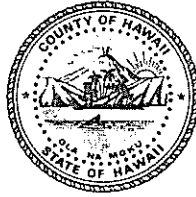


Stephen K. Yamashiro  
Mayor



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 8661

February 4, 2000

Mr. Duncan W. Anderson  
P. O. Box 111  
Ookala, HI 96774

Dear Mr. Anderson:

Variance Permit No. 1093 (VAR 99-058)  
Applicant: DUNCAN W. ANDERSON, JR.  
Owners: DUNCAN W. ANDERSON, JR., ETAL.  
Request: Variance From Chapter 23, Subdivisions, Article 6,  
Division 2, Improvements Required, Section 23-84, Water Supply, (1)  
Tax Map Key: 4-1-004:010, Lot 24

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 six (6) 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.

**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 six (6) lot subdivision:

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1. The subject property containing 34.0 acres consists is Lot 24, Grant 6747, Portion of Nuipea-Keala, 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 82-091) which includes a preliminary plat map that was granted tentative approval on October 20, 1986, to subdivide the subject TMK property into six (6) lots. Further action on the proposed 6-lot subdivision application has been deferred pending consideration of the subject variance application.
4. The Department of Finance-Real Property Tax memorandum dated July 20, 1999 states in part:

"Property receiving agricultural use value."

"Possible rollback taxes if subdivided to 5 Ac or less."

"Status of real property taxes: Current"
5. The State Department of Health (DOH) memorandum dated July 16, 1999 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."

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6. The Department of Water Supply (DWS) memorandum dated August 24, 1999 states in part:

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

Please be informed that the subject property was subdivided into 6 lots under waiver application No. 82054 approved on August 5, 1982. However, the conditions for final approval were not completed.

Further, there is no water system maintained by the Department near the area of the subject property. Please refer to our memorandum of April 22, 1982 for our comments and requirements. We are enclosing a copy for your information."

The attached DWS memorandum dated April 22, 1982 states in part:

"Please be informed that the Department of Water Supply has no water system near the area of the proposed subdivision.

Pursuant to Article II, Section 5.01 of the Subdivision Control Code, the subdivider is required to provide a dedicable water system meeting our minimum water requirements as stipulated in our Rules and Regulations, unless a waiver is granted by the Department.

With a copy of this memorandum, waiver application forms will be forwarded to the subdivider. Should the subdivider decide to pursue the waiver process, three (3) sets of the application must be completed and returned to our office with all necessary maps and pertinent information.

The subdivider shall be aware that should any waiver be denied by our office, our minimum water requirements shall be complied with. Otherwise, subsequent denial of the subdivision will be recommended."

7. The proof of mailing of notices to the surrounding property owners was received on July 21, 1999. No oral or written objections to the variance application were received.

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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 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 rain water 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.

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#### DETERMINATION-VARIANCE CONDITIONS

The subject variance application was deemed complete by the Planning Department on June 25, 1999.

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 conditions of Variance Permit No. 1093, effective August 24, 1999.
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 82-091. 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. Any dwelling(s) constructed on the proposed lots not serviced by a County water system shall be provided with and maintain a private rain catchment system which includes a minimum 6,000-gallon 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.
  - b. 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

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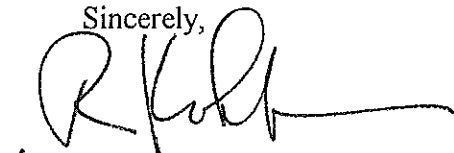
connector system and location of the water storage capacity on the property, shall meet with the approval of the Hawaii County Fire Department. The Hawaii County Fire Department also advises as a precautionary measure for other uninhabited agricultural structures that consideration be given to the provision of a similar water storage system for fire fighting and emergency purposes.

- c. 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.
  - d. In the event that any of the lots created by SUB 82-091 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-rated costs for such improvements as determined by the Department of Water Supply.
3. The owners, their 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 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 82-091