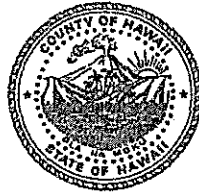


Harry Kim
Mayor



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

May 22, 2003

Mr. Jack Furtado
P. O. Box 1104
Kurtistown, HI 96760

Dear Mr. Furtado:

VARIANCE PERMIT NO. 1360 (VAR C3-013)

Applicant: JACK FURTADO
Owners: JACK FURTADO, ET AL.
Request: Variance from Chapter 23, Subdivisions,
Minimum Water and Roadway Requirements
Tax Map Key: 1-7-017:144 and 145 (SUB 02-0114)

After reviewing your variance application, the Planning Director certifies the approval of your variance request with conditions. The subject variance request is to allow a 3-lot subdivision of existing TMK property(s), without meeting all water and roadway improvements stipulated and required by the Department of Water Supply (DWS) and Department of Public Works (DPW) requirements pursuant to their memorandums to the proposed 3-lot subdivision application (SUB 02-0114). The applicant requested a variance from requirements under the Hawaii County Code, Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water supply, (1) (2), and Section 23-87, Requirement for non-dedicable street; escrow maintenance fund.

BACKGROUND

1. **Location.** The subject TMK property(s), Lot 86 and 87 containing approximately 74.8 acres, are within the Keaau Tract, being portions of R.P. 7223, L.C. Aw. 8559-B, Apana 16, and situated at Keaau, Puna, Hawaii.

03689

MAY 23 2003

2. **Zoning.** The subject property is zoned Agricultural (A-20a) by the County and designated Agriculture ("A") by the State Land Use Commission (LUC). Property zoned A-20a means an agricultural district (A) with a minimum building site area of twenty acres (20a).
3. **Subdivision Request/PPM.** The applicant submitted a 3-lot subdivision (SUB 02-0114). The subdivision application's preliminary plat map (PPM) is dated November 6, 2002 and was submitted on or about November 7, 2003. Further subdivision action was deferred pending resolve of agency requirements to the PPM.
4. **Variance Application.** Access to the proposed subdivision is via "South Road" or "South Kulani Road". South Road or South Kulani Road is a privately owned and maintained right-of-way fronting the proposed subdivision. Currently the roadways within "South Road" or "South Kulani Road" are privately owned and maintained by the abutting users. The variance request is from the revised DWS and DPW memorandums dated December 4, 2002 and January 3, 2003, respectively, in the subdivision file (SUB 02-0114).
 - In lieu of a 20'-wide agricultural road (street) meeting DPW's standards (Standard Detail R-39) from subdivision's west boundary to Huina Road, the applicant, at his own expense, previously graded and installed additional gravel roadway improvements within South Road or the privately owned right-of-way fronting the subject TMK property(s). Please refer to further cost estimates, documentation, and pictures received on or about February 20, 2003.

The applicant cites the recent privately owned roadway improvements within South Road and feels that these additional roadway improvements within the privately owned right-of-way, installed and paid for by the applicant in 2003, are sufficient to allow farm vehicle and emergency vehicular access to the proposed 3-lot subdivision. There is adequate room for conventional and emergency vehicles to pass.

- The TMK parcel(s) are eligible to receive county water or be issued water meters from county water system within "South Road" or the DWS. The service connection to each eligible parcel after the DWS meter(s) would be the responsibility of the subdivider or lot owner(s). The applicant feels that

county water or water system requirements for one (1) additional lot is not necessary for a proposed orchard development to installed upon the proposed lot. The applicant or future owner(s) of the proposed additional lot will utilize rainfall and install private potable and emergency water systems pursuant to variance conditions.

- In consideration of the present county water system situation, completed or recent private roadway improvements, nature of the variance request, and location of the subdivision, the applicant feels that subdivision construction for required private roadway and water improvements are not necessary.

The applicant submitted the subject variance application, variance submittals, and filing fee on or about January 15, 2003. Subsequently the applicant-subdivider forwarded cost estimates and color photographs on or about February 20, 2003 showing the completed roadway and grassed shoulder improvements.

