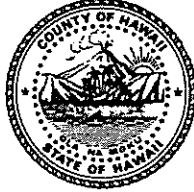


Stephen K. Yamashiro  
Mayor



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 4868 8341

August 30, 2000

Mr. Gary Ashikawa, P.E.  
P.O. Box 789  
Kealahou, Hawaii 96750

Dear Mr. Ashikawa:

Variance Application WH(VAR00-051)  
Variance No. 1149  
Applicant: KAZUO SEO TRUST  
Owner: KAZUO SEO TRUST  
Subdivision No. 2000-007  
Variance from Water Requirements of Subdivision Code  
Tax Map Key: 7-9-004:016

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 two (2) 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. Your patience is appreciated.

The subject property is situated at Lot 3-D and Lot 4-F, being also a portion of Grant 974 to Ehu, at Kuamoo 1,2 and 3, North Kona, Hawaii, Tax Map Key: 7-9-004:016.

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 two (2) lot subdivision.

1. The applicant submitted a subdivision application (SUB 2000-007) and preliminary plat map dated December 6, 1999, proposing to subdivide Grant 974, a 7.89 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 memorandum dated July 10, 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 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 Water Supply memorandum dated July 7, 2000 states:

"We have reviewed the subject variance application. Please refer to our memorandum of January 13, 2000 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."

4. Department of Water Supply memorandum dated January 13, 2000 states:

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

"Water can be made available from the end of an existing 6-inch waterline along Saint Road, approximately 500 feet from the property.

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"Pursuant to the Department's 'Water Commitment Guidelines Policy,' a copy of which is being forwarded to the applicant, a water commitment may be issued. Based on the 1 additional unit requested in the proposed 2-unit development, the required water commitment deposit is \$150.00.

"Remittance by the applicant of the \$150.00 is requested as soon as possible so that a water commitment may be formally issued. The commitment will be in writing with specific conditions and effective dates stated. Please keep in mind that this letter shall not be construed as a water commitment. In other words, unless a water commitment is officially effected, water availability is subject to change depending on the water situation.

"For the applicant's information, final subdivision approval will be subject to compliance with the following requirements:

- "1. Construct necessary water system improvements, which shall include, but not be limited to:
  - "a. extension of approximately 500 feet of 6-inch waterline from the end of the existing 6-inch waterline along Saint Paul Road to the property.
  - "b. service laterals that will accommodate 5/8-inch sized meters to each lot, and
  - "c. a fire hydrant within 300 feet of each lot.
- "2. Submit construction plans and design calculations prepared by a professional engineer, registered in the State of Hawaii, for review and approval.
- "3. Remit the prevailing facilities charge and capital assessment fee, which are subject to change, of \$3,938.00 and \$500.00 respectively. These are due and payable upon completion of the installation of the required water system improvements and prior to final subdivision approval being granted.
- "4. The appropriate documents shall be submitted, property prepared and executed, to convey the water system improvements and necessary easements to the Water Commission of the County of Hawaii prior to final subdivision approval being granted. A registered land surveyor shall stamp and certify the metes and bounds description within the conveyance documents. However, prior to the water meter services being granted to the development, or any lots within, the

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conveyance documents shall be accepted by the Water Commission.

"Should there be any questions, please call our Water Resources and Planning Branch at 961-8665."

5. Applicant's Response in a Letter dated March 7, 2000 states:

"In response to the Memorandum from the Department of Water Supply to the Planning Department dated January 13, 2000, the Kazuo Seo Trust, the subdivider, respectfully requests a variance from extending the 6-inch water line approximately 500 feet along Saint Paul Road from the present terminus to the subject property and from installing fire hydrants.

"Our engineers estimate of the cost to prepare the construction drawings and install the water line and required fire hydrants is SIXTY THOUSAND DOLLARS (\$60,000.00). The Kazuo Seo Trust is not in a position to expend this large amount of money.

"For your information, the subject property is being subdivided whereby Merle Uyeda, the daughter of Mr. and Mrs. Kazuo Seo, would be able to retain the existing house and the area around the house (Lot 1) within the family and Lot 2 would be sold to help settle the Kazuo Seo estate.

"Should you have any questions regarding the foregoing, please call me at 322-4000."

The Planning 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 requirements. To upgrade the existing County water system by the individual applicant would not economically feasible. However, due to the limited nature (2-lot subdivision not serviced by County water system) of the subdivision, this alternative would be cost prohibitive.

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The applicant stated that the total cost for the preparation of construction drawings and to install a water line with the required fire hydrants will cost sixty thousand dollars (\$60,000.00). The purpose of creating this subdivision is so that the applicant will be able to retain the existing house (Lot 1) and sell the remaining Lot 2 to settle the Kazuo Estate. The settlement of the estate persipitated the need for the subdivision. The added cost to install a water service from the Department of Water Supply, has created a special and unusual circumstance which obviously interferes with the best use or manner of development of the subject property.

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 two (2) 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 soils are Puna extremely stony muck (rPYD) with 3-25 percent slope. Surface layer is of dark brown about 5 inches thick underlain by fragmental a'a. These soils are gently sloping to moderately steep. They are on uplands at an elevation ranging from 1,000 to 3,500 feet and receive from 60 to 90 inches of rainfall annually. Their mean annual soil temperatures is 63°. Permeability is rapid, runoff is slow, and the erosion hazard is slight. This soil is used for pasture and orchards.

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 7.89 acres is located within the County's Agricultural (A-1a) zoned district. Under this zoning designation the minimum building site area is 1 acre. The applicant is proposing a two (2) lot subdivision with each lot not exceeding the minimum (1) 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

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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.

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- 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. 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.

Should you have any questions, please feel free to contact Eleanor Mirikitani of this department.

Sincerely,

  
VIRGINIA GOLDSTEIN  
Planning Director

EMM: rld  
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xc: West Hawaii Office  
Subdivision File