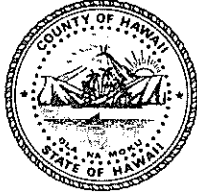


Stephen K. Yamashiro
Mayor



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

7099 3220 0000 4869 7497

May 8, 2000

Ms. Adele Eggel, Realtor
CLARK REALTY CORPORATION
99 Aupuni Street, Suite 119
Hilo, Hawaii 96720

Dear Ms. Eggel:

Variance Permit No. 1108 (VAR 00-002)
Applicant: ADELE EGGEL
Owners: ROBERT BURGADO, ETAL.
Request: Variance From Chapter 25, Article 5,
Division 7, Section 25-5-74, Minimum Building Site Area
to Allow a 2 Lot Subdivision of the Existing Property
Tax Map Key: 2-4-007:045 Portion, Lot 6

After reviewing your variance application and the information submitted, the Planning Director certifies the approval of a subdivision to allow lots to be created without meeting the minimum lot size requirements of the county's Zoning and Subdivision Codes.

Please accept our sincere apology for this tardy confirmation of the approval to allow the requested variance. Additional time to study older subdivision maps and records, property tax history, and county ordinances was necessary. Your patience is appreciated.

FINDINGS AND RECOMMENDATIONS

The Planning Director has concluded that the variance from the county's Zoning Code and Subdivision Code to allow and recognize a lot containing 0.7 acres within the subject property can be approved based on the following findings.

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SPECIAL AND UNUSUAL CIRCUMSTANCES

Prior to the submission of your variance application, the Planning Department received an inquiry from the owners on September 24, 1999. The Planning Department's letter dated November 5, 1999 directed the owners to pursue a variance from the Chapter 25, Zoning Code, prior to submission of a subdivision application to recognize a lot consisting of 0.7 acre. For the record we note and acknowledge the following:

1. The subject property is Lot 6, which contains 5.11 acres +/- . The affected portion of the subject property containing 0.70 acre is a portion of Lot 6, Grant 11,411 of the Waiakea Homesteads, Situate at Waiakea, South Hilo, Hawaii.

The subject property was zoned Agricultural (A-3a) by the County in 1967. The property is designated Agriculture "A" by the State Land Use Commission (SLUC).

2. On or about February 7, 1962, a subdivision application and map submittals showing a subdivision of Lot 6 into 3 lots were submitted to the Planning and Traffic Commission (PTC) for approval. An affected portion of the TMK property (Lot 6), containing 0.70 acres, was designated as "LOT 6-A", on the preliminary subdivision map prepared by "E.K. Bright". Pursuant to copies of earlier correspondence in the Planning Department, we note the following:

The Board of Water Supply 's letter dated February 21, 1962 states in part:

"The Board of Water Supply has no water system in this area at the present time. However, the Board is now ready to advertise for the construction of the Waiakea-Uka Water System Improvements and will install a 6" C.I. water main along Malaai Street and water will be available from same in the near future."

Pursuant to a letter dated February 27, 1962, the Planning & Traffic Commission at its meeting of February 19, 1962, considered the proposed subdivision of Lot 6, and voted to grant preliminary approval to the proposed 3-lot subdivision. The letter dated February 27, 1962 states in part:

"The Commission voted to grant preliminary approval to the subdivision, subject to each and every provision of Ordinance No. 24, excepting only those provisions of the said Ordinance which are specifically modified as follows:

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1. Sidewalks are not recommended and sewers need not be constructed.
2. Points of curvature on roads need not be monumented but all lot corners shall be marked by one-half (1/2) inch galvanized pipe or equal, firmly set on the ground.

Final approval will be granted upon installation of water lines and completion of water service connection according to the rules and regulations of the Board of Water Supply.”

Pursuant to a letter dated April 14, 1964 to “Joseph H. Bugado”, the Planning and Traffic Commission, declared the 3-lot subdivision null and void. The letter dated April 14, 1964 states in part:

“Your subdivision expired on February 19, 1963 as you have not installed water lines and completed water service connection according to the rules and regulations of the Board of Water Supply as requested in our letter dated February 27, 1962.