5. **Agency Comments and Requirements (VAR 03-013):**

- a. The State Department of Health (DOH) memorandum, dated March 25, 2003, was received. (Refer to DOH memorandum in variance file).
- b. The Department of Water Supply (DWS) memorandum dated April 1, 2003 states in part:

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

Please refer to our December 4, 2002, memorandum to you for our comments and requirements.”

The DWS comments or December 4, 2002 memorandum in subdivision file (SUB 02-0114) 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.”

Furthermore, pursuant to May 19, 2003 confirmation with the DWS Engineering, each TMK property or Parcel(s) 144 and 145 are eligible to receive a service from the existing County water system. As such, only one (1) proposed lot will not be eligible to receive county water at this time and will be dependent on private water catchment for potable and emergency needs. The applicant or subdivider will designate which 2-lots (proposed) will be assigned or eligible to apply for water service (meter) from the DWS. (Refer to further discussion and variance conditions cited below).

- c. The Department of Public Works (DPW) memorandum dated April 2, 2003, states in part the following:

“We have reviewed the subject variance application and have the following comment:

The improvements imposed on the access road are the minimum required for a subdivision street serving areas zoned for three acres and over, according to Section 23-87 of the Hawaii County Code (HCC). To satisfy HCC, Section 23-34, The DPW still believes that the required improvements should be provided. However, should the Planning Director determine that the roadway’s existing condition is sufficient to support the subject subdivision, the DPW defers to that determination.”

6. **Notice to Surrounding Owners.** The applicant submitted a copy of a notice mailed to property owners within 300 feet of the subject property(s), list of surrounding property owners, and proof of mailing said notice to surrounding property owners on April 7, 2003. It appears that the notice was mailed on or about April 3, 2002. *3/27/02*
7. **Comments from Surrounding Property Owners or Public.** No written objections to the subject variance application were received from surrounding property owners or public. No other agency comments were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The following special and unusual circumstances apply to the subject project which exist either to a degree which deprive the applicant/owner 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:

1. Existing and Proposed Agricultural Uses. The applicant intended to develop the subdivision for a family member (son). The proposed 3-lot subdivision could not support the costs to provide the private road improvements and dedicable water system improvements for the additional lot meeting County standards. Even if not meeting all the subdivision requirements, the availability of the county water system to service 2 of the proposed 3-lots will be available and further roadway improvements installed within the privately owned right-of-way fronting the proposed subdivision are superior to other similar access improvements to allow subdivisions in the vicinity. No further subdivision of the 3 resultant lots created by the proposed subdivision application without rezoning.
2. Proposed Lot and Subdivision Road Improvements. The existing paved roadway and/or existing gravel roadways within South Kulani Road or between the proposed subdivision and Huina Road exceed or meet the pavement width standards (R-39) for A-3a or A-20a subdivisions. Given the existing graveled roadway situation fronting the existing property(s), low vehicular usage from the subdivision and adjoining areas, and credit to the applicant for completing roadway and shoulder improvements installed in 2003 fronting the proposed subdivision, the applicant's variance request is reasonable. The subdivision will be accessible by conventional vehicles (with adequate roadway clearance) and emergency vehicles.

ALTERNATIVES

The decision alternatives include the following:

1. *Improve the roadways within the existing roadway with an agricultural roadway standard as required by DPW and install the necessary DWS improvements.* This alternative would require the applicant (owner/subdivider) to improve nearly 1.5 miles of existing gravel roadway within South Kulani Road in accordance with the agricultural standards or the recent DPW memorandum. The costs associated to design and install the minimum DPW roadway and shoulder improvements within the (South Kulani Road) existing right-of-way together with the DWS improvements would be substantial and

unfair when weighed against the proposed agricultural uses and other special and unusual circumstances discussed above.

2. *Reasonable subdivision improvements to meet minimal emergency vehicular and safety requirements and alternative water system improvements.* This is the selected alternative. The existing paved/gravel roadways and other recent shoulder and gravel roadway improvements installed within South Kulani Road are adequate for the proposed 3-lot subdivision and are superior to other unpaved privately owned subdivision roads within the vicinity of the subdivision and adequate to service the subdivision and existing orchard/farm use. The recently installed or additional gravel roadway improvements fronting the proposed subdivision are superior compared to other gravel roadways fronting other lots within the immediate area. On-site drainage concerns or improvements within the proposed subdivision development will be identified or addressed by the subdivider prior to final subdivision approval. There is adequate rainfall to support a private rainfall water catchment system for potable and emergency needs.

