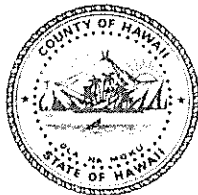


Stephen K. Yamashiro
Mayor



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 6599

June 19, 2000

Mr. and Mrs. Reginald Leite
HCR 2 Box 6451
Keaau, HI 96749

Dear Mr. and Mrs. Leite:

Variance Permit No. 1132 (VAR 00-027)
Applicants: REGINALD LEITE, ETAL.
Owners: REGINALD LEITE, ETAL.
Request: Variance From Chapter 23, Subdivisions, Article 6,
Division 2, Improvements Required, Section 23-84, Water Supply, (1)
Tax Map Key: 2-4-006:078 (SUB 98-118)

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 twelve (12) lots within a proposed two (2) lot subdivision to be created 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 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 Planning Director has concluded that the variance from the minimum subdivision water system requirements for two (2) lot subdivision 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 a variance from the minimum water requirements for the proposed two (2) lot subdivision:

1. The subject property containing 6.000 acres is a Portion of Grant 11,678 to Tadariori Hokama (Lot 1214), Waiakea Homesteads, Second Series, Waiakea, South Hilo, Hawaii.
2. The subject property is zoned Agricultural (A-3a) by the County and is designated Agriculture "A" by the State Land Use Commission (LUC).
3. The owners have submitted a subdivision application (SUB 98-118) which includes a preliminary plat map dated September 28, 1998 to subdivide the subject property into two (2) lots. Further action on the proposed 2-lot subdivision application has been deferred pending consideration of the subject variance application (VAR 00-027).
4. The Department of Finance-Real Property Tax memorandum dated March 22, 2000 states in part:

"Property is dedicated to agricultural use

"Possible rollback taxes"

"Delinquent/Amount \$13.12 Amount includes tax, penalty, & interest up to 3/30/00 "

"Remarks: See bill attached."

Note: For the record, the applicant submitted a tax receipt on May 22, 2000 showing that taxes in the amount of \$13.38 had been paid.
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."

6. The Department of Water Supply (DWS) memorandum dated May 17, 2000 states:

We have reviewed the subject application. Please refer to our memorandum of November 9, 1998 for our comments and requirements. We are enclosing a copy for your information."

The attached copy of the attached DWS memorandum dated November 9, 1998 memorandum states in part:

"We have reviewed the subject application 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.

Further, the nearest Department of Water Supply's water system facility is at the end of an existing 4-inch waterline along Alawaena Road, approximately 1,600 feet from the property.

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

7. The "APPLICANT'S REASONS FOR REQUESTING A VARIANCE FROM THE MINIMUM WATER REQUIREMENTS OF THE SUBDIVISION CONTROL CODE" states in part:

"There are no reasonable alternatives to resolve the water system requirements. The Department of Water Supply has also stated in the letter of November 9, 1998, "the nearest Department of water Supply's water system facility is at the end of an existing 4-inch waterline along Alawaena Road, approximately 1,600 feet from the property." The alternative would be for the applicants to make substantial improvements to the Department of Water Supply system. The cost of upgrading the existing water system as specified by the Department of Water Supply or to drill wells to provide a private water system is cost prohibitive and economically unjustifiable for two (2) Agricultural-3a Lots.

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RAINFALL DATA:

The National Weather Service Office provided the monthly and annual precipitation for "HI92-WAIAKEA UKA" gage (see attached). It receives 180" of rainfall annually.

The WATER-RESOURCES INVESTIGATIONS REPORT 95-4212, "Active rain-gaging stations with real time data at Waiakea-Uka rain gage State Key No. 85.2, which receives between 170" to 180" annually. Our interpretation of the approximate vicinity median annual rainfall is 175".

Assuming a dwelling structure with a roof catchment area of 2,500 sq. ft. with 170 inches (14.58') of annual rainfall would collect approximately 272,646 gal/day. Depending on the water tank storage capacity, the estimated possible 757 gal/day should be adequate to sustain the water demands for a normal household of four occupants.

ZONING & SUBDIVISION CODES:

The property consists of 6 acres and is within the County's agricultural 3a zoned district. The proposed Lot 1214-A-1 (3 acres) and Lot 1214-A-2 (3 acres) both meet the 3 acres minimum building site area of the Zoning Code.

The Subdivision Code requirement for a water system meeting the minimum standards of the Department of Water Supply is basically to assure water is available for domestic consumption and fire protection. However, since the property is zoned Ag-3a, the installation of fire hydrants to assure adequate fire protection (Department of Water Supply, County of Hawaii, Rules and Regulations, Section 4-4) is not a requirement. A private water catchment system could meet the domestic consumption for this agricultural zoned district."

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

8. The proof of mailing of notices to the surrounding property owners by the applicant's representative was received on April 5, 2000.

No oral or written objections to the variance application (VAR 00-027) 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 standards. 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

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 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 individual or separate private rain water catchment systems for potable and emergency uses within two (2) lots. The lot owners, if needed, also have the option of purchasing water to supplement the catchment system. This is a common method of providing water in areas like this, with the understanding that existing roadways are able to allow access by trucks hauling water.

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 within lots not served by a county water system.

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 March 15, 2000. Additional time by the RP and DWS to address the variance request 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 a proposed two (2) lot subdivision without a 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. 1132.
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 98-118. 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 the lots not serviced by a county water system that are created by SUB 98-118. No ohana dwellings units shall be permitted on any proposed lots created by SUB 98-118.
 - b. The owners agree and accept the fact that the County will not, at this time, bear the responsibility of supplying public water to the proposed lots created by SUB 98-118. No further subdivision of the lots created by SUB 98-118 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 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

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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 98-118