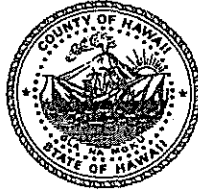


Harry Kim
Mayor



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

September 4, 2003

Mr. Sidney Fuke
SIDNEY FUKU PLANNING CONSULTANT
100 Pauahi Street, Suite 212
Hilo, HI 96720

Dear Mr. Fuke:

VARIANCE PERMIT NO. 1371 WH (VAR 03-002)
Agent: SIDNEY FUKU PLANNING CONSULTANT
Applicants: JOHN HEIDE, ET AL.
Owners: JOHN HEIDE, ET AL.
**Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required,
Section 23-84, Water Supply, (1) (2)**
Tax Map Key: 7-9-005:060, (SUB 02-0100)

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 8-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, consisting of 22.4027 acres, is a portion of Grant 1182 to Josiah Fuller and situated at Maihi 2nd, North Kona, Hawaii.

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2. **Zoning.** The subject property is zoned Agricultural (A-1a) 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 02-0100) which includes a preliminary plat map (PPM), dated July 17, 2002, to subdivide the property into seven (7) buildable lots and one (1) roadway lot. Further action on the proposed 8-lot subdivision application has been deferred pending resolve of the water requirements pursuant to letter dated September 10, 2002 in SUB 02-0100.
4. **Variance Application.** The applicant submitted the subject variance application on or about January 7, 2003 and required submittal on or about February 13, 2003. Recently, the agent met with the Planning Department to discuss other alternatives to distribute County water to the proposed buildable lots and improve existing road infrastructure.

5. **Agency Comments and Requirements WH (VAR 03-002):**

- a. Hawaii County Fire Department's memorandum is dated February 26, 2003. (Refer to memorandum in variance file).
- b. The State Department of Health (DOH) memorandum is dated March 7, 2003. (Refer to memorandum in variance file).
- c. The Department of Water Supply (DWS) memorandum, dated April 28, 2003 received on or about May 29, 2003, states in part:

"We have reviewed the subject Variance Application. Please refer to our November 29, 2002, memorandum to you for our comments and requirements."

Refer to DWS memorandum, dated November 29, 2002 in subdivision file (SUB 02-0100). Note: This DWS memorandum states in part the following:

"We have reviewed the preliminary plat map, dated July 17, 2002, for the proposed subdivision and have the following comments. Water can be

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made available from an existing 6-inch waterline along St. Paul Road approximately 2,500 feet from the subject property. The parcel currently has an account, No. 890-457420, with the Department. The meter box for this account is at the end of the

Department's existing waterline in St. Paul Road. The meter for this account was removed in 1986.

Pursuant to the Department's Water Commitment Guidelines Policy, a copy which is being forwarded to the applicant, a water commitment may be issued. Base on the six additional lots requested in the proposed subdivision, the required water commitment deposit is \$900.00. For the applicant's information the water commitment is for six additional units of water with each unit of water having a daily maximum use of 600 gallons. For the six additional units that is a maximum daily use of 3,600 gallons.

Remittance of \$900.00 from the applicant is requested, as soon as possible, so that a water commitment may be formally issued. The commitment will be in writing with specific conditions and effective dates stated. Please keep in mind that this letter shall not be construed as a water commitment officially effected, water availability is subject to change depending on the water situation."

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 received. The following objection letter from the following property owner(s) was received:
 - a. Objection letter dated February 26, 2003 from Benson A. Nakamura, Et al. (TMK: (3) 7-9-015:023) received on or about February 28, 2003.

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

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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 subdivider. 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. The agent recently states in part the following, "Because the County's water system is located nearly ½-mile mauka of the subject site, potable water cannot be reasonably provided by the County without undergoing extensive costs. As explained below, it is not only the distance but also the condition of St. Paul Road that makes the provision of a County approved system extremely prohibitive. At the same time, the applicants believe that a water system would suffice. As such, the applicants are requesting relief from this water requirement." The DWS requirement to extend and install a dedicable County water system within such an old and narrow (25-foot wide R-O-W) or substandard public right-of-way or providing an approved alternative water system for the proposed eight (8) lots subdivision would be putting excessive demands upon the applicants when a more reasonable alternative to provide subdivision water and other access improvements is available.

