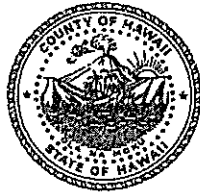


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • Fax (808) 961-8742

October 8, 2002

Mr. and Mrs. Takayama
TAKAYAMA FAMILY PARTNERSHIP
2370 Ainaola Drive
Hilo, HI 96720

Dear Mr. and Mrs. Takayama:

Variance Permit No. 1321 (VAR 02-042)

Applicants: KAZUTO TAKAYAMA, ET AL.

Owner: TAKAYAMA FAMILY TRUST

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

Tax Map Key: 2-4-007:015 (SUB 01-0138)

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 two (2) lots of a proposed 4-lot subdivision to be created 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:

02596914

OCT 09 2002

BACKGROUND

1. **Location.** The subject property, Lot 1511 (Revised) consisting of approximately 46.99 acres, is Grant 11,617 to Kazuto Takayama, Waiakea Homesteads, Second Series, and situated at Waiakea, South Hilo, Hawaii.
2. **Zoning.** The subject property is zoned Agricultural (A-3a) by the County and designated Agriculture (A) by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** The applicant's surveyor submitted a subdivision application (SUB 01-0138) which includes a preliminary plat map (PPM), dated October 20, 2001, to subdivide "LOT 1511 (REVISED)" into four (4) lots. Further action on the proposed 4-lot subdivision application has been deferred pending resolve of the water requirements pursuant to letter dated April 17, 2002 in SUB 01-0138.
4. **Variance Application.** The applicant submitted the subject variance application on June 14, 2002.
5. **Agency Comments and Requirements (VAR 02-042):**

- a. The first Department of Water Supply (DWS) memorandum, dated July 30, 2002, states in part:

"We have reviewed the subject application. We request that the applicant inform this department which lots the two (2) existing 5/8-inch meters (Account Nos. 184-58000 and 184-58030) will service. (sic)

Please refer to our December 19, 2001, memorandum to you for our comments and requirements regarding final subdivision approval for the proposed subdivision.

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

Mr. and Mrs. Takayama
TAKAYAMA FAMILY PARTNERSHIP

Page 3

October 8, 2002

Applicant Reply to DWS: Pursuant to a copy of the applicant's response letter to the DWS dated August 5, 2002, we note:

"Regarding you (sic) letter dated July 30, 2002, and your request for this applicant to inform your department which lots the two (2) existing 5/8-inch meters (Account Nos. 184-5800 and 184-58030) will service, Account No. 184-5800 will service Lot 1511-D and Account No. 184-58030 will service Lot 1511-C as indicated on the attached map."

The second DWS memorandum, dated August 23, 2002, states in part:

"The applicant has complied with our request in Paragraph 1 of our July 30, 2002, memorandum to you.

Pleas refer to our December 19, 2001, memorandum to you for our comments and requirements."

Note: For the record, according to the DWS memorandums dated December 19, 2001 and April 11, 2002 in subdivision file (SUB 01-0138), "the cost to install a water system that meets the Department's minimum requirements to be \$135,000.00."

- b. The State Department of Health (DOH) memorandum dated August 1, 2002 states:

"The Department of Health's Safe Drinking Water Branch authority on drinking water quality is based on the definition of 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 (6) days out of the year. All public water systems are regulated by the Department of Health 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.

Mr. and Mrs. Takayama
TAKAYAMA FAMILY PARTNERSHIP
Page 4
October 8, 2002

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. Hawaii County Fire Department’s memorandum dated August 8, 2002, states in part:

“Although this application addresses a request to subdivide the property among the four heirs of the estate and no changes are being requested at this time, we would like to ensure that conditions or provisions are in place should the individual heirs elect to sell or subdivide in the future.”

6. **Notice to Surrounding Owners.** The applicant submitted a copy of notice(s) sent to surrounding property owners. It appears that the notice(s) were sent on June 14, 2002 and August 5, 2002.
7. **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, after considering the circumstances and variance background information, rainfall 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.

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.

Mr. and Mrs. Takayama
TAKAYAMA FAMILY PARTNERSHIP
Page 5
October 8, 2002

As such, the imposition of improving the existing public water system or providing an approved alternative water system for the two (2) lots of the proposed 4-lot 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 for the two (2) of the proposed 4-lots. According to an extract of a map- Plate 6-WATER-RESOURCES INVESTIGATIONS REPORT 95-4212, submitted by the applicant, denoting the approximate location of the "SUBDIVISION SITE" and proximity to active rain gage stations, it appears that the property and surrounding areas receive in excess of 160+ 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 rain water catchment system(s) for the proposed two (2) lots will be addressed by the applicant-family or future lot owner(s) of said lot.

The subject variance application was acknowledged by letter dated July 24, 2002. Additional time was required to consider existing water service requirement for the property and other 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 request to allow a proposed 4-lot subdivision of the subject TMK property without 2-lots having 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 stated conditions of approval.
2. Prior to final subdivision approval, the subdivider/owner, applicant, or assigns shall designate and denote on the final plat map which lots the two(2) existing 5/8"-inch meters (Accounts Nos. 184-58000 and 184-58030) will service. The subdivider will be required to comply and meet all DWS requirements before final subdivision approval is granted to SUB 01-0138.
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 01-0138. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions, which affect the designated 2-lots arising from the approval of pending 4-lot 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 proposed 2-lots without public water created by SUB 01-0138. 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 01-0138 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 2-lots created by SUB 01-0138 not serviced by a County water system.

- d. Any dwelling constructed on a 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.
- 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 01-0138 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 01-0138, the owner(s) of the lot(s) created by SUB 01-0138 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.

Mr. and Mrs. Takayama
TAKAYAMA FAMILY PARTNERSHIP
Page 8
October 8, 2002

- 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 01-0138) final plat map shall meet all other requirements of the Hawaii County Zoning Code and Subdivision Code not covered by this variance.
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

WRY:cps
P:\WP60\WRY\FORMLETT\VARAPPSUBTMK24007015.TAKAYAMA

xc: DWS-Engineering Branch
SUB 01-0138
Planning Dept. - Kona