INTENT AND PURPOSE OF THE SUBDIVISION CODE

The intent and purpose of access requirements to a proposed subdivision is to ensure legal and physical access to the proposed lots that is clearly defined and accessible from a public road by domestic and farm vehicles, police, fire, and other service vehicles under various weather conditions without constant maintenance. The applicant is requesting a variance to utilize the existing gravel roadway including the recent gravel roadway improvements installed within South Kulani Road to be utilized for the 3-lot subdivision and allow private rainwater catchment systems for 1 of the 3 proposed lots. The variance request is from some of the subdivision improvements stipulated by the DPW and DWS agency comments/memorandums to allow the proposed 3-lot subdivision application.

The surrounding areas are agricultural in character. The character of the nearby public road (Huina Road) right-of-way and private roadway access (South Kulani Road) to the subject property and immediate and surrounding areas have not significantly changed over the past 50 + years. Existing vehicular access to the existing property(s) and neighborhood is appropriate for current zoning (A-20a) of the area and the intentions by the subdivider to maintain low intensity agricultural for himself and his immediate family. By granting this variance, there should be no adverse impact to adjoining properties or other users of the nearby public road or existing private roadway fronting the proposed subdivision. Road maintenance or upkeep to the privately owned roadway within (South Kulani Road) right-of way fronting the subdivision will be privately addressed and maintained by the users.

Mr. Jack Futado
Page 7
May 22, 2003

The intent and purpose of requiring a water system for 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, 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 an additional lot or third lot. According to an extract of a map and other information submitted by the applicant, denoting the approximate location of the proposed subdivision and proximity to the nearest active rain gage station(Kurtistown- SKN No. 91.4). The analysis of the applicant's submittals and rainfall data indicate the subject property(s) currently receive in excess of 165 + 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. Provisions for water storage, water distribution, and construction of private rainwater catchment system(s) within the proposed additional or third lot, without public water or DWS water meter, will be privately addressed by the applicant or future lot owner(s).

Therefore, based on the representations made by the applicant, evaluation of existing water system improvements, rainfall information, and the current private roadway access and traffic patterns to and near the existing property(s), the Planning Director that the variance request is reasonable and some of the agency requirements to develop the proposed subdivision can be deleted or modified.

DETERMINATION-VARIANCE CONDITIONS

The variance request and application was acknowledged by letter dated March 20, 2003. Additional time to study previous variance approvals and confer with the DWS-Engineering Division was necessary. An extension of time to May 27, 2003 to complete the variance background and render a variance decision was granted by the applicant.

Based on the foregoing findings, this applicant's 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. The variance requested to allow a proposed 3-lot subdivision without providing the minimum road and water system improvements stipulated by the DPW and DWS memorandums to allow the 3-lot subdivision shall be modified and subject to the following variance conditions:

1. The subdivider, owners, their assigns, or successors shall be responsible for complying with all stated conditions of this variance.
2. The subdivider, owners, their assigns, or successors understand that the 3-lots arising out of SUB 02-0114 will use and maintain the existing access easements, paved roadways, and grassed roadway shoulders to and within the subject TMK property on their own without any expectation of governmental assistance to maintain South Road or any other private access improvements within the subdivision.
3. Prior to final subdivision approval, the subdivider, applicant, or owner(s), their assigns or successors shall designate and inform the DWS and subdivision file (SUB 02-0114) which two (2) proposed agricultural lots will receive their respective one (1) unit of water from the DWS. Each unit of water is limited to a daily maximum use of six hundred (600) gallons per unit. The subdivider or owner(s) of these two (2) designated agricultural lots must pay for the installation DWS meter(s) or comply with any further DWS requirements or tentative subdivision conditions.
4. ROAD VARIANCE: The access roadway within the existing South Kulani Road right-of-way was previously improved by the original subdivider, applicant or others. The applicant, 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 02-0114. This agreement shall contain the following deed language, being covenants, conditions, and restrictions, which affect the entire property and/or proposed 3-lots arising from the approval of the subdivision application (SUB 02-0114) and be duly recorded at the Bureau of Conveyances of the State of Hawaii by the Planning Department at the cost and expense of the applicant:
 - a. The applicant and/ or owners shall indemnify and defend the State of Hawaii or County of Hawaii from any and all liability arising out of vehicular access to and from the subject property utilizing the private road right-of-ways outside the existing TMK property designated on the subdivision application's (SUB 02-0114) final plat map.
 - b. Upon written demand of the County of Hawaii, the applicant and /or owners, their assigns, or successors shall agree to participate and pay their

