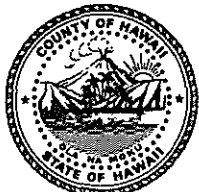


VAR 644



Stephen K. Yamashiro
Mayor

Virginia Goldstein
Director

Norman Olesen
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-9615

CERTIFIED MAIL

April 17, 1995

Kaupulehu Land Company
P. O. Box 1119
Kailua-Kona, HI 96745

Dear Gentlemen:

Variance Application No. 644 (95-8)
Applicant: Kaupulehu Land Company
Request: Variance from minimum road and water
requirements of Subdivision Control Code
Tax Map Key: 7-2-3:por 1

After reviewing your application and the information submitted on behalf of it, including comments received from consulting agencies, the Planning Director, by this letter, hereby certifies the approval of your variance request to allow the construction of three (3) glassed lined steel water tanks as part of a private water system in lieu of the required dedicable concrete water tanks by the Department of Water Supply as required by Article 6, Division 2, Section 23-84 (1) of the Subdivision Control Code.

The subject property is located adjacent to the Kona Village Resort between the Mamalahoa and Queen Kaahumanu Highways, Kaupulehu, North Kona, Hawaii. Tax Map Key 7-2-3:por 1.

The Planning Director has concluded that the variance request from the Subdivision Control Code minimum water requirements should be approved based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances that exist which would warrant or necessitate a waiver from the minimum water requirements to service the proposed twelve (12) lot subdivision. The Department

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of Water Supply stated, "The Department of Water Supply (DWS) utilizes reinforced concrete reservoir as a standard because of its structural integrity, it is vandal proof, and it is virtually maintenance free. Because of the higher front end cost of the concrete reservoir, the developer has been in contact with the DWS to substitute this glass-lined steel tank. As discussed with them, we indicated that we are not in a position, nor have the authority, to approve any variance of the subdivision control code."

As such, all facilities will be provided by the private water system for domestic consumption as well as fire-fighting purposes.

Therefore, considering the foregoing issues, it has been determined that there are special and unusual circumstances applying to the subject property which exist either to a degree which deprive the applicant of substantial property rights that would otherwise be available or to a degree which obviously interfere with the best use or manner of development of the subject property.

ALTERNATIVES

There are no reasonable alternatives in resolving the required water system requirement. The construction of concrete water tanks are beyond the cost of the project budget and would not be economically feasible to complete the development.

As such, the imposition of constructing a dedicable water system as opposed to the private water system in this area for the proposed twelve (12) lot subdivision would be putting excessive demands upon the applicant when a more reasonable alternative is available.

INTENT AND PURPOSE

The subject property consisting of 624 acres is located within a mix of County Resort, Residential, Multiple Residential and Commercial zoned districts. Under these zoning designations, the minimum building site area is 7,500 square feet. The applicant is proposing a twelve (12) lot subdivision with areas far exceeding the minimum lot size requirements of the Zoning Code.

The intent and purpose of requiring a water system in this case is to assure that a adequate water system is available for domestic consumption and fire protection. In this situation, the substitute private water system is considered adequate for the development.

Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning and Subdivision Control Codes and the County General Plan, 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.

The variance request is, therefore, approved subject to the following conditions:

1. The applicant, his assigns, or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant, his assigns, or successors shall file a written agreement with the Planning Department prior to receipt of final subdivision approval containing the following stipulations and covenants which shall be duly recorded at the Bureau of Conveyances of the State of Hawaii by the Department at the cost and expense of the subdivider:
 - a. The water system will be privately maintained and operated with compliance as a regulated public utility. The water system shall not be connected at any time to any DWS water system. Should a connection be desired, the tanks must be upgraded to a reinforced concrete reservoir from the proposed glass-lined tanks. Should the developer or future owners of the development wish to dedicate to the DWS, the water system in the future, the concrete reservoirs must be constructed to DWS standards to replace the glass-lined steel tanks. The DWS reserves the right to accept or refuse dedication of the water system though the tanks are brought up to present standard.
 - b. In the event that there are any amendments or changes to the subdivision after the agreement is signed, the applicant/subdivider shall be responsible for informing the department of the amendments or changes so that the agreement can reflect the amendments or changes. Further, the written agreement shall be considered as a condition and covenant running with the land and shall be binding upon the applicants/subdivider or owner, his successors, and assigns and shall be incorporated as an exhibit and made part of each agreement of sale, deed, lease, or other similar documents affecting the title or ownership of each subdivided lot.

