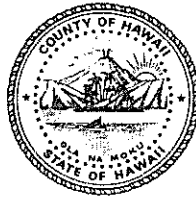


Stephen K. Yamashiro
Mayor



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 6421

June 2, 2000

Mr. Joel La Pinta
c/o Orchid Isle Properties
391 Kilauea Avenue
Hilo, Hawaii 96720

Dear Mr. La Pinta:

Variance Permit No. 1125 (VAR 00-024)

Applicant: JOEL LA PINTA

Owners: JOEL LA PINTA, ETAL.

Request: Variance From Chapter 23, Subdivisions, Article 6,

Division 2, Improvements Required, Section 23-84, Water Supply, (1)

Tax Map Key: 2-8-007:006

After reviewing your variance application and the information submitted, the Planning Director certifies the approval of your variance from Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply, (1), to allow the creation of a seven (7) lot subdivision without a water system meeting with the minimum requirements of the Department of Water Supply (DWS).

Please accept our sincere apology for this tardy confirmation of the variance approval. Additional time by the DWS to review the variance request was necessary. Your patience is appreciated.

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 seven (7) lot subdivision:

1. The subject property containing 46.849 acres is a portion of R.P. 7192, L.C. Aw. 8559-B, Apanas 17 and 18 to William C. Lunalilo, Pepeekeo and Makahanaloa, South Hilo, Hawaii.
2. The subject property is zoned Single-Family Residential (RS-10) and Agricultural (A-20a) by the County and respectively designated Urban "U" and Agriculture "A" by the State Land Use Commission (LUC).
3. The owners have submitted a subdivision application (SUB 00-024) which includes a preliminary plat map dated October 25, 1999, to subdivide the subject property into seven (7) lots. Further action on the proposed 7-lot subdivision application has been deferred pending consideration of the subject variance application.
4. The Department of Finance-Real Property Tax memorandum dated March 22, 2000 states in part:

"Property is receiving agricultural use value"
"Remarks: Agricultural use assessment is on the A-20a portion."
"Real Property taxes are paid through June 30, 2000."
5. The State Department of Health (DOH) memorandum dated March 28, 2000 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 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 catchments systems for drinking purposes."

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6. The Department of Water Supply (DWS) memorandum dated May 11, 2000 states:

"We have reviewed the subject application. Please refer to our memorandum of November 26, 1999 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 961-8665."

7. The attached copy of the DPW memorandum dated November 26, 1999 states in part:

"We have reviewed the subject application for the proposed subdivision and have the following comments (sic)

Please be informed that the Department's 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 961-8665."

8. The applicant submitted a written narrative "ATTACHMENT TO" dated "2/14/00" that includes a detailed analysis of rainfall within the subject property and supporting information with the variance application which states in part:

"On behalf of the Applicant, Joel La Pinta we submit the following data/guidelines relating to annual rainfall statistics, as denoted in NOAA pamphlet "Climatology of the United States No. 81."

We submit a reduced map of "Water-Resources Investigations Report 95-4214" denoting Active rain-gaging stations and mean annual rainfall contours.

We have indicated there on the approximate project site and it (sic) proximity to the closest active rain gage: ANDRADE (State Key no 144.6) (sic)
We submit the following (Annual) Active Rain Gage readings in order to calculate the yearly available water.

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The basis for the yearly available water:

- a. Family of four (4), each using 50 gallons per day.
- b. Catchment Roof Area of 2,500 Square Feet.
- c. One cubic foot contains 7.48 Gallons (sic)

Station Name: ANDRADE (1949-1983: Near Pepeekeo's Andrade Camp.)
State Key No. 144.6
Altitude of Gage: 650' (ANDRADE)

- a. Median Annual Rainfall: 154.2" (12.9')
- b. Highest Annual Rainfall: 227.2" (18.9')
- c. Lowest Annual Rainfall: 94.3" (7.9')

- a. 12.9 X 2,500 X 7.48 = 241,230 Gal/year
661 Gal/day
165 Gal/person
- b. 18.9 X 2,500 X 7.48 = 353,430 Gal/year
968 Gal/day
242 Gal/person
- c. 7.9 X 2,500 X 7.48 = 147,730 Gal/year
405 Gal/day
101 Gal/person

Assuming a family of four (4) using 50 gallons per day per person, the expected requirements would amount to 73,000 Gallons per year.