- c. fair share percentage of any improvement district adopted for the purpose of roadway improvements to South Road serving the proposed lot(s) arising out of SUB 02-0114 or rights-of-way fronting and along the proposed subdivision. Should the improvement district require acquisition of rights-of-way within the lots arising out of SUB 02-0114, such rights-of-way shall be dedicated to the County without cost and the value of the dedication credited to the fair share contribution of the lot owner. 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.
 - d. The owners understand that the lots created by SUB 02-0114 have been approved with this road variance, and that they will use and maintain the privately owned on-site driveways and privately owned access roadway to and within their property, water system, and drainage improvements on their own without any expectation of governmental assistance, including any road improvements within South Kulani Road or any privately owned rights-of-way fronting the proposed subdivision.
 - e. The lot owners agree to participate in any original road maintenance agreement affecting the previous parcels or proposed lots arising out of the subdivision. Said maintenance shall include, without limitation, grass cutting (mowing), timely repair and/or filling of any and all rutted areas and "potholes", and mowing of existing roadway shoulders within South Kulani Road or privately owned right-of-way fronting the proposed lots arising out of SUB 02-0114.
5. 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.

6. 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 02-0114. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting the a lot arising from the approval of 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 any lots without public water created by SUB 02-0114. 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 a proposed or affected lot created by SUB 02-0114 not serviced by a County water system. No further subdivision of a lot created by SUB 02-0114 will be permitted unless county water system requirements and other requirement of Chapter 23, Subdivisions, are met.
 - c. 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.

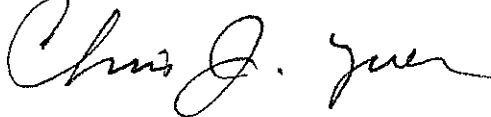
- f. In the event that there are any amendments or changes to the subdivision after the agreement is signed, the applicant shall be responsible for informing the County Planning Department of such amendments or changes so that the agreement can be amended concomitantly. Further, the written or recorded 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 created by SUB 02-0114 that the County Water System has been upgraded or an improvement district initiated to enable service to the lot created by SUB 02-0114, the owner(s) of the lot(s) created by SUB 02-0114 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 2 previously existing TMK parcel(s) pursuant to a variance from the water supply requirement in Section 23-84 of the Hawaii County Code.
- 7. Any lots created by SUB 02-0114 may not be made subject to a condominium property regime.
 - 8. The owners, their assigns or successors shall pay any outstanding real property taxes due and comply with all other applicable State and County rules and regulations pertaining to subdivisions, tentative subdivision approval conditions, approved subdivision construction plans, variance conditions, and land use.
 - 9. Any outstanding DPW construction or building permits issued to the previously existing TMK parcels or proposed lots shall be addressed and closed prior to any further change or transfer of title of the resultant lots. The location of all permitted and future building improvements are subject to minimum building yards pursuant to the Hawaii County Zoning Code.

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

Mr. Jack Futado
Page 12
May 22, 2003

Thank you for your understanding and patience during our review.

Sincerely,

A handwritten signature in cursive script that reads "Chris J. Yuen".

CHRISTOPHER J. YUEN
Planning Director

WRY:pak
P\WP60\WRY\FORMLETT\VARAPPSUBTMK17017144145.FURTADO

xc: DPW-Engineering Branch
DWS-Engineering Branch
SUB 02-0114