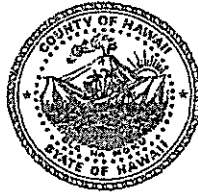


Harry Kim
Mayor



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

June 9, 2003

Chrystal T. Yamasaki, L.P.L.S.
WES THOMAS ASSOCIATES
75-5749 Kalawa Street
Kailua-Kona, HI 96740

Dear Mrs. Yamasaki:

VARIANCE PERMIT NO. 1369 (VAR 03-005)

Agent: WES THOMAS ASSOCIATES
Applicant: MORTON E. BASSAN, JR.
Owner: MORTON E. BASSAN, JR.
**Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required,
Section 23-84, Water Supply, (1) (2)**

Tax Map Key: 9-4-005:010 (SUB 02-0136)

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 nine (9) lots of a proposed 10-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 202.1 acres, is Lot 6 of Kiolakaa-Keaa Homestead Lots (Registered Map No. 2176), being the whole of Grant 5064 to Walter Hoolulu Hayselden, and situated at Nukakaia and Puumakaa, Kau, Hawaii.

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2. **Zoning.** The subject property is zoned Agricultural (A-20a) 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 02-0136) which includes a preliminary plat map (PPM), dated October 18, 2002, to subdivide Lot 6 into ten (10) lots. Further action on the proposed 10-lot subdivision application (SUB 02-0136) is being deferred pursuant to letter dated November 7, 2002.
4. **Variance Application.** The applicant submitted the subject variance application on January 22, 2003. Pursuant to a discussion with the applicant on June 3, 2003, Wes Thomas is authorized to submit the variance application. Reference is made to the applicant's authorization letter in the subdivision file. (Refer to copy of authorization letter in variance file).

5. **Agency Comments and Requirements (VAR 03-005):**

- a. The County of Hawaii Fire Department (HFD) memorandum is dated February 26, 2003. (Refer to memorandum in variance file).
- b. The State Department of Health (DOH) memorandum, dated March 7, 2003, 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” 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 (6) 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 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 first Department of Water Supply (DWS) memorandum, dated April 28, 2003, states in part:

“We have reviewed the subject variance application. Please refer to our January 9, 2003, memorandum to you for our comments and requirements.

Further, for the applicant’s information, a new Elevation Agreement is to be submitted and a “Policy and Conditions for Water Service” letter signed prior to water being granted to the lot, which the existing service later will be assigned to, upon final subdivision approval.”

Note: The copy of the DWS memorandum, dated January 9, 2003 in the subdivision file (SUB 02-0136) states in part:

“We have reviewed the subject application for the proposed subdivision and have the following comments.

Please be informed that the Department’s existing water system facilities cannot support the proposed subdivision at this time. Extensive improvements and additions, including source, storage, transmission, booster pumps, and distribution facilities, must be constructed. Currently, sufficient funding is not available and no time schedule is set. As such. A moratorium is in effect for this area.

For your information, there is an existing 4-inch waterline traversing the property which is operated and maintained by the Department. The waterline was installed in 1942, by the United States Government and a License Agreement was executed to grant the County of Hawaii the necessary right-of-way. However, the legal description and dimensions contained in the license are inadequate. Therefore, we are in the process of drafting a letter of agreement to the applicant requesting a 15 foot-wide easement through the property that would encompass the waterline.

Should the subdivision application be processed through a variance from water system improvements, final subdivision approval will be subject to the existing 4-inch waterline and 15-foot-wide easement being shown on the final plat map.”

6. **Notice to Surrounding Owners.** The applicant submitted a letter dated February 19, 2003 and Certificate of Mailing dated February 19, 2003.
7. **Comments from Surrounding Property Owners or Public.** No other agency comments or objections from the surrounding property owners or public to the subject variance request 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 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. There are limitations to utilize a 4-inch waterline (publicly owned water line) constructed in 1942 and located on the subject property. 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 nine (9) lots of the proposed 10-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 a map showing the approximate location of the subdivision and background information 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. According to an extract of a map- Plate 6-WATER-RESOURCES INVESTIGATIONS REPORT 95-4212, denoting the approximate location of the "SUBJECT

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WES THOMAS ASSOCIATES

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PROPERTY TMK: 9-4-05:10" and proximity to active rain gage stations, it appears that the property and surrounding areas receive in excess of 60 + 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.

Additional provisions for water storage, water distribution, and construction of private rain water catchment system(s) for nine (9) lots of the proposed 10-lot subdivision request will be addressed by the applicant (Morton E. Bassan, Jr.) or future lot owner(s) of said lot.

The subject variance application was acknowledged by letter dated February 13, 2003. Additional time was required to confer with the applicant (Morton E. Bassan, Jr.) about the existing water service requirement, understand other DWS requirements, and agency requirements. The applicant (Morton E. Bassan, Jr.) agreed to extend the decision to on or before June 15, 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 10-lot subdivision of the subject TMK property 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 is eligible to receive the existing service. The subdivider will be required to comply and meet all DWS requirements before final subdivision approval is granted to SUB 02-0136.
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 02-0136. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions, which affect the designated 9-lots arising from the approval of pending 10-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 02-0136. 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 02-0136 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 9-lots created by SUB 02-0136 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 02-0136 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 02-0136, the owner(s) of the lot(s) created by SUB 02-0136 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.
- 4. The subdivision's (SUB 02-0136) final plat map shall meet all other requirements of the Hawaii County Zoning Code and Subdivision Code not covered by this variance. No other variance to permit this subdivision shall be granted to allow SUB 02-0136.
 - 5. The subdivider, owner(s), their assigns or successors shall pay any outstanding real property taxes due and comply with all other applicable State statutes and County ordinances pertaining to subdivisions, and tentative subdivision approval conditions prior to final subdivision approval.

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WEST THOMAS ASSOCIATES

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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: DWS-Engineering Branch
SUB 02-0136
Planning Dept. - Kona