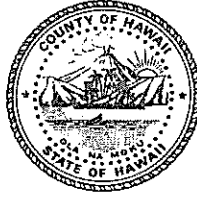


Harry Kim
Mayor



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

June 26, 2002

Mrs. Chrystal Thomas Yamasaki, LPLS
WES THOMAS ASSOCIATES
75-5749 Kalawa Street
Kailua-Kona, HI 96740

Dear Mrs. Yamasaki:

Variance Permit No. 1290 (VAR 01-074)

Applicant: LUKE AIKEN/WES THOMAS ASSOCIATES

Owner: LUKE AIKEN

**Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required,
Section 23-84, Water Supply, (1) (2)**

Tax Map Key: 8-7-014:052 (SUB 01-0080)

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:

FINDINGS AND BACKGROUND INFORMATION

1. **Location.** The subject property, Lot 2-A consisting of 20.000 acres, being a Portion of Grant 2572 to Kuhia, is situated at Opihihale 2nd, South Kona, Hawaii.
2. **Zoning.** The subject property is zoned Agricultural (A-5a) by the County and is designated Agriculture ("A") by the State Land Use Commission (LUC).

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3. **Subdivision Application/PPM.** The applicant's surveyor, submitted a subdivision application (SUB 01-0080) which includes a preliminary plat map (PPM), dated June 7, 2001, to subdivide Lot 2-A into four (4) lots. Further action on the proposed 4-lot subdivision application has been deferred pending consideration of the subject variance application.

4. **Variance Application.** Wes Thomas Associates, on behalf of the applicants/owners, submitted subject variance application to the Planning Department (Kona) on September 24, 2001. An authorization letter dated November 28, 2001 was received from the applicant and further supplemental information consisting of a rainfall map identifying the approximate location of the proposed subdivision was submitted by Wes Thomas Associates on May 10, 2002.

5. **Agency Comments and Requirements WH (VAR 01-074).**
 - a. The Department of Water Supply (DWS) memorandum, dated November 30, 2001, states:

“We have reviewed the subject application and have the following comments.

Please refer to our August 7, 2001, memorandum to you for our comments and requirements. We are enclosing a copy for your information.

Should there be any questions, the applicant may contact our Water Resources and Planning Branch at 961-8070.”

The attached copy of the DWS memorandum, dated August 7, 2001, states:

“We have reviewed the subject application and have the following comment.

Please be informed that the subject property is not within the service limits of the Department's water system facilities. The Department's nearest water system is at the end of an existing 8-inch waterline along the Mamalahoa Highway, approximately 7.5 miles from the property.

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

- b. The State Department of Health (DOH) memorandum dated November 28, 2001 states:

“Please allow us an extension on the December 15, 2001 due date for comments. The submittals for the subject development have been transmitted to our Environmental Management programs for their coordinated review and comments. Upon receipt of their reply, their comments will be forwarded to your office.”

The subsequent DOH memorandum dated December 27, 2001 states in part:

“Thank you for the opportunity to review an comment on the subject application. The VAR was routed to the various branches of the Environment Health Administration. We have the following comments:

Wastewater Branch (WWB)

We have reviewed the subject document that proposes to subdivide the property into four (4)-five (5) acre lots and utilize water catchment systems for potable water. Although we have comments regarding potable water supply, we are concerned with proper treatment and disposal of wastewater generated at the site. Therefore, we have the following comments at this time. The subject property is located in the critical wastewater disposal area (CWDA) with five (5) acre lot exception. There is no County sewer service system in the area and none will be constructed in the near future. We signed a building permit for the subject property, but only for the use of a green house on the property.

We concur with the subject request on the condition that at the time of building permit, all dwellings and/or building constructed on any of the proposed four (4) lots have wastewater systems conforming to current and applicable provisions of the Department’s wastewater rules.

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All wastewater plans must conform to applicable provisions of the Department of Health's Administrative Rules, Chapter 11-62. "Wastewater Systems." We do reserve the right to review the detailed wastewater plans for conformance to applicable rules.

Should you have any questions, please contact the Planning/Design Section of the Wastewater Branch at (808) 586-4294."

- c. The County of Hawaii Fire Department memorandum dated November 28, 2001 states:

"We have no comments regarding the above-referenced Variance Application."

