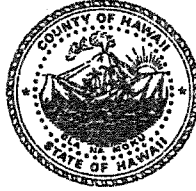


Harry Kim
Mayor



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

August 11, 2003

Ms. Helga M. Tossman
and Mr. Jerry T. Shimizu
P. O. Box 2824
Kailua-Kona, HI 96745

Dear Ms. Tossman and Mr. Shimizu:

VARIANCE PERMIT NO. 1353 (VAR 02-072)

**Applicants: HELGA M. TOSSMAN &
JERRY T. SHIMIZU**

**Owners: HELGA M. TOSSMAN &
JERRY T. SHIMIZU**

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

Tax Map Key: 1-8-008:029, Lot 229 (SUB 02-0098)

Please note there were typographical errors in the heading on Page 1 and Item No. 3 on Page 2 of Variance Permit letter dated March 21, 2003.

The first line of the heading "**Variance Permit No. 1353 (VAR 02-042)**" is hereby changed to read as follows: "**VARIANCE PERMIT NO. 1353 (VAR 02-072)**" and, Item 3 on Page 2 is hereby amended to read:

- "3. **Subdivision Request/PPM.** The applicant's surveyor submitted subdivision application (SUB 02-0098), on behalf of the owners, that includes a preliminary plat map (PPM) dated July 19, 2002. Further action on the proposed 9-lot subdivision application was deferred pending resolve of the water requirements pursuant to a letter dated September 27, 2002 in SUB 02-0098."

We apologize for these errors and any misunderstanding or inconvenience.

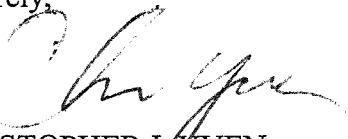
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Ms. Helga M. Tossman
and Mr. Jerry T. Shimizu
Page 2
August 11, 2003

Should you require any further clarification, please do not hesitate to contact this office
at 961-8288.

Sincerely,

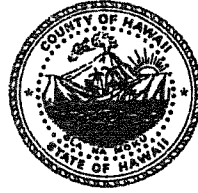


CHRISTOPHER J. YUEN
Planning Director

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xc: Manager-DWS
SUB 02-0098
Planning Dept. - Kona

Harry Kim
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March 21, 2003

Ms. Helga M. Tossman
and Mr. Jerry T. Shimizu
P. O. Box 2824
Kailua-Kona, HI 96745

Dear Ms. Tossman and Mr. Shimizu:

Variance Permit No. 1353 (VAR 02-042)
Applicants: HELGA M. TOSSMAN &
JERRY T. SHIMIZU
Owners: HELGA M. TOSSMAN &
JERRY T. SHIMIZU
Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required,
Section 23-84, Water Supply, (1) (2)
Tax Map Key: 1-8-008:029, Lot 229 (SUB 02-0098)

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 9-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, Lot 229 consisting of 45.917 acres, Olaa Reservation Lots, is a portion of Grant 4300 to Olaa Coffee Company, Ltd., and situated at Olaa, Puna, 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 submitted a subdivision application (SUB 02-0098) which includes a preliminary plat map (PPM), dated July 19, 2002, to subdivide Lot 229 into nine (9) lots. Further action on the proposed 9-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 November 12, 2002.
5. **Agency Comments and Requirements (VAR 02-072):**
 - a. Hawaii County Fire Department's memorandum is dated November 29, 2002. (Refer to memorandum in variance file).
 - b. The State Department of Health (DOH) memorandum dated December 2, 2002 states:

“Under current rules, cesspools are allowed on these lots. However, rule changes may require septic systems in the future.”
 - c. The Department of Water Supply (DWS) memorandum, dated December 2, 2002, states in part:

“We have reviewed the subject application and the comments in our memorandum of September 16, 2002, still stand. (A copy is enclosed.)”

The attached DWS memorandum, dated September 16, 2002, states in part:

“We have reviewed the preliminary plat map dated July 19, 2002, and our comments follow.

For your information, the Department of Water Supply's nearest water system facility is an existing 4-inch line along the Volcano Highway approximately 6,200 feet from proposed Lot 229-J. In addition, the

Ms. Helga M. Tossman
and Mr. Jerry T. Shimizu
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March 21, 2003

subject parcel is outside of the Department's service area. Lastly, the Department's existing water system facilities cannot support the proposed subdivision at this time. Extensive improvements and additions, including source, storage, transmission, booster pump, and distribution facilities, must be constructed. Currently, sufficient funding is not available and no time schedule is set."

6. **Notice to Surrounding Owners.** The applicant submitted a copy of a notice and other attachments sent to surrounding property owners. Pursuant to these submittals, it appears that notice was mailed on or about December 2, 2002.
7. **Comments from Surrounding Property Owners or Public.** No other agency comments or objections were received. No objections from the surrounding property owners or public to the subject variance request or application 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 TMK property which exist either to a degree which deprive the applicants or owners of 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 applicants. The first alternative requires the applicants to extend or 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 a nine (9) lots 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

Ms. Helga M. Tossman
and Mr. Jerry T. Shimizu
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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 proposed 9-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 proposed subdivision or "SITE" and proximity to the nearest active rain gage station(s). The analysis of the applicant's submittals and other rainfall data indicate the property ("SITE") and surrounding areas receive in excess of 180+ 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.

The provisions for water storage, water distribution, and construction of private rain water catchment system(s) for the proposed lots will be addressed by the applicants or future lot owner(s).

The subject variance application was acknowledged by letter dated November 15, 2002. Additional time was required to consider existing water service requirement for the property and other agency comments was necessary. The applicant agreed to extend the decision date to on or before March 31, 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 9-lot subdivision of the subject TMK property without providing a water system meeting DWS standards is approved subject to the following conditions:

Ms. Helga M. Tossman
and Mr. Jerry T. Shimizu
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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 02-0098. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting the all lots arising from the approval of pending 9-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 9-lots without public water created by SUB 00-0098. 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. The owners agree and accept the fact that the County will not, at this time, bear the responsibility of supplying public water to the proposed or affected 9-lots created by SUB 02-0098 not serviced by a County water system. No further subdivision of the lots created by SUB 98-0098 will be permitted unless county water system requirements and other requirement of Chapter 23, Subdivisions, are met.
 - c. Any lots created by SUB 02-0098 may not be made subject to a condominium property regime.
 - d. No additional farm dwelling or second farm dwelling shall be permitted on any lot create by SUB 02-0098.
 - e. Any farm 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 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 owner(s) of the lot(s) created by SUB 02-0098 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 02-0098, the owner(s) of the lot(s) created by SUB 02-0098 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

Ms. Helga M. Tossman
and Mr. Jerry T. Shimizu
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water supply requirements to permit further subdivision of the subject property.

3. The subdivision's (SUB 02-0098) final plat map (minimum lot size, minimum average lot size requirements, etc.) shall meet all the requirements of the Hawaii County Zoning Code and the Subdivision Code not covered by this variance. No other variance to permit this subdivision shall be granted to allow SUB 02-0098.
4. 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: Manager-DWS
SUB 02-0098
Planning Dept. - Kona