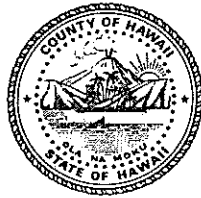


Harry Kim
Mayor



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

November 15, 2002

FOREST VIEW INC.
c/o WES THOMAS ASSOCIATES
Attn: Chrystal T. Yamasaki, LPLS
75-5749 Kalawa Street
Kailua-Kona, Hawaii 96740

Dear Ms. Thomas:

SUBJECT: VARIANCE PERMIT NO. 1331 WH (VAR 02-050)
Agent: WES THOMAS ASSOCIATES
Applicant: FOREST VIEW INC.
Owner: FOREST VIEW INC
Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required,
Section 23-84, Water Supply, (1) (2)
Tax Map Key: 8-7-008:005, 006, and 050 (SUB 02-0026)

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 a proposed 7-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:

BACKGROUND

1. **Location.** The subject property(s), consisting of approximately 37.31 acres, being the whole of R.P. 6084, L.C. Aw. 9101, Ap. 1 to S. Kaleohano and being a portion of Grant 2368 to Ohua, and the whole of R.P. 6001, L.C. Aw. 7494 to

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Kekaula, are situated at Kaohe 5th, South Kona, Hawaii.

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 submitted a subdivision application (SUB 02-0026) which includes a preliminary plat map (PPM), dated March 13, 2002, proposing a 7-lot subdivision of the 37 acre + property. Further action on the proposed 7-lot subdivision application has been held in abeyance pending resolve of the water and other agency requirements.
4. **Variance Application.** The applicant submitted the subject variance application on or about July 24, 2002.
5. **Agency Comments and Requirements-WH (VAR 02-050):**
 - a. The State Department of Health (DOH) memorandum dated August 1, 2002 states:

“By current rules, the subject lot is located in a Critical Wastewater Disposal Area. A lot size of five (5) acres or more are required for the use of a cesspool. Only one (1) cesspool would be allowed on the lot. A septic tank system would be needed if a second wastewater disposal system is needed on this lot.

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 (60) 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 Chapter 20. Recommend the subdivision lots be connected to an existing public water system.
 - b. Hawaii County Fire Department’s memorandum dated August 28,

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2002, states in part:

“Fire apparatus roads shall be in accordance with UFC Section 10.207:

“Fire Apparatus Access Roads

“Sec. 10.207. (a) General. Fire apparatus access roads shall be provided and maintained in accordance with the provisions of this section.

“b) Where Required. Fire apparatus access roads shall be required for every building hereafter constructed when any portion of an exterior wall of the first story is located more than 150 feet from fire department vehicle access as measured by an unobstructed route around the exterior of the building.

“EXCEPTIONS: 1. When building are completely protected with and approved automatic fire sprinkler system, the provisions of this section may be modified.

“2. When access roadways cannot be installed due to topography, waterways, nonnegotiable grades or other similar conditions, the chief may require additional fire protection as specified in Section 10.301 (b).

“3. When there are not more than two Group R, Division 3 or Group M Occupancies, the requirements of this section may be modified, provided, in the opinion of the chief, fire-fighting or rescue operations would not be impaired.

“More than one fire apparatus road may be required when it is determined by the chief that access by a single road may be impaired by vehicle congestion, condition of terrain, climatic conditions or other factors that could limit access.

“For high-piled combustible storage, see Section 81.109.

“(c) Width. The unobstructed width of a fire apparatus access road shall

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meet the requirements of the appropriate county jurisdiction.

“(d) **Vertical Clearance.** Fire apparatus access roads shall have an unobstructed vertical clearance of not less than 13 feet 6 inches.

“**EXCEPTION:** Upon approval vertical clearance may be reduced, provided such reduction does not impair access by fire apparatus and approved signs are installed and maintained indicating the established vertical clearance.

“(e) **Permissible Modifications.** Vertical clearances or widths required by this section may be increased when, in the opinion of the chief, vertical clearances or widths are not adequate to provide fire apparatus access.

“(f) **Surface.** Fire apparatus access roads shall be designated and maintained to support the imposed loads of fire apparatus and shall be provided with a surface so as to provide all-weather driving capabilities.”
(20 tons)

“(g) **Turning Radius.** The turning radius of a fire apparatus access road shall be as approved by the chief.” (45 feet)

“(h) **Turnarounds.** All dead-end fire apparatus access roads in excess of 150 feet in length shall be provided with approved provisions for the turning around of fire apparatus.

“(i) **Bridges.** When a bridge is required to be used as access under this section, it shall be constructed and maintained in accordance with the applicable sections of the Building Code and using designed live loading sufficient to carry the imposed loads of fire apparatus.