Kaupulehu Land Company
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April 17, 1995

- c. In the event that any of the lots are provided by a water service (individual meter) from the Department of Water Supply or an approved private water system, the above covenants for the specific property will no longer be in effect.
- d. Comply with all other applicable State and County rules and regulations.

Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,

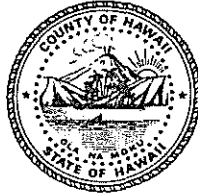


VIRGINIA GOLDSTEIN
Planning Director

EC:mjs
6331D

xc: Subdivision No. 90-47
Department of Water Supply
West Hawaii Office

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

July 25, 2002

KAUPULEHU LAND COMPANY/
Mr. William L. Moore
c/o WILLIAM L. MOORE PLANNING
159 Haili Street
Hilo, HI 96720

Dear Mr. Moore:

AMENDMENT TO VARIANCE PERMIT NO. 644 WH (VAR 02-024)

Applicant: KAUPULEHU LAND COMPANY
Owners: KAMEHAMEHA SCHOOLS/ BISHOP ESTATE
Request: AMENDMENTS to VAR 644-04/17/1995
Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required,
Section 23-84, Water Supply, (1) (2)

**Tax Map Key: Formerly-7-2-003:001, Portion 003, TMK: 7-2-003:004,
TMK: 7-2-003:004, and TMK: 7-2-010:006**

After reviewing your variance amendment application, the Planning Director approves your request and amends Variance Permit No. 644 (VAR 644) and conditions dated April 17, 1995 subject to conditions contained herein. VAR 644 allowed a private water system and limited the private water system improvements to "three (3)" glass lined steel water tanks. This amendment will allow additional glass lined steel water tank improvements to be constructed. VAR 644 and the variance amendment and amended conditions are from the water system requirements for a subdivision, pursuant to Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply, (1) (2).

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KAUPULEHU LAND COMPANY/

Mr. William L. Moore

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The Planning Director has concluded that your request to amend the original variance permit language and variance conditions should be approved based on the following findings:

BACKGROUND AND FINDINGS

1. The subject Tax Map Key (TMK) property(s) are located approximately four miles north of the Keahole Airport and makai of the Queen Kaahumanu Highway located within the district of North Kona, Island of Hawaii. The current resort activity or development is located makai of the Queen Kaahumanu Highway, within the Ahupuaa of Kaupulehu, and situated at North Kona, Hawaii.
2. The original VAR 644-Letter dated April 17, 1995 was issued in relation to SUB 6623. SUB 6623 consolidated and resubdivided 3 lots (as shown on File Plan 1978) totaling 624 acres into 12 lots (the total subject area of SUB 6623 is hereafter referred to as the "Tract"). The variance conditions and recorded agreements required by VAR 644 (Document No. 95-146600 and Document No. 96-045786, hereafter "Recorded Agreements") encumber the entire Tract.
3. The Recorded Amendment to Agreement (Document 96-045786) corrects the original agreement and references the Tract in terms of the TMK parcel numbers prior to final subdivision approval of SUB 6623, i.e., TMK 7-2-003:004, 005, 006. The assignment of TMK parcel numbers corresponding to the Tract were subsequently assigned TMK parcel numbers in TMK plat 7-2-010 (Note: The Tract excludes TMK: 7-2-010:002- Kona Village Resort).
4. The original private water system approved by VAR 644 located within the Ahupuaa of Kaupulehu was designed to serve the Tract (Variance Application-Refer to Exhibit 1). However, residential development within the Tract is now being planned at a higher elevation than anticipated. VAR 644 limited the private water system to three (3) glass lined steel water tanks. "While the domestic water requirements for these proposed residential projects can be supported by the existing water tanks, the higher elevations have necessitated the construction of a fourth (4th) water tank to provide the required fire flow for these areas. Additional tanks may also be required in the future depending on the overall potable water demand required to serve the Ka'upulehu lands." (Variance Application-Refer to letter dated April 29, 2002, p. 2).

