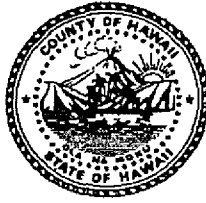


Harry Kim
Mayor



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 1063

February 20, 2001

Mr. Owen T. Prell and
Ms. Karen A. Burke
c/o Steven S. C. Lim, Esq.
P. O. Box 686
Hilo, HI 96721-0686

Dear Mr. Prell and Ms. Burke:

Variance Permit No. 1190 (VAR 00-094)
Applicants: OWEN T. PRELL, ET AL.
Owners: OWEN T. PRELL, ET AL.
Request: Variance From Chapter 23, Subdivisions, Article 6,
Division 2, Improvements Required, Section 23-84, Water Supply, (1)
Tax Map Key: 4-4-008:129 (Por.), Lot 59-A1, (SUB 00-173)

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. Owen T. Prell and
Ms. Karen A. Burke
c/o Steven S. C. Lim, Esq.
Page 2
February 20, 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 consists of Lot 59-A-1 containing 16.374 acres, being a Portion of Grant 8325 to John De Gouveia, Kalopa Homesteads, Hamakua, 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 owners have submitted a subdivision application (SUB 00-173) which includes a preliminary plat map dated October 20, 2000, to subdivide the subject 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)/owner(s) submitted the subject variance application on November 8, 2001. (Please refer to the applicant's variance application, detailed written explanation, and exhibits in the variance file which is incorporated herein.)
5. The Department of Water Supply (DWS) memorandum, dated December 13, 2000, states in part:

"We have reviewed the subject application. Please refer to our November 24, 2000 memorandum to you for our comments and requirements. We are enclosing a copy for your information."

The attached copy of the DWS memorandum, dated November 24, 2000 states in part:

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

Mr. Owen T. Prell and
Ms. Karen A. Burke
c/o Steven S. C. Lim, Esq.
Page 3
February 20, 2001

Please be informed that the Department's existing water supply 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."

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.

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. The Department of Finance-Real Property Tax memorandum dated December 1, 2000, "Tax Map Key: 4-4-008-129" states in part:

"There are no comments at this time"

"Remarks: Real property taxes are paid through December 31, 2000."

8. For the record the applicant mailed two (2) notices to the surrounding property owners. Proof of mailing of the respective notices were received on November 9, 2000 and December 19, 2000.

Mr. Owen T. Prell and
Ms. Karen A. Burke
c/o Steven S. C. Lim, Esq.
Page 4
February 20, 2001

The following objections letters were received:

1. Letter, dated December 21, 2000, from John L. Tarson.
2. Fax Transmission, dated December 29, 2000, from Steve & Clara Toma.

For the record, a facsimile and hard copy of a letter from Owen Prell & Karen Benke responding to Tarson's letter dated December 21, 2000 were received on December 27, 2000 and January 3, 2001, respectively.

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.

Mr. Owen T. Prell and
Ms. Karen A. Burke
c/o Steven S. C. Lim, Esq.
Page 5
February 20, 2001

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 acknowledged by certified letter dated November 23, 2000.

An extension of time to February 28, 2001 to inspect the property and consider surrounding subdivisions and land patterns 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:

1. The owners, their assigns, or successors shall be responsible for complying with all stated conditions of approval.

Mr. Owen T. Prell and
Ms. Karen A. Burke
c/o Steven S. C. Lim, Esq.
Page 6
February 20, 2001

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 00-173. 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 00-173. 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 dwellings or additional farm dwellings shall be permitted on any lots created by SUB 00-173.
 - 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 00-173. No further subdivision of the lots created by SUB 00-173 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 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.

Mr. Owen T. Prell and
Ms. Karen A. Burke
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Page 7

February 20, 2001

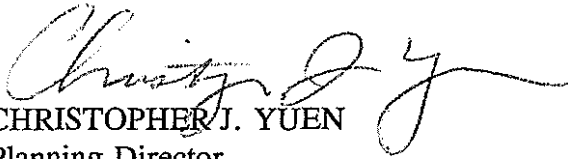
- e. Each permitted dwelling shall be provided with and maintain a private water supply system which includes an additional minimum 3,000 gallon water storage capacity for fire fighting and emergency purposes. The emergency water supply system, including the necessary compatible connector system and 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.
 - 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 00-173 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 00-173, the owners of the lots created by SUB 00-173 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.
2. 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.

Mr. Owen T. Prell and
Ms. Karen A. Burke
c/o Steven S. C. Lim, Esq.
Page 8
February 20, 2001

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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xc: DWS-Engineering Branch
SUB 00-173
John L. Tarson
Steve and Clara Toma