“(j) **Grade.** The gradient for a fire apparatus access road shall not exceed the maximum approved by the chief.” (15%)

“(k) **Obstruction.** The required width of any fire apparatus access road shall not be obstructed in any manner, including parking of vehicles. Minimum required widths and clearances established under this section

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shall be maintained at all times.

“(l) **Signs.** When required by the fire chief, approved signs or other approved notices shall be provided and maintained for fire apparatus access roads to identify such roads and prohibit the obstruction thereof or both.”

Water Supply shall be in accordance with UFC Section 10.301:

“(c) **Water Supply.** An approved water supply capable of supplying required fire flow for fire protection shall be provided to all premises upon which buildings or portions of buildings are hereafter constructed, in accordance with the respective county water requirements. There shall be provided, when required by the chief, on-site fire hydrants and mains capable of supplying the required fire flow.

“Water supply may consist of reservoirs, pressure tanks, elevated tanks, water mains or other fixed systems capable of providing the required fire flow.

“The location, number and type of fire hydrants connected to a water supply capable of delivering the required fire flow shall be protected as set forth by the respective county water requirements. All hydrants shall be accessible to the fire department apparatus by roadways meeting the requirements of Section 10.207.”

- c. The first Department of Water Supply (DWS) memorandum, dated August 20, 2002, states:

“We have reviewed the subject application.

Please refer to our May 6, 2002, memorandum to you for our comments and requirements.

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

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Note: The DWS memorandum dated May 6, 2002 in subdivision file (SUB 02-0026) states:

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

Please be informed that the proposed subdivision is not within the service limits of the Department’s existing water system facilities.

The nearest Department of Water Supply water system facility is at the end of an existing 8-inch waterline along the Mamalahoa Highway approximately 5.25 miles from the property.

Further, the property is at an elevation beyond the pressure limits of the existing water system facilities.

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

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 or about August 16, 2002.
6. **Comments from Surrounding Property Owners or Public.** No other agency comments were received. The following objection letter from surrounding property owner(s)-“Association” and correspondence responding to the objection letter and supplemental information pertaining to similar or adjoining approved subdivisions were received:
 - a. Objection letter dated September 9, 2002 from Jung & Vassar, P.C. (Francis L. Jung, Esq.) representing the Kaohe Ranch Estates Homeowners Association.
 - b. Letter dated September 21, 2002 from the developer-James Singleton.
 - c. Letter dated September 26, 2002 from Wes Thomas Associates. This letter included a copy of an approved water variance to allow the

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subdivision of TMK: (3) 8-7-008:003, Lot 13. “(Which is makai of the subject property)”.

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.

As such, the imposition of improving the existing public water system or providing an approved alternative water system for the proposed 7-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 marginal rainfall within the subject property and surrounding areas to support individual or separate private rainwater catchment systems for the proposed 7-lots. According to the rainfall information cited by the applicant it appears that the property and surrounding areas receive approximately 60 inches of rainfall yearly. The proposed subdivision and surrounding development was inspected by Planning Department staff to consider the subdivision's elevation, character, and substantiate farming activity and other building improvements.

Given the very limited extent of this subdivision (it already consists of two legal lots), the

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uncertainty and expense of drilling a well for such a limited number of lots, the proposed variance is reasonable.

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 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 August 12, 2002. Additional time was required to inspect the property, surrounding areas, and consider agency and other concerns was necessary. The applicant agreed to extend the decision date to November 15, 2002.

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 7-lot subdivision of the subject TMK property without any 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. 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 02-0026. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions, which affect the 7-lots arising from the approval of pending 7-lot subdivision application and shall be duly recorded at the Bureau of Conveyances

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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 7-lot subdivision without public water created by SUB 02-0026. 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 02-0026 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 any lots created by SUB 02-0026 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.

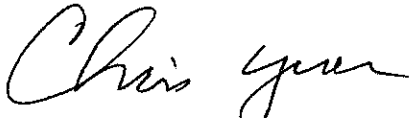
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- f. In the event that there are any amendments or changes to the subdivision after the agreement is signed, the applicant shall be responsible for informing the County Planning Department of such amendments or changes so that the agreement can be 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 02-0026 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 02-0026, the owner(s) of the lot(s) created by SUB 02-0026 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 02-0026) final plat map shall meet all other requirements of the Hawaii County Zoning Code and Subdivision Code not covered by this variance.
 4. The subdivider, owner(s), their assigns or successors shall pay any outstanding real property taxes, address any historical or archeological concerns, 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

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cc: DWS-Engineering Branch
SUB 02-0026
Planning Dept.-Kona
Jung & Vassar, P.C. (Francis L. Jung, Esq.)