KAUPULEHU LAND COMPANY/

Mr. William L. Moore

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5. VAR 644 approved a variance to the types of materials (glass lined steel water tanks) for the private water system. The materials meet AWWA standards, but do not meet the more stringent standards of the Department of Water Supply (DWS). More specifically, AWWA has standards for steel tanks, while the DWS requires concrete reservoirs for purposes primarily to protect against vandalism.
6. VAR 644 does not allow for a variance from DWS capacity for potable and emergency fireflow standards. Therefore, any further subdivision within the Tract must be reviewed by and have DWS's approval in terms of capacity.
7. No objections were received from the agencies contacted. No oral or written objections were received from the surrounding property owners or public.

SPECIAL AND UNUSUAL CIRCUMSTANCES; ALTERNATIVES; AND INTENTS AND PURPOSES

Since the only change to VAR 644 is to remove the limit on the number of steel tanks, agency comments, the findings in VAR 644 explaining the special and unusual circumstances, alternatives considered, and relationship to intents and purposes of the zoning and subdivision codes are hereby incorporated by reference.

DETERMINATION-VARIANCE CONDITIONS

The subject variance application was acknowledged by letter dated May 7, 2002. Additional time to review current progress of the resort and residential development and past subdivision approvals was required. The applicant agreed to extend the variance decision date to July 31, 2002.

This amendment to VAR 644 deletes limitations to only three (3) glass lined steel tanks, and allows any number of glass lined steel tanks. The conditions of VAR 644 are hereby amended and restated and supplemented as follows:

KAUPULEHU LAND COMPANY/

Mr. William L. Moore

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July 25, 2002

1. The applicant, owner(s), their assigns, or successors shall be responsible for complying with the amended variance conditions.
2. The applicant, owner(s), their assigns, or successors shall file a written agreement with the Planning Department prior to receipt of final subdivision approval for any subdivision served by the (subject) private water system. This agreement shall contain the following stipulations and covenants which shall be duly recorded at the Bureau of Conveyance of the State of Hawaii by the Planning Department at the cost and expense of the subdivider:
 - a. The water system will be privately maintained and operated with compliance as a regulated public utility. The water system shall not be connected at any time to any DWS water system. Should a connection be desired, the tanks must be upgraded to a reinforced concrete reservoir from the proposed glass-lined tanks. Should the developer or future owners of the development wish to dedicate the water system in the future to the DWS, the concrete reservoirs must be constructed to DWS standards to replace the glass-lined steel tanks. The DWS reserves the right to accept or refuse dedication of the water system though the tanks are brought up to present standards.
 - b. In the event that there are any amendment or changes to the subdivision after the agreement is signed, the applicant/subdivision shall be responsible for informing the department of the amendments or changes so that the agreement can reflect the amendments or changes. Further, the written agreement shall be considered as a condition and covenant running with the land and shall be binding upon the applicants/subdivider or owner, his successors, and assigns and shall be incorporated as an exhibit and made part of each agreement of sale, deed, lease, or other similar documents affecting the title or ownership of each subdivided lot.
 - c. In the event that any of the lots are provided by a water service (individual meter) from the Department of Water Supply the above covenants for the specific property will no longer be in effect.
 - d. Comply with all other applicable State and County rules and regulations.

KAUPULEHU LAND COMPANY/

Mr. William L. Moore

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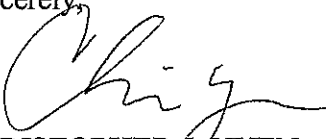
July 25, 2002

3. The above requirement to file and record an agreement shall apply to any further subdivision of lots created by SUB 6623, even if the water improvements within those proposed subdivisions meet DWS standards.
4. Any subdivision served by the subject private water system that is outside the lots created by SUB 6623 will not require a new variance or amendment to VAR 644, provided that DWS determines that the private water system has the capacity to serve the proposed subdivision and the above agreement is filed and recorded.
5. Any further deviations from DWS standards other than the type of storage shall require a new variance or amendment to VAR 644.

Should any of the foregoing stated conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Thank you for your understanding and patience during our review.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

WRY/RRT:cps

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xc: DPW-Engineering
DWS-Engineering Branch
VAR 644