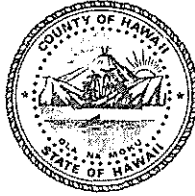


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
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

7000 0600 0024 2905 3035

May 31, 2001

Steven S. C. Lim, Esq.
CARLSMITH BALL LLP
121 Waianuenue Avenue
Hilo, HI 96720

Dear Mr. Lim:

Variance Permit No. 1202 (VAR 00-088)
Applicant: WB KUKIO RESORTS, LLC.
Owners: WB KUKIO RESORTS, LLC.
Request: Variance From Chapter 23, Subdivisions, Article 6,
Division 2, Improvements Required, Section 23-84, Water Supply, (1)
Tax Map Key: 7-2-004:014 (Por.), Lot A-2, (SUB 00-195)

After reviewing the subject variance application and 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 four (4) lot subdivision without a water system meeting with the minimum requirements of the Department of Water Supply (DWS).

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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JUN 14 2001

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 four (4) lot subdivision:

1. The subject property consists of Lot A-2 containing 23.088 acres, being Portions of Grant 3438 and Grant 3953 to John A. Maguire, Kukio 2nd and Maniniowale, North Kona, Hawaii.
2. The subject property is zoned Agricultural (A-5a) by the County and is designated Agriculture ("A") by the State Land Use Commission (LUC).
3. The applicants submitted a variance application to the Planning Department on October 12, 2000. Subsequent to receipt of the variance application, the applicants submitted a subdivision application (SUB 00-195) which includes a preliminary plat map to subdivide Lot A-2 into four (4) lots. Further action on the proposed 4-lot subdivision application has been deferred pending consideration of the subject variance application.
4. The applicant(s)/owner(s) included a detailed written explanation and other attachments on October 12, 2000. (Please refer to the applicant's original variance application, detailed written explanation, and other exhibits in the subject variance file which is incorporated herein.)
5. The Department of Water Supply (DWS) memorandum, dated May 17, 2001, states in part:

"We have reviewed the subject application and the comments in our memorandum of January 16, 2001, still stand. (A copy is attached.)

Should there be any questions, please call our Water Resources and Planning Branch at 961-8070."

The attached copy of the DWS memorandum, dated January 16, 2001, states in part:

"We have reviewed the preliminary plat map for the proposed subdivision and have the following comment.

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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's water system facility is at the end of an existing 12-inch waterline along the Mamalahoa Highway, approximately 1.3 miles from the property.

Further, the Department's existing 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 you have any questions, please call our Water Resources and Planning Branch at 961-8665."

6. The State Department of Health (DOH) memorandum dated December 18, 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 human consumption through pipe or other constructed conveyance if such system has 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. All public water systems are regulated by the Department of Health and shall be in compliance with the Hawaii Administrative Rules, Title 11, Chapter 20.

Past episodes of water quality concerns for lead, copper, algae and microbiological and chemical contaminations in private rain catchment systems have identified the need for self monitoring. The Department of Health does not support the use of these private rain catchment systems for drinking purposes since the quality may not meet potable water standards."

7. For the record the applicant mailed two notification letters to adjacent property owners within 300 feet of the subject property. Proof of mailing of the respective notification letter(s) were submitted on October 12, 2000 and December 18, 2000.

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The Planning Department received no other oral or written objections to the subject variance application.

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 submitted by the applicant. The analysis of available private and public information appears to indicate that there is adequate rainfall within the subject property and surrounding areas to support individual or separate private rainwater catchment systems for potable and emergency uses.

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.

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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 acknowledged by certified letter dated November 3, 2000. Pursuant to a telephone request, the applicant agreed to extend the date on which the Planning Director shall render a decision on the subject variance to no later than May 31, 2001.

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 proposed 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 stated conditions of approval.
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 00-195. 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 existing property or the proposed lots created by SUB 00-195. Should the Council adopt a Unified Impact Fees Ordinance setting forth criteria for the imposition of exactions or the assessment of impact fees, conditions included herein shall be credited towards the requirements of the Unified Impact Fees Ordinance.
- b. No ohana or additional farm dwellings shall be permitted on any lots created by SUB 00-195.
- c. The owners agree and accept the fact that the County will not, at this time, bear the responsibility of supplying public water to proposed lots created by SUB 00-195. No further subdivision of the lots created by SUB 00-195 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
- d. 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 water storage capacity 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.
- e. 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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- f. 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.
 - g. In the event that the County notifies the owners of the lots created by SUB 00-195 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 00-195, the owners of the lots created by SUB 00-195 shall participate in such improvement district or shall pay their pro-rata share of the upgrade and installation of laterals, as determined by the Department of Water Supply.
3. The owners, their assigns or successors shall pay any outstanding real property taxes and comply with all other applicable State and County rules and regulations pertaining to subdivisions and land use.

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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,



CHRISTOPHER J. YUEN
Planning Director

WRY:cps
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Enclosure

xc: DWS-Engineering Branch
SUB 00-195