Therefore, even in the driest year, the catchment capacity exceeds demand by a reasonable factor for all vital needs: drinking, cooking and bathing.

In view of the above there are special and unusual circumstances applying to the subject property deprives (sic) the applicant of substantial property rights that would otherwise be available, or, to degree, (sic) which obviously interferes with the best use or Manner of development of the subject property.

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ALTERNATIVES

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

There has been an absence of an adequate County Water system since this property was originally zoned in 1967. The first alternative, requires the petitioner/subdivider/owner of the proposed subdivision application to pay appropriate facilities charges and fees to the DWS and to improve the existing water system, provide the necessary facilities charges and fees to the DWS and to improve the existing water system, provide the necessary dedicable water system improvement in accordance with the Rules, Regulations, and Standards prescribed by the DWS.

The second alternative requires the petitioner/subdivider/owner to plan, explore, design and drill a minimum of two (2) private wells, and to install the necessary pipeline and electrical infrastructure in accordance with the Rules, Regulations and Standards presented by the DWS.

However, the wells would need to conform to the minimum 100' radius for residence sanitary systems, imposed by the Department of Health.

The development cost per lot for the water system design and construction of an approved dedicable or acceptable private water system is cost prohibitive.

Thus, the imposition of requiring a public or private water system for the proposed subdivision would be creating excessive demands upon he (sic) petitioner/subdivider/owner when a more reasonable alternative is available.

These special and unusual circumstances applying to the subject property deprives the applicant of substantial property rights that would otherwise be available, or, to degree, which obviously interferes with the best use or manner of development of the subject property.

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.

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The analysis of private and public information indicates that there is adequate rainfall within the subject property and the surrounding areas to support a private roof water catchment system for potable uses and for storage of water supply deemed adequate for fire protection.

The subject property contains 46.849 Acres and is located in both an Agricultural Zoned District (12.341 Acres) and Urban Zoned District (34.508) Acres).

The proposed subdivision conforms to the Zoning Code.”

Note: The above quotes are taken from the narrative submitted with the subject variance application. The applicant’s complete narrative is a part of the variance application and shall be hereafter referred to as “applicant’ attachment”.

9. The proof of mailing of notices to the surrounding property owners was received on April 10, 2000.
10. No oral or written 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 improvements in accordance with DWS and DOH standards. The second alternative would be to design, drill and develop private wells and install the necessary water system improvements in accordance with DWS and DOH standards.

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

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INTENT AND PURPOSE-WATER VARIANCE

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 in the "applicant's attachment". The analysis of the "applicant's attachment" and public rainfall information appears to indicate that there is adequate rainfall within the subject property and surrounding areas to support the proposed individual or separate private rain water catchment systems for potable and emergency uses within six (6) lots of the proposed seven (7) lots. The lot owners, if needed, also have the option of purchasing water to supplement the private rain water catchment systems.

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 on February 17, 2000. Additional time to discuss the specific variance request with DWS and understand the location of the existing water system was required.

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 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 to allow a six (6) lots of a proposed seven (7) lot 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. 1125.

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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 99-141. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions, which affect the proposed lots 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 six (6) lots not serviced by a county water system that are created by SUB 99-141.
 - b. The owners agree and accept the fact that the County will not, at this time, bear the responsibility of supplying public water to six (6) lots of the proposed lots not serviced by a county water system that are lots created by SUB 99-141. No further subdivision of the six (6) lots created by SUB 99-141 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions are met.
 - c. Any dwelling(s) constructed on the proposed six (6) lots not serviced by a County water system 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 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 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. The Hawaii County Fire Department also advises as a precautionary measure for other uninhabited agricultural structures that consideration be given to the provision of a similar water storage system for fire fighting and emergency purposes.

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- 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.
 - f. In the event that any of the lots created by SUB 99-141 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.
 - g. All permitted dwellings and uses shall meet Zoning Code requirements. No ohana dwellings units shall be permitted on any proposed seven (7) lots created by SUB 99-141.
3. The owners, their assigns or successors shall comply with all other applicable State and County rules and regulations pertaining to SUB 99-141 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 99-141