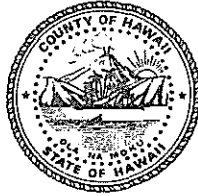


Harry Kim  
Mayor



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

ROBINSON, BRIGHT, & BRIGHT  
c/o Mr. Peter Hughes  
MIO REALTY, INC.  
21 Kamana Street  
Hilo, HI 96720

Dear Mr. Hughes:

**Variance Permit No. 1288 (VAR 02-014)**

**Applicant:** ROBINSON, BRIGHT, & BRIGHT  
c/o PETER HUGHES-MIO REALTY, INC.

**Owners:** CHARLES A. ANDERSON, ET AL.

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

**Tax Map Key: 4-4-011:032, Lot 20 (SUB 01-0142)**

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).

The Planning Director has concluded that the variance from the minimum subdivision water system requirements be approved based on the following findings:

#### **BACKGROUND**

1. **Location.** The subject property, Lot 20 consisting of 10.285 acres, is a portion of Grant 4274 to Charles Loustad, and situated at Kaapahu Homesteads, Hamakua, Hawaii.

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2. **Zoning.** The subject property is zoned Agricultural (A-5a) by the County and designated Agriculture (A) by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** The applicant's surveyor, The Independent Hawaii Surveyors, submitted a subdivision application (SUB 01-0142) which includes a preliminary plat map (PPM), dated August 3, 2001, to subdivide Lot 20 into two (2) lots. Further action on the proposed 2-lot subdivision application has been deferred pending consideration of the subject variance application.
4. **Variance Application.** The applicant's agent-Peter Hughes submitted the variance application on March 15, 2002.
5. **Agency Comments and Requirements (VAR 02-014)**
  - a. The Department of Water Supply (DWS) memorandum, dated April 5, 2002, states:

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

Please be informed that 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.

Water is available for only one service to the subject property. Although the service lateral has not been installed, we request that the applicant inform this office as to which lot the one and only available service will be assigned.

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

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- b. The State Department of Health (DOH) memorandum dated April 2, 2002 states:

"The Department of Health's Safe Drinking Water Branch on drinking water quality is based on the definition of a "public water system." A "public water system" means a system which provides water for human consumption through pipe or other constructed conveyance if such system has fifteen (15) service connections 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. Recommend the subdivision lots be connected to an existing public water system.

Concerns on water quality for lead, copper, algae and microbiological and chemical contaminations in private water 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."

- c. The Hawaii County Fire Department's memorandum dated March 22, 2002, states:

"We have no comments to offer at this time regarding the above-referenced Variance Application."

8. **Notice to Surrounding Owners.** The applicant submitted a letter dated March 25, 2002, and attached list with affixed USPO mail receipt dated March 23, 2002.
9. **Comments from Surrounding Property Owners or Public.** No other agency comments or objections from the surrounding property owners or public to the subject variance request were received.

Therefore, considering the background information, information provided by the applicant, 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.

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### **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.

The analysis of existing site conditions, official maps at the DWS and Planning Department, and rainfall information provided by the applicant 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. According to the reduced map "WATER-RESOURCES INVESTIGATIONS REPORT 95-4212", active rain gauges, and historical rainfall data submitted by the applicant, it appears that proposed subdivision and surrounding areas receive 100+ (mean) inches of rainfall yearly.

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 rainwater catchment system(s) on the property or proposed additional lot will be addressed by the applicant or future lot owner(s) of said lot.

The subject variance application was acknowledged by letter dated March 20, 2002. Additional time was required to consider and understand DWS comments and current water service requirements.

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c/o Mr. Peter Hughes  
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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. Prior to final subdivision approval, the subdivider/owner, applicant, or assigns shall designate the lot that will receive one (1) unit of water from the Department of Water Supply (DWS). The subdivider or owner(s) of this lot must pay any appropriate facilities charge and install or participate in the construction of any required off-site water line improvements before said lot can use their one (1) unit of water. Each unit of water is limited to a daily maximum use of six-hundred (600) gallons per unit. The subdivider will be required to comply and meet all DWS requirements pursuant to their DWS memorandum dated April 5, 2002, before final subdivision approval is granted to SUB 01-0142.
3. 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 01-0142. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions, which affect the designated 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:

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c/o Mr. Peter Hughes

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- a. The owners agree and accept the fact that a County dedicable public water system is not now able to service all proposed lots created by SUB 01-0142. 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 lots created by SUB 01-0104 may not be made subject to a condominium property regime.
- c. The owners agree and accept the fact that the County will not, at this time, bear the responsibility of supplying public water to the affected lot created by SUB 01-0142 not serviced by a County water system.
- d. Any dwelling 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 6000-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 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.

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- 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 owner(s) of the lot(s) created by SUB 01-0142 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 01-0142, the owner(s) of the lot(s) created by SUB 01-0142 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.
4. The subdivision's (SUB 01-0142) final plat map shall meet all other requirements of the Hawaii County Zoning Code and Subdivision Code not covered by this variance.
  5. Each lot created by SUB 01-0142 shall have no more than one dwelling. No permit to allow an ohana dwelling or building permit issued to construct an "ohana" dwelling shall be granted to the subject property, subject to provisions of the Zoning Code or State Law, which may change from time to time.

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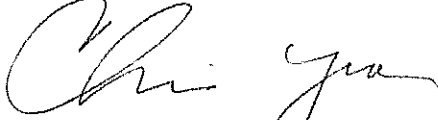
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6. The subdivider, owner(s), their assigns or successors shall pay any outstanding real property taxes and comply with all other applicable State statutes and County ordinances pertaining to building improvements and land use.

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 01-0142  
Planning Dept. - Kona