Therefore, the Commission considers your subdivision null and void.

3. The owners/applicant submitted an inquiry letter dated September 23, 1999 to the Planning Department regarding the subject property. The Planning Department’s response in a letter dated November 6, 1999, states in part:

“Please be advised that in light of the circumstances relating to the subject property and as a means to resolve the minimum building site area requirements of Chapter 25 (Zoning Code), Article 8, A, Agricultural Districts, Section 25-154, be pursued. For your information and use, we are enclosing a Variance Application.”

4. The subject variance application was deemed complete by the Planning Director on January 28, 2000. The attached transmittal letter includes a written explanation which states in part:

“On behalf of the owners, we thank you for acknowledging receipt of our letter dated September 23, 1999. Upon recommendation of Virginia Goldstein, we have completed the Variance Application along with supporting documents attached.

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We appreciate your consideration to grant a variance due to the unusual circumstances regarding this property. The property has been in the Bugado family since 1954. The father (sic) divided the land into three parcels back in 1962. Unfortunately he fell ill with cancer and passed away in 1963. Your files document the subdivision process up to 1964 showing a final letter from Planning declaring the subdivision null and void because the water lines had not been installed. (Today it currently meets this requirement.)

The family heirs, and current owners, inherited this home in 1998 and were completely unaware of this situation until just recently. They remember their father was a very hard working and diligent (sic) and only think his decline in health may have cause (sic) this oversight. The family only wishes to remedy the situation and knows of no other solution than a variance, as they do not own the other two lots.

The property currently has a small home on it situated in the middle and close to Malaai St. This home was transported from lower Hilo in 1969. All County Building Permits are in place and there are no known or visible encroachments. The home continues to be consistent with the surrounding neighborhood and use of the land.”

5. The State Department of Health (DOH) memorandum dated January 25, 2000 states:

“The Health Department found no environmental health concerns with regulatory implications in the submittals.”

6. The Department of Finance-Real Property Tax memorandum dated February 11, 2000 states:

“There are no comments at this time”

“Real Property taxes are paid through June 30, 2000.”

7. The Department of Public Works (DPW) memorandum dated February 15, 2000 states:

“After discussing the subject variance with both the Engineering and Building Divisions, we could find no relevance or see any interest in the granting of VAR 00-002, 00-003 or any other minimum building site variance. As a result, to expedite processing, we suggest you discontinue transmitting these variance to this office.”

6. The County Tax Office and Department of Public Works (DPW) records show seven (7) building permits (BP nos. 40837, 44670, 47317, 47813, 48385, 771228, and 990798) were approved by the affected county and state agencies between 1969 and 1999. These building permits are for a storage building, dwelling, alteration and building repairs, carport addition, and demolition of a storage building located on parcel 65 or Lot “6A”. For the record, B No. 48385 expired and six (6) BPs were “closed” or finalized by the Department of Public Works (DPW)-Building Division.
7. Pursuant to DWS records, TMK: (3) 2-4-007:045, “Lot 6-A”, was issued a county DWS water meter (No. 183-49040) in November 1969. The other adjacent portions of Lot 6 being parcel 057 and parcel 056, identified on the 1962 preliminary subdivision map as “Lot 6-B” and “Lot 6-C”, were also issued water meters by the BWS or DWS in May 1963 (“Lot 6-B”: No. 183-49300) and in February 1981 (“Lot 6-C”: No. 183-48970), respectively. Tax records and DPW building records disclose that further building permits were issued for other building improvements located on Lot 6 with separate tax map parcel numbers.
8. A demolition permit (BP NO. 990798) to remove a “12 x 24” storage building located on parcel 45 was closed or finalized by the DPW-Building Division on October 19, 1999. Pursuant to a recent site inspection, it appears that a two (2) story dwelling remains on the affected portion of Lot 6 or “6-A”, TMK: (3) 2-4-007:045. For the record, we could not affirm if the dwelling located on the affected portion of Lot 6 consisting of 0.7 acre or other building improvements established on the remaining portion of Lot 6 met all minimum building yards.
9. Proof of first and second mailing was submitted to Planning Department on February 28, 2000. For the record, several oral and written objections to the variance application were received from the surrounding property owners.

