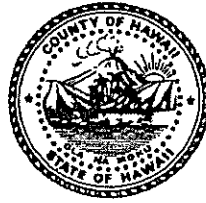


Harry Kim  
Mayor



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 2904 0981

February 13, 2001

Mr. Thomas A. Marshall  
c/o Mr. Peter Hughes, Realtor  
MIO REALTY, INC.  
21 Kamana Street  
Hilo, HI 96720

Dear Mr. Marshall:

Variance Permit No. 1188 (VAR 00-093)  
Applicant: THOMAS A. MARSHALL  
Owners: MIURA & OSHITA ASSOCIATES  
Request: Variance From Chapter 23, Subdivisions, Article 6,  
Division 2, Improvements Required, Section 23-84, Water Supply, (1)  
Tax Map Key: 1-5-009:045 and 046 (SUB 98-120)

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 three (3) 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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Mr. Thomas A. Marshall  
c/o Mr. Peter Hughes, Realtor  
MIO REALTY, INC.

Page 2

February 13, 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 three (3) lot subdivision:

1. The subject property containing 247.592 acres, consists of Portions R. P. 7788, L. C. Award 8452 Apana 15 to Keohokalole Puua, Puna, Hawaii.
2. The subject property is zoned Agricultural (A-20a) by the County and is designated Agriculture "A" by the State Land Use Commission (LUC).
3. The owners have submitted a subdivision application (SUB 98-120) which includes a revised preliminary plat map dated April 16, 1999 which proposed to subdivide the subject TMK property into three (3) lots. Further action on the proposed 3-lot subdivision application has been deferred pending consideration of the subject variance application.
4. The applicant's "ATTACHMENT TO" states in part:

"The principal purposed of SUBDIVISION APPLICATION 98-120 is to create a legal parcel, conforming to existing A-20 zoning for TMK: 1-5-09:45 to be conveyed to the VETERANS OF FOREIGN WARS IN FEE.

The VETERANS OF FOREIGN WARS, Post 3830 is a non-profit Organization with very limited operating funds.

Presently, the VETERANS OF FOREIGN WARS (VFW) Post 3830 are occupying a two (2) Acre parcel within TMK 1-5-09:46 under SPECIAL PERMIT #670 approved by the County Planning Commission on August 15, 1988. The remainder Lots C and B, are vacant and unencumbered.

This SPECIAL PERMIT Parcel is not recognized by the County and State of Hawaii as a legal or tax parcel, even though occupancy and use of the two (2) Acres is separated from the remainder of TMK: 1-5-09:45.

Mr. Thomas A. Marshall  
c/o Mr. Peter Hughes, Realtor  
MIO REALTY, INC.  
Page 3  
February 13, 2001

In 1998 the SPECIAL PERMIT Application was the only Alternative available to accomplish the VFW's goal of acquiring a site for a LODGE and CLUBHOUSE.

As you are aware, the granting of this SPECIAL PERMIT APPLICATION NO. 670, contains stringent conditions addressing the use of the property; any infractions of these conditions could result in a NULLIFICATION of the PERMIT by the Planning Director.

We believe that all of the conditions addressing this PERMIT have been met and are in order.

As part of the PERMIT an approved single Water Services lateral and a Consumer Pipeline was constructed along Maluhia Road to service the LODGE and CLUBHOUSE IN (sic) 1988.

The PERMIT conditions did not require a water line to support the remaining 200 Acres ±.

THIS WATER WAIVER APPLICATION IS AN EFFORT TO POSTPONE THE BURDEN OF COST TO CONSTRUCT AN EXPENSIVE WATER SYSTEM TO BENEFIT PROPERTIES OWNED BY OTHER."

5. The Department of Water Supply (DWS) memorandum, dated December 8, 2000, states in part:

"We have reviewed the subject application and the comments in our memorandum of November 24, 1998 and May 26, 1999 still stand. (Copies are attached.)

Should a variance be granted, we ask that the following conditions be included:

1. The applicant shall provide the lot number for the one proposed lot that will receive water from the Department of Water Supply, through existing account No. 090-30430, which I snow assigned to Tax Map Key: 1-5-009: Por. 45.

Mr. Thomas A. Marshall  
c/o Mr. Peter Hughes, Realtor  
MIO REALTY, INC.

Page 4

February 13, 2001

2. The applicant understands and agrees that the existing Department of Water Supply meter is for one dwelling only.
3. The applicant shall provide the lot numbers for the two proposed parcels that will not receive water from the Department of Water Supply.

For your information, the Real Property Tax Office records do not show the applicant or Miura & Oshita Associates as the legal owners of the subject parcels.

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

Note: The following DWS memorandums dated November 24, 1998 and May 26, 1999 memorandums were attached:

DWS memorandum, dated November 24, 1999, states in part:

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

Water can be made available from the end of an existing 8-inch waterline along Maluhia Road, approximately 35 feet from the property.

Pursuant to the Department's "Water Commitment Guidelines Policy, " a copy which is being forwarded to the applicant, a water commitment may be issued. Based on the one additional lot requested in the proposed 2-lot subdivision, 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.

