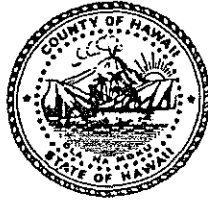


Harry Kim
Mayor



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

March 13, 2001

Mr. Paul Bailey
Mr. Gregory Doran
P. O. Box 188
Paauilo, HI 96776

Dear Messrs. Bailey and Doran:

Variance Permit No.1191 (VAR 01-04)
Applicants: PAUL BAILEY, ET AL.
Owners: PAUL BAILEY, ET AL.
Request: Variance from Chapter 23, Subdivisions Article 6,
Division 2, Improvements Required, Section 23-84, Water Supply, (1)
Tax Map Key: 4-3-009:041, (SUB 2000-0064)

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 two (2) 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.

1. The subject property containing 10.863 +/- acres, is Lot 5, Grant 4226 to Antone De Souza, Paauilo Homesteads, First Series, Hamakua, Hawaii.
2. The subject property is zoned Agricultural (A-5) by the County and is designated Agriculture "A" by the State Land Use Commission (LUC). A maximum of 2 lots each a minimum of 5 acres in area could be created.

003389

MAR 14 2001

Mr. Paul Bailey
Mr. Greg Doran
Page 2
March 13, 2001

3. The owners of the subject property originally submitted a subdivision application (SUB 2000-0064) on March 7, 2000, to subdivide the property into two (2) lots. Pursuant to Planning Department letter dated June 27, 2000 further action to consider the 2-lot subdivision was deferred to August 26, 2000 to allow the subdividers additional time to comply with the minimum water requirements of the proposed subdivision application.

4. The Department of Water Supply (DWS) memorandum, dated January 26, 2001, states in part:

"We have reviewed the subject application and the comments in our memorandum of May 16, 2000 still stand. (A copy of each is attached.)"

The DWS memorandum, dated May 16, 2000, states in part that "the subject property is not within the service limits of the Department's existing water system facilities."

"The property is at an elevation beyond the pressure limits of the Department's water system facility, which is approximately 1.8 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."

6. The State Department of Health (DOH) memorandum dated February 2, 2001, 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."

Mr. Paul Bailey
Mr. Greg Doran
Page 3
March 13, 2001

“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 January 30, 2001, “Tax Map Key: 4-3-009-041” states in part that “Property is receiving agricultural use value” and that “Real Property taxes are paid through June 30, 2001.”
8. The proof of mailing of notices to the surrounding property owners was received on February 15, 2001.
9. No comments regarding the subject variance application were received.

ALTERNATIVES

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.

SPECIAL AND UNUSUAL CIRCUMSTANCES

In 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.

The applicant proposes to create 2 new lots from the existing lot, which is 10.863 acres in area. The Zoning Code allows a maximum of 2 new lots to be created in accordance with the requirements of the Subdivision Code.

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. Paul Bailey
Mr. Greg Doran
Page 4
March 13, 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.

There are no other reasonable alternatives in resolving the difficulty of the applicant. 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.

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.

DETERMINATION-VARIANCE CONDITIONS

The variance requested to allow a proposed two (2) lot subdivision of the subject property without a 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. 1191.
2. 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 2000-0064. 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:

Mr. Paul Bailey
Mr. Greg Doran
Page 5
March 13, 2001

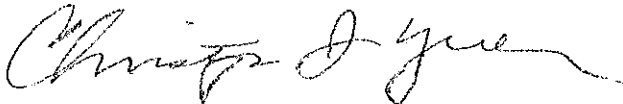
- a. The owners agree and accept the fact that a County dedicable public water system is not now able to service the existing property or the proposed lots created by SUB 2000-0064.
- b. The owners agree and accept the fact that the County will not, at this time, bear the responsibility of supplying public water to proposed lots created by SUB 2000-0064. No further subdivision of the lots created by SUB 2000-0064 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 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 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.

Mr. Paul Bailey
Mr. Greg Doran
Page 6
March 13, 2001

- f. In the event that any of the lots created by SUB 2000-0064 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.
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.

Should any of the foregoing stated conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

RKN:cps
P:\WP60\RODNEY\2001-1\LVARBAILEY1.doc

xc: Department of Water Supply
SUB 2000-0064