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Therefore, considering the above facts, site plan submittals, agency comments, and additional information and facts related to the existing development of the subject property and adjacent property, the Planning Director has determined that there are special and unusual circumstances applying to the subject land area or property which exists either to a degree which deprives the current 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

In view of the above findings and facts, it appears the action taken by the Planning and Traffic Commission (PTC) in 1964 to nullify the pending 3-lot subdivision was not appropriate. Current DWS records show county water was made available to Lot 6 from a water line installed or located within the Malaai Street right-of-way in 1963. The county water meter service to Lot 6 or "Lot 6-B" was issued or installed by the Board of Water Supply (BWS) in May 1963. Therefore, the statements made or cited in the PTC letter dated April 14, 1964 are not correct and the action to terminate and declare the 1962 3-lot subdivision null and void was inappropriate. Furthermore, previous to the PTC 1964 letter to nullify the subdivision request, it appears the 3-lots identified and respective land areas denoted on the preliminary subdivision map dated 1962 were already platted by the State and treated as separate lots by the State Tax Office beginning in 1963.

It appears the affected 0.7 acre portion of Lot 6, Lot "6-A", was issued tax map key number TMK:(3) 2-4-007:045 by the State in 1963. As a point of reference, the County did not recognize the 3-lot subdivision in 1967 and no government correspondence to refute the platting of the subdivision of Lot 6 on the tax maps or zoning maps was found. Lot 6, containing 5.11 acres +/-, was zoned Agricultural (A-3a) by the County, when the Zoning Code was adopted by the County in 1967. In spite of the nullification of the 3-lot subdivision in 1964, two additional water meters were granted to Lot "6-A" (TMK: (3) 2-4-007:045) and Lot "6-C" (TMK: (3) 2-4-007:056) in November 1969 and February 1981, respectively. In addition, starting in 1963, former state tax assessment records, DWS (BWS) water meter records, and DPW building permit records indicate that numerous buildings were constructed and on specific portions of Lot 6, each with a separate tax map key numbers.

Therefore, in view the confusion resulting from the actions taken by the County and State agencies between 1962 and 1964, additional information obtained from the DWS, and other affected agencies, there are special and unusual circumstances to warrant the granting of the subject variance.

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DETERMINATION-VARIANCE CONDITIONS

The subject variance application and attached variance submittals were deemed necessary and complete by the Planning Director on January 18, 2000. Additional time to review and study the previous subdivision correspondence and action, past agency comments, and other copies of building information and building permits affecting the subject property was required.

Based the foregoing findings and the existing property circumstances, 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 variance 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 by the applicant and required by Planning Director is approved subject to the following conditions:

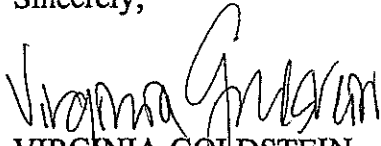
1. The applicants/owners, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The variance is from Chapter 25, Article 5, Division 1, Section 25-5-74, Minimum Building Area to recognize the 0.7 acre property and allow a 2-lot subdivision of the existing property.
3. The applicants/owners shall cause and submit a subdivision application showing the approved lot on a subdivision map to the Planning Director for review and subdivision approval. The preliminary and final subdivision maps shall include and denote the existing future road widening lines and identify all existing structures and related building improvements built or established on the subject property. All building improvements established on the subject property after 1967 are required to comply with the minimum building yards and other provisions of Chapter 25, the Zoning Code requirements. The final subdivision plat map shall comply with all the requirements of Chapter 23, Subdivisions, Chapter 25, the Zoning Code, and other county and state statutes pertaining to subdivisions and property recordation.
4. Existing and future building improvements and permitted uses on the approved lot(s) shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

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Thank you very much for your understanding and your patience.

Any questions may be directed to this office at 961-8288.

Sincerely,


VIRGINIA GOLDSTEIN
Planning Director

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xc: Mr. and Mrs. George W. Baybrook
Ms. Rose DeLuz