Mr. Thomas A. Marshall  
c/o Mr. Peter Hughes, Realtor  
MIO REALTY, INC.

Page 5

February 13, 2001

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 350 feet of 4-inch waterline from the end of the existing 8-inch waterline along Maluhia Road to the property.
  - b. install a service lateral that will accommodate a 5/8-inch sized meter to the additional lot, and
  - c. cut and plug the existing service lateral at the main and relocate to the appropriate lot.
2. Submit construction plans and design calculations prepared by a professional engineer, registered in the State of Hawaii, for review and approval.
3. Remittance of the prevailing facilities charge, which is subject to change of \$3,375.00. This is due and payable upon completion of the construction of the water system improvements and prior to final subdivision approval being granted.
4. The appropriate documents shall be submitted, properly 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 water meter services being granted to the development, or any lots within, the conveyance documents shall be accepted by the Water Commission."

Mr. Thomas A. Marshall  
c/o Mr. Peter Hughes, Realtor  
MIO REALTY, INC.

Page 6

February 13, 2001

DWS memorandum, dated May 26, 1999 states in part:

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

Please refer to our November 24, 1998 memorandum to you. We are enclosing a copy for your information.

Pursuant to the revised preliminary plat map, revise Paragraph 3 from a 2-lot subdivision to a 3-lot subdivision. Also, in Item 3, the facilities charge should be \$3,938.00 instead of \$3,375.00. The rest of the memorandum remains unchanged."

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 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. 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 used of these private rain catchment systems for drinking purposes since the quality may not meet potable water standards."

Mr. Thomas A. Marshall  
c/o Mr. Peter Hughes, Realtor  
MIO REALTY, INC.

Page 7

February 13, 2001

7. The Department of Finance-Real Property Tax memorandum dated December 8, 2000, "Tax Map Key: 1-5-009-045 & -046" states in part:

"There are no comments at this time"

"Remarks: Real Property taxes are paid on 1-5-009-045 through 12/31/00. Real Property taxes are paid on parcel 046 through 6/30/01."

8. The proof of mailing of notices to the surrounding property owners was received on December 4, 2000.

For the record, an objection letter, dated December 11, 2000, was received on December 13, 2000, from Reid E. Choate, Et al. Choate, Et al.'s, objection letter was addressed by the applicant's representative (Peter Hughes, Realtor). On January 16, 2001, Peter Hughes, (R), submitted a copy of Choate's, Et al.'s letter, dated January 15, 2001, rescinding their objection.

No other oral or written objections to the variance application were received from the surrounding property owners or public.

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.

Mr. Thomas A. Marshall  
c/o Mr. Peter Hughes, Realtor  
MIO REALTY, INC.

Page 8

February 3, 2001

#### 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.

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 and acknowledged by certified letter dated November 23, 2000. Additional time to allow the applicant's representative to confer with a surrounding property owner and understand past land use approvals 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 proposed subdivision without water system meeting DWS standards is approved subject to the following conditions:



Mr. Thomas A. Marshall  
c/o Mr. Peter Hughes, Realtor  
MIO REALTOR, INC.

Page 9

February 13, 2001

1. The applicant(s), owner(s), their assign(s), or successor(s) shall be responsible for complying with all stated conditions of approval.

The approval of this variance and stated variance conditions shall not amend, change, or imply tacit approval of any request to modify the Special Permit (LUC NO. 670) conditions.

The applicant(s), owner(s), their assign(s), or successor(s) shall be responsible for complying with Special Permit (LUC NO. 670) conditions and complying with all conditions of final subdivision approval (SUB 98-120).

2. WATER VARIANCE: The applicant (s), owner(s), their assign(s), or successor(s) 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 98-120. 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 provide a service or water meter to those specific lots , "LOT C" and "LOT D" created by SUB 98-120 which will not be serviced by the DWS or County dedicable public water system. No ohana dwellings shall be permitted on any lots created by SUB 98-120.
  - b. 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, "C" and "D" created by SUB 98-120. No further subdivision of any lots created by SUB 98-120 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.

Mr. Thomas A. Marshall  
c/o Mr. Peter Hughes, Realtor  
Page 10  
February 13, 2001

- c. Any permitted 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-gallons 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.
- 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.
- 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 assigns or successors 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 98-120 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.

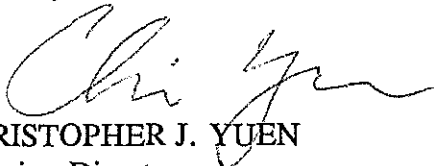
Mr. Thomas A. Marshall  
c/o Mr. Peter Hughes  
MIO REALTY, INC.  
Page 11  
February 13, 2001

3. The owners, their assigns or successors shall pay outstanding real property taxes and comply with all other applicable State and County rules and regulations pertaining to subdivisions 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,



CHRISTOPHER J. YUEN  
Planning Director

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xc: DWS  
SUB 98-120  
LUC NO. 670