At this time, the subdivider has agreed to utilize 7-DWS water commitments, pay the appropriate facility charges, and install a large master water meter within St. Paul road's right-of-way in accordance with DWS standards. There are stonewalls within the St. Paul roadway (County R-O-W approximately 25 feet wide) and numerous private water "spaghetti" lines within and along the narrow paved roadway. At this time, the width of the St. Paul R-O-W and location of the 8 to 10 feet wide paved roadway, placement of rockwalls within the R-O-W, and location of numerous "non-conforming" water lines along the paved roadway limit the installation of a dedicable or "standard" water system within the county owned R-O-W. In conjunction with the proposed "on site" subdivision improvements, the subdivider will install a private water distribution system consisting of approximately 2400 feet of waterline "after" the DWS meter (within the 25-foot wide St. Paul Road R-O-W) up to each proposed 7-buildable lots created by the subdivision. The subdivider or individual lot owner(s) will be required to form an association to administer or pay the monthly water bill and maintain the privately owned waterline "after" the DWS meter and individual water distribution line(s) within the subdivision's private roadway. Further, in conjunction with the installation of the privately

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owned waterline improvements, the subdivider shall confer with the DPW and expand and improve the paved roadway within the St. Paul R-O-W between the DWS master meter up to the private subdivision roadway. The existing paved 8-foot wide paved roadway shall be resurfaced and widened to a minimum 10-foot wide roadway plus pullouts where possible. (Refer to variance conditions).

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 subdivider will install a large master (county-DWS) water meter and construct the necessary alternative private water distribution system and roadway improvements for the proposed subdivision and address other subdivision improvements.

The subject variance application was acknowledged by letter dated February 13, 2003. Additional time was required to consider the availability of county water for the proposed subdivision and other subdivision requirements for the property. The applicant agreed to extend the decision date to on or before August 29, 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 8-lot subdivision of the subject TMK property without providing 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. The subdivider will be required to pay all fees and install the Department of Water Supply (DWS) master meter before Final Subdivision is granted. The subdivider shall confer with the Department of Public Works (DPW) and install the private water line improvements and paved roadway improvements within the St. Paul

(County owned right-of-way) before Final Subdivision is granted. The privately owned water system improvements and paved roadway improvements within the proposed subdivision shall be installed in accordance with approved subdivision construction plans and completed prior to Final Subdivision approval.

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 02-0100. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting the pending 8-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 the existing County dedicable public water system will not be extended/improved and individual meters installed to provide individual water service to the proposed 7-individual buildable lots created by SUB 02-0100. 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 02-0100 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 extending the existing County system beyond the DWS-Master Meter or maintaining the privately owned water line improvements and appurtenances located within the St. Paul right-of-way and within the privately owned subdivision roadway created by the proposed subdivision (SUB 02-0100). The subdivider or lot owner(s) will form an "association" to administer and maintain the privately owned water line improvements and appurtenances after the DWS master meter. The owner(s) of the large lot resulting from SUB 02-0100 will guarantee the payment of the water bill for the DWS master water meter.

- d. Each permitted farm dwelling shall be provided with and maintain a private rainwater catchment system or 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.
 - e. 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.
 - f. In the event that the County Department of Water Supply (DWS) notifies the owner(s) of the lot(s) created by SUB 02-0100 that the County Water System will be upgraded or an improvement district initiated to enable individual service to the lots created by SUB 02-0100, the owner(s) of the lot(s) created by SUB 02-0100 shall participate in such improvement district or shall pay their pro-rata share of the upgrade and installation of laterals, as determined by the DWS.
4. The subdivision's (SUB 02-0100) 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.

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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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xc: Manager-DWS
SUB 02-0100
Planning Dept. - Kona
Benson A. Nakamura, Et al.