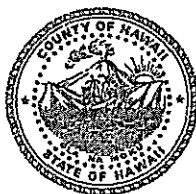


Harry Kim
Mayor



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 27, 2003

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

Dear Mr. Fuke:

VARIANCE PERMIT NO. 1373 WH (VAR 03-026)
Agent: SIDNEY FUKU PLANNING CONSULTANT
Applicant: HANO, LLC
Owner: HANO, LLC
Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required,
Section 23-84, Water Supply, (1) (2)
Tax Map Key: 5-7-002:002, (SUB 02-0155)

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 4-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, containing 134.9 acres, is a portion of Grant 3791 to W.C. Irwin and situated at Hihii and Puuokumau, North Kohala, 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 submitted a subdivision application and undated preliminary plat map (PPM) proposing to subdivide the subject TMK property into four (4) lots. Further action on the proposed 4-lot subdivision application has been deferred pending resolve of the water requirements pursuant to letter dated September 10, 2002 in SUB 02-0155.
4. **Variance Application.** The applicant submitted the subject variance application on or about April 2, 2003 and May 12, 2003.

5. **Agency Comments and Requirements WH (VAR 03-026):**

- a. The State Department of Health (DOH) memorandum is dated May 20, 2003. (Refer to memorandum in variance file).
- b. The Department of Water Supply (DWS) memorandum, dated June 5, 2003 received on June 9, 2003, states in part:

“We have reviewed the subject Variance Application. Please refer to our April 24, 200, memorandum to you for our comments and requirements.”

Refer to DWS memorandum, dated April 24, 2003 in subdivision file (SUB 02-0155). Note: This DWS memorandum was forwarded to the subject variance file on June 24, 2003 and states in part the following:

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

The subject project is not within the service limits of the Department of Water Supply’s existing water system facilities. The nearest Department facility is at the end of an existing 4-inch waterline along Homestead Road approximately 1,500 feet from the property. Also, approximately half of the property is at an elevation beyond where the Department’s existing water system can deliver water at adequate pressure and volume under peak-flow conditions.

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Furthermore, the Department's existing water system facilities cannot support the proposed subdivision at this time. Extensive improvements are required, however, funding is not available and no time schedule is set. Therefore, water will not be available for this subdivision until the water condition in this area is resolved.

Should there be any question, the applicant may contact our Water Resources and Planning Branch at 961-8070."

Note: In addition to the DWS memorandum cited above, the agent's background states in part the following: "According to the staff at the Department of Water Supply (DWS), current policy limits potable water to only an existing lot of record. This is a result of a limitation on water source in the area. The applicant is thus requesting relief or variance from the provision of a County dedicable water system for the proposed 4-lot subdivision.

It should be noted, however, that the applicant is exploring the possibility of extending the existing County water line to the subject property. If successful, only one (1) of the proposed 4-lots would have access to County water. The remaining three (3) lots would still not to be serviced by the County's system. Not knowing, however, whether even the initial service can be secured, this request is to allow a MAXIMUM of four (4) lots to be service without an approved water system."

Furthermore, the agent also stated in part the following, "County water could made available only if extensive source development and transmission lines are made. The estimated cost to make these improvements would be in excess of \$3 million. At that cost, it would be financially prohibitive for a small agricultural project of this nature."

- c. The Hawaii County Fire Department (HCFD) memorandum is dated June 24, 2003. (Refer to memorandum in variance file).
6. **Notice to Surrounding Owners.** The applicant submitted a copy of a notice and other attachments sent to surrounding property owners. According to those submittals, the applicant mailed the notice on or about May 23, 2003.

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7. **Comments from Surrounding Property Owners or Public.** No other agency comments or written objection letter(s) were received. The following letter or concern from surrounding property owner(s) was received:
 - a. Letter by Randall R. Stoddard, Et al. dated May 30, 2003 was received by the Planning Department (Hilo) on or about June 2, 2003. The letter requested "specifics about the proposed water catchment system". (Refer to variance background-text and conditions).

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 applicant. The first alternative requires the applicant or subdivider 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 extending and/or improving the existing public water system or providing an approved alternative water system for the proposed four (4) 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 assure that adequate water is available for human consumption and fire protection.

The analysis of the property's location, site conditions, available maps at the DWS or Planning Department, and rainfall information provided by the applicant appear to indicate and show 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

lots. According to the agent and Atlas of Hawaii 3rd Edition, "the average annual rainfall in this general area is about 60 inches. This is confirmed by the County of Hawaii Data Book, 2000, which noted that Hawi averaged 59 + inches a year between the years 1993-1997." In addition, according to published information issued by the Department of Land and Natural Resources (DLNR)-WATER-RESOURCES INVESTIGATIONS REPORT 95-4212, "PLATE 6", it appears that the nearest active rain gage station is Station No. 176.3. The analysis of the applicant's submittals-information and DLNR rainfall map indicate the proposed subdivision and surrounding areas receive in excess of 50-60 + 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.

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).

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 4-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. 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 02-0155. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting all lots (without a DWS meter) arising from the approval of

pending 4-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 4-lots without public water created by SUB 02-0155. 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 02-0155 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 proposed 4-lots created by SUB 02-0155 or those lots not serviced by a County water system.
- d. 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.

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SIDNEY FUKU PLANNING CONSULTANT

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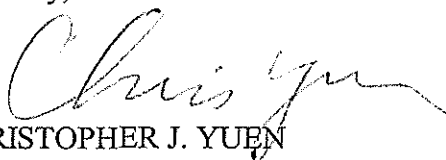
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- f. In the event that there are any amendments or changes to the subdivision after the agreement is signed, the applicant shall be responsible for informing the County Planning Department of such amendments or changes so that the agreement can be 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 02-0155 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 02-0155, the owner(s) of the lot(s) created by SUB 02-0155 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.
3. The subdivision's (SUB 02-0155) 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 02-0155.
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.

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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 02-0155
Planning Dept. – Kona
Mr. Randall R. Stoddard, Etal.