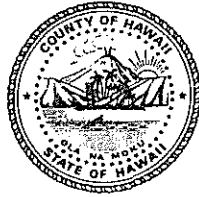


Harry Kim
Mayor



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

January 16, 2003

Steven K. Strauss, Esq.
P. O. Box 11517
Hilo, HI 96721

Dear Mr. Strauss:

VARIANCE PERMIT NO. 1344 WH (VAR 02-066)

Agent: STEVEN D. STRAUSS, ESQ.
Applicants: KAREN AKIBA/G. B. HAJIM
Owners: KAREN AKIBA/G. B. HAJIM
Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required,
Section 23-84, Water Supply, (1) (2)
Tax Map Key: 2-9-001:003, Lot B (SUB 02-0069)

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 one of the proposed 2-lots to be created without having a water system meeting with the minimum requirements of the Department of Water Supply (DWS) and allow a proposed 2-lot subdivision of the subject property. The Planning Director has concluded that a variance from the minimum subdivision water system requirements be approved based on the following findings:

BACKGROUND

1. **Location.** The subject property, Lot B consisting of 45,449 square feet, is within the Hakalau-Iki House Lots, Hakalau, and situated at South Hilo, Hawaii.
2. **Zoning.** The subject property is zoned Single-Family Residential (RS-7.5) by the County and designated Urban (U) by the State Land Use Commission (LUC).

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3. **Subdivision Request/PPM.** The applicant submitted a subdivision application (SUB 02-0069) which includes a preliminary plat map (PPM), dated May 30, 2002, proposing a 2-lot subdivision of Lot B. Further action on the proposed 2-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 October 25, 2002.

5. **Agency Comments and Requirements-WH (VAR 02-066):**

a. Hawaii County Fire Department's memorandum is dated November 4, 2002. (Refer to memorandum in variance file).

b. The State Department of Health (DOH) memorandum is dated November 25, 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." 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 State 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 Department of Water Supply (DWS) memorandum dated December 23, 2002 states the following:

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

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Please refer to our July 31, 2002, memorandum to you for our comments and requirements.

We reiterate our request that the applicant indicate which lot the existing service (Account No. 500-01300) will be assigned.

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

Note: The DWS memorandum dated July 31, 2002 in subdivision file (SUB 02-0069) states:

"Water is not available for Subdivision, Change of Zone, Boundary Amendment, or Ohana applications. Water is limited to one 5/8-inch meter and 600 gallons per day per existing lot of record.

Should a variance application be executed, we request that the applicant indicate to which lot the existing service (Account No. 500-01300) will be assigned.

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 list of surrounding property owners. It appears that 2-notices were mailed to surrounding property owners. According to the certificate of mailing(s), a first notice was mailed on or about October 11, 2002 and second notice was mailed on or about November 4, 2002.
6. **Comments from Surrounding Property Owners or Public.** No other agency comments were received. No oral objections or objection letters were received from the surrounding property owner(s) or public.

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 one of the proposed 2-lots 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 the additional lot. According to the rainfall information cited by the applicant and extract of a map-WATER RESOURCES INVESTICATIONS REPORT submitted by the applicant, denoting the approximate location of the "subject site", it appears that the subject TMK property and surrounding areas receive approximately 120-140 + inches of rainfall yearly.

Given the very limited extent and unusual nature of the subdivision, the uncertainty and expense of drilling a well for the additional lot, 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 additional lot will be addressed by the applicant-family or future lot owner(s) of said lot.

The subject variance application was acknowledged by letter dated October 28, 2002. Additional time was required to review and consider the Department of Water Supply and other agency

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comments to the subject application. The applicant agreed to extend the decision date to January 17, 2003.

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 2-lot subdivision of the subject TMK property without one (1) of the proposed 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 lot the existing water service (Account No. 500-01300) will service. The subdivider will be required to comply and meet all DWS requirements before final subdivision approval is granted to SUB 02-0069.
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 02-0069. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions, which affect the designated lot arising from the approval of the pending 2-lot subdivision application. The written agreement 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 subdivider or owners:
 - a. The owners agree and accept the fact that a County dedicable public water system is not now able to service the proposed lot without public water created by SUB 02-0069. 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.

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- b. Any lots created by SUB 02-0069 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 02-0069 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 02-0069 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 02-0069, the owner(s) of the lot created by SUB 02-0069 shall participate

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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 02-0069) 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.

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 02-0069
Planning Dept.-Kona