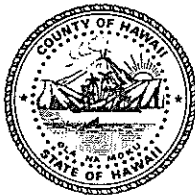


Harry Kim
Mayor



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

February 22, 2002

Mr. Tyrone Rapozo
P. O. Box 343
Honokaa, HI 96727

Dear Mr. Rapozo:

Variance Permit No. 1260 (VAR 01-092)

Applicant: TYRONE G. RAPOZO

Owner: TYRONE G. RAPOZO

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

Tax Map Key: 4-4-008:003 (SUB 01-0081)

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 two (2) lot subdivision without a water system meeting with the minimum requirements of the Department of Water Supply (DWS).

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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. The subject TMK property, Lot 32-B consisting of 12.405 acres, is a portion of Land Patent 7860 to Manuel C. Rapozo, Lot 32, Kalopa Homesteads and a portion of Land Commission Award 7842-B to Naihehau, and is situated at Kalopa, 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 applicant's surveyor, submitted a subdivision application (SUB 01-0081) which includes a preliminary plat map, dated July 3, 2001, to subdivide Lot 32-B into two (2) lots. Further action on the proposed 2-lot subdivision application has been deferred pending consideration of the subject variance application.
4. Tyrone Rapozo submitted subject variance application and request to the Planning Department.
5. The Department of Water Supply (DWS) memorandum, dated January 7, 2002, states in part:

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

Please refer to our memorandum of July 30, 2001, 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 copy of the attached DWS memorandum, dated July 30, 2001, states in part:

"We have reviewed the preliminary plat map dated July 3, 2001, for the proposed subdivision and have the following comments.

The existing parcel has service with the Department through a 5/8-inch meter that was installed in 1960. The Department would not allow this meter to serve both the existing parcel and the proposed parcel.

Please be informed that the Department's existing 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 961-8070."

6. No written comments were received from the Hawaii County Fire Department.
7. The applicant submitted a copy of a notice(s) and affixed postal receipt(s) to the Planning Department on January 23, 2002.
8. No other agency comments or objections from the surrounding property owners or public to the subject variance request 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.

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.

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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 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 for the proposed additional lot will be necessary and addressed by the applicant or future lot owner.

The subject variance application was acknowledged by certified letter dated December 28, 2001. Additional time to consider or incorporate further agency comments was necessary.

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 2-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 01-0081. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions, which affect the proposed lot 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 one (s) of the proposed lots created by SUB 01-0081. 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 01-0081 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 this time, bear the responsibility of supplying public water to any lots created by SUB 01-0081 not serviced by a County water system.

- d. Any farm dwelling(s) constructed on the proposed lot 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 3,000 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 01-0081 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 01-0081, the owners of the lots created by SUB 01-0081 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.

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- 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 01-0081) 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 01-0081 shall have no more than one dwelling. No ohana "additional farm dwelling" or second farm dwelling shall be permitted on any lot created by SUB 01-0081 for the reason that this variance is granted based on minimal increase in the number of users.
5. 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.

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

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xc: DWS-Engineering Branch
SUB 01-0081
Planning Dept. - Kona