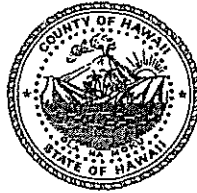


Harry Kim
Mayor



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

August 27, 2003

Mrs. Elaine C. Carlsmith
P. O. Box 309
Paauilo, HI 96776

Dear Mrs. Carlsmith:

VARIANCE PERMIT NO. 1384 (VAR 03-032)
Applicant: ELAINE C. CARLSMITH
Owner: ELAINE C. CARLSMITH
Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required,
Section 23-84, Water Supply, (1) (2)
Tax Map Key: 4-3-015:025, Lot 9-B (SUB 02-0106)

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 one of the proposed 2-lots to be created without having a water system meeting with the minimum requirements of the Department of Water Supply (DWS) and allow a proposed 2-lot subdivision of the subject property.

The Planning Director has concluded that a variance from the minimum subdivision water system requirements be approved based on the following findings:

BACKGROUND

1. **Location.** The subject property, Lot 9-B consisting of 11.920 acres, is a portion of Lot 9, Grant 4794 to Jose Muniz Medeiros, Paauilo Homesteads 2nd. Series, and situated at Paauilo, Hamakua, Hawaii.

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2. **Zoning.** The subject property is zoned Agricultural (A-5a) 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 02-0106) which includes a preliminary plat map (PPM) dated August 12, 2002, to subdivide Lot 9-B into two (2) lots. Further action on the proposed 2-lot subdivision application has been deferred pending resolve of the water requirements pursuant to letter dated December 23, 2002 in SUB 02-0106.
4. **Variance Application.** The applicant submitted the subject variance application on May 12, 2003. The applicant is requesting a variance to permit a 2-lot subdivision (SUB 02-0106) of the subject tax map key (TMK) property without providing water system improvements to one (1) lot of the proposed 2-lots, pursuant to Hawaii County Code, Chapter 23, Subdivisions, Division 2, Improvements Required, Section 23-84, Water Supply, (1) (2).
5. **Agency Comments and Requirements (VAR 03-032):**
 - a. The Hawaii County Fire Department's memorandum is dated June 23, 2003. (Refer to memorandum in variance file).
 - b. The State Department of Health (DOH) memorandum is dated July 3, 2003.
 - c. The Department of Water Supply (DWS) memorandum, dated July 25, 2003, states in part:

"We have reviewed the subject application. We have no additional comments to our memorandum of October 7, 2002."

The DWS memorandum, dated October 7, 2002, in SUB 02-0106 states in part:

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

The Department's existing water system facilities cannot support the proposed subdivision at this time. Extensive improvement 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.”

Note: Pursuant to August 27, 2003 discussion and other DWS records, it appears that the subject TMK (Lot 9-B) was assigned an account in 1965 (Account No. 68036000). Service to Lot 9-B is via a DWS-5/8-inch water meter (#5419583) and limited to 600 gallons per day.

6. **Notice to Surrounding Owners.** The applicant submitted a copy of a notice dated June 16, 2003 and other submittals on June 26, 2003. According to the applicant, it appears that a copy of a notice dated June 16, 2003 was mailed to “OWNERS OF RECORD” according to the affixed mailing receipt dated June 17, 2003.
7. **Comments from Surrounding Property Owners or Public.** No other agency comments or objections were received. No objections from the surrounding property owners or public to the subject variance request or application 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 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 applicants. 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.

As such, the imposition of improving the existing public water system or providing an approved alternative water system for one of the proposed two (2) lots arising out of proposed subdivision (SUB 02-0106) would be putting excessive demands upon the applicant when a more reasonable alternative is available.

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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 existing site conditions, official maps at the DWS and Planning Department, 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 the proposed 2-lots. According to the DLNR report/Map- Plate 6-WATER-RESOURCES INVESTIGATIONS REPORT 95-4212 in the Planning Department, and proximity to the nearest active rain gage station "216.3" cited by the applicant's background report, it appears that the TMK property and surrounding areas receive approximately 80 inches of rainfall yearly.

Given the limited extent and unusual nature of the subdivision, the uncertainty and expense of drilling a well and other improvements necessary for the additional lot, the proposed variance is reasonable.

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 potable and emergency needs on the proposed lot without public water will be addressed by the subdivider or future lot owner(s) and variance conditions.

The subject variance application was acknowledged by letter dated June 12, 2002. Additional time to verify the existing DWS service to the property and consider other DWS requirements for the subdivision was necessary. 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 2-lot subdivision of the subject TMK property without providing a water system to a proposed lot without 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. Prior to final subdivision approval, the subdivider/owner, applicant, or assigns shall designate and denote on the final plat map which lot the existing water service (Account No. 68036000) will service. The subdivider will be required to comply and meet all DWS requirements before final subdivision approval is granted to SUB 02-0106.
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 02-0106. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting the designated lot without public water arising from the approval of pending 2-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 lot without public water created by SUB 02-0106. 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 02-0106 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 or affected lot created by SUB 02-0106 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.
- 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 02-0106 that the Hawaii County Water System has been upgraded or an improvement district initiated to enable service to any lot created by SUB 02-0106 without County water, the owner(s) of the affected lot created by SUB 02-0106 without County water shall participate in such improvement district or shall pay their pro-rata share of the upgrade and installation of laterals, as determined by the Hawaii County 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

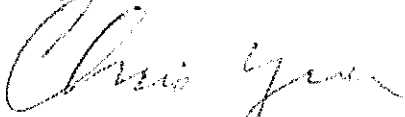
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Hawaii County Code. The subdivider or grantee, the assigns or successors acknowledges that there are no special or unusual circumstances existing on the property, and therefore, there are no grounds for the subdivider or grantee, the assigns or successors to request a further variance from the water supply requirements to permit further subdivision of the subject property.

4. The subdivision's (SUB 02-0106) 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.

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 02-0106
Planning Dept. - Kona