5. **Notice to Surrounding Property Owners/Proof of Mailing.** The applicant submitted a letter dated November 28, 2001 together with a certificate of mailing and affixed mail receipt dated November 27, 2001.
6. **Comments from Surrounding Property Owners or Public.** No comments or objections to the subject variance application were received from surrounding property owners or public. No other agency comments were received.

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.

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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.

Rainfall data and a supplemental rainfall map were submitted by Wes Thomas Associates. According to the US Department of Agriculture and Soil Conservation and other information cited in their letter dated September 20, 2001, "this area receives an average of 50 inches of rainfall annually". The supplemental rainfall map denoting the subject property's location indicates the proposed subdivision may receive up to approximately 60 inches of rainfall annually. In addition, building permit(s) to allow a green house building and other agricultural uses proposing to utilize individual or private rainwater catchment systems have been allowed or permitted.

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 or similar provisions for water storage, water distribution, and construction of private rainwater catchment system(s) on the property or proposed lots will be privately addressed by the applicant or future lot owner(s). Concerns for the individual wastewater systems on the proposed lots will be required to meet current DOH standards and will be addressed and met by the applicant or future lot owners during the review of any building permit applications.

The subject variance application was acknowledged by letter dated November 21, 2001. Additional time to consider the status of the structures located throughout the proposed subdivision and incorporate rainfall information was necessary. The applicant, et al. or owner(s) will properly identify and protect the "Archeological Site" located upon proposed "LOT 1". This site shall be protected during all phases of land development and maintained by the applicant or future lot owner(s). Any outstanding or active building permits and related construction permit issued to the subject TMK property and not constructed shall be addressed or voided by the DPW-Building Division prior to Final Subdivision Approval.

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.

VARIANCE DECISION-CONDITIONS

The variance requested to allow a proposed 4-lot subdivision of the subject TMK property 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 01-0080. 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 ~~01-0166~~⁰¹⁻⁰⁰⁸⁰. 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. Any dwellings constructed on lots created by SUB 01-0080 shall be farm dwellings. Farm dwelling is defined in Section 205-4.5 (a) (4) as "a single family dwellings permitted within agricultural parks developed by the State, or where agricultural activity provides income to the family occupying the dwelling."

- c. The owners agree and accept the fact that the County will not, at any time, bear the responsibility of supplying public water to any lots created by SUB 01-0080 not serviced by a County water system.
- d. Any farm 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 private water 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 farm dwelling shall be provided with and maintain a private water supply system which includes an additional minimum 6,000 gallon water storage capacity for fire fighting and emergency purposes. The location and capacity of the emergency water supply system, including the necessary compatible connector system, 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 concomitantly. 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 01-0080 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 01-0080, the owners of the lots created by SUB 01-0080 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.

- h. The subject property was created by subdivision of a larger parcel pursuant to a variance from the water supply requirement in Section 23-84 of the Hawaii County Code. The subdivider or grantee, the assigns or successors acknowledges that there are no special or unusual circumstances existing on the property, and therefore, there are no grounds for the subdivider or grantee, the assigns or successors to request a further variance from the water supply requirements to permit further subdivision of the subject property.
3. The subdivision's (SUB 01-0080) final plat map shall meet all other requirements of the Hawaii County Zoning Code and Subdivision Code not covered by this variance.
4. Each lot created by SUB 01-0080 shall have no more than one dwelling. No "additional farm dwelling" or second farm dwelling shall be permitted on any lot created by SUB 01-0080 for the reason that this variance is granted based on minimal increase in the number of users.
5. The applicant, et al. will confer with Department of Public Works (DPW)- Building Division to address any outstanding building permits issued to the subject TMK property prior to Final Subdivision Approval. Any building permits issued to the subject TMK or proposed lots shall be "finaled" or closed prior to any sale of the permitted lots or change in ownership or transfer of title.
6. The subdivider, owner(s), their assigns or successors shall pay any outstanding real property taxes and comply with all other applicable State statutes and County ordinances pertaining to building improvements 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 the subject Variance Permit null and void.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

WRY:cps

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xc: DWS-Engineering Branch
SUB 01-0080
Planning Dept. - Kona