience and safety, and to the proposed use of land to be served by the street. Where the location is not shown in the County general plan, the arrangement of a street in a subdivision shall either: (a) Provide for the continuation or appropriate projection of existing principal streets in surrounding areas; or (b) Conform to a plan for the neighborhood which has been approved or adopted by the director to meet a particular situation where topographical or other conditions make continuance or conformance to existing streets impractical.

The Land Use Pattern Allocation Guide (LUPAG) Map designates the area as Orchards. The LUPAG Map component of the General Plan is a representation of the document's goals, policies, standards and courses of action to guide the coordinated growth and development of the County. It reflects a graphic depiction of the physical relationships among the various land uses. The LUPAG Map establishes the basic urban and non-urban land use pattern for areas within the County. The requested variance is consistent with the general purpose of the district, the intent and purpose of this chapter, and the County general plan and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or to adjoining properties. In this particular instance, based on the circumstances, conformance to existing subdivision code roadway requirements are impractical.

The request therefore warrants and necessitates a waiver from the minimum requirements for the proposed two (2) lot subdivision considering its relation to existing and planned streets, to topographical conditions, to public convenience and safety, and the proposed use of land to be served by the street.

The subject property consisting of 460+ 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 two (2) lot subdivision consisting of Lot 1 (78+acres) and Lot 2 (381+acres).

The intent and purpose of requiring a right-of-way and pavement width requirements is to permit the subdivision and where necessary to give access to or permit a satisfactory future subdivision. These are related to existing and planned streets, to topographical conditions, to public convenience and safety issues, and to the proposed use of land to be served by the street. The applicant is proposing the continued use of a coffee farm and therefore, in this

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situation, the existing 3,000 foot easement consisting of 8-12 feet of pavement and the remainder consisting of gravel within a 15-20 foot wide access easement 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.

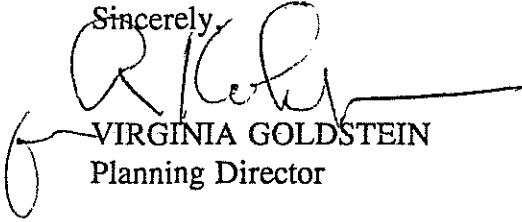
- d. Any existing and/or future dwellings shall be provided with and maintain a private water supply system which includes an additional water storage capacity at a minimum of 3,000 gallons of water for fire fighting and emergency purposes. The design, including appropriate connector system, and location of the additional water storage capacity shall meet with the approval of the Hawaii County Fire Department. The Fire Department also advises as a precautionary measure for other uninhabited agricultural structures that consideration be given to the provision of similar water storage system for fire fighting and emergency purposes.
- 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 property shall be through the existing right-of-way easement which varies from 15 to 20 feet.
- h. 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.

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

Sincerely,



VIRGINIA GOLDSTEIN
Planning Director

EMM: rld
a:\79002001\kmc.app

xc: West Hawaii Office
Subdivision File