

Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

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March 5, 2004

Steven S.C. Lim, Esq.
CARLSMITH BALL LLP
P. O. Box 686
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Dear Mr. Lim:

VARIANCE PERMIT NO. 1411 (VAR 03-044)
Applicant: BRYANT JEROME AZEVEDO
Owner: BRYANT JEROME AZEVEDO
Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required,
Section 23-84, Water Supply, (1) (2)
Tax Map Key: 2-4-004:158, Lot 3-A (SUB 03-0066)

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 proposed 2-lot subdivision (SUB03-0066) to be created without having a water system meeting with the minimum requirements of the Department of Water Supply (DWS).

The Planning Director has concluded that a variance from the minimum subdivision water system requirements for the proposed 2-lot subdivision can be approved based on the following findings:

BACKGROUND

1. **Location.** The subject TMK property, Lot 3-A containing 15.135 acres, being portion of Grant 11,470 and being also a portion of Lot 3, Section "B", and

Steven S.C. Lim, Esq.
CARLSMITH BALL LLP
Page 2
March 5, 2004

situated at Waiakea Homesteads , 3rd Series, Waiakea, Hawaii. The subject property or "Lot 3-A" was approved on July 18, 2001 (SUB 7438).

2. **Zoning.** The subject property is zoned Agricultural (A-3a) by the County and designated Agriculture (A) by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** The applicant submitted a subdivision application (SUB 03-0066) and includes revised preliminary plat map (PPM-"Tax Map Key: 3rd Div. 2-4-04:86") dated August 19, 2002 proposing to further subdivide "Lot 3-A" into 2-lots (Lot 3-A-1 and Lot 3-A-2). Further action on proposed 2-lot subdivision application has been deferred pending resolve of the water requirements.

Note: The TMK denoted on the revised PPM map dated August 19, 2002 reads "Tax Map Key: 3 rd Div. 2-4-04:86". The TMK number should be corrected to read "Tax Map Key: 3 rd Div. 2-4-004:158".

4. **Variance Application.** The applicant submitted a variance application on or about July 10, 2003 before revised PPM dated August 19, 2002 was submitted to the Planning Department on August 21, 2003. The applicant, on behalf of the owner is requesting a variance to allow a 2-lot subdivision (SUB 03-0066) of the subject TMK property (Lot 3-A) according to the revised PPM and without providing water system improvements pursuant to Hawaii County Code, Chapter 23, Subdivisions, Division 2, Improvements Required, Section 23-84, Water Supply, (1) (2).

The applicant's background dated "July, 2003" states in part:

"As noted on Plate 6 of the "Water-Resources Investigations Report 95-4212", Station "88.2" (Waiakea SCD) is the closest active rain-gauging station and mean annual rainfall data to the Property. From the available and current climatological data for Station "88.2", the annual precipitation for 1998 was 200.33 inches, for 1997 was 178.0 inches and 1996 was 199.82 inches. The following variables and formulas were used to predict the amount of available water for portable and emergency uses on the Property and supports the private rain water catchment system."

Steven S.C. Lim, Esq.
CARLSMITH BALL LLP
Page 3
March 5, 2004

5. Agency Comments and Requirements (VAR 03-044):

- a. The Hawaii County Fire Department's memorandum dated August 12, 2003, states:

"We have no comments to offer at this time regarding the above-referenced variance application."

- b. The State Department of Health (DOH) memorandum is dated August 26, 2003. (Refer to memorandum in variance file) .
- c. The Department of Water Supply (DWS) memorandum, dated September 4, 2003, states in part:

"We have reviewed the subject Variance application for Lot 3-A and have the following comments.

In our October 14, 2002, memorandum regarding Subdivision Application No. 2002-0066 for Tax Map Key (TMK) 2-4-004:086, we comment that the nearest facility to the subject lot is an 8-inch line at the intersection of Young Road and Ainalako Road. This waterline is a considerable distance away at approximately 33,100 feet from Lot 3-A.

We do not object to the current request for Variance from Subdivision Code regarding water system improvements. We understand the applicant is proposing to use catchment systems to provide for water supply needs associated with the proposed Lots 3-A-1 and 3-A-2

Note that Lot 3-A is correctly identified on the Application for Variance from Subdivision Code as TMK Parcel 2-4-004:158. However, Lot 3-A is identified on the Subdivision Map attached to the application as TMK Parcel 2-4-004:086. Parcel TMK 2-4-004:086 is adjacent to Parcel 158, and earlier records indicate that Parcel 86 included the area of TMK 2-4-004:158 before a previous subdivision."

6. **Notice to Surrounding Owners.** The applicant submitted an affidavit of mailing dated August 7, 2003 and other submittals on August 8, 2003.

Steven S.C. Lim, Esq.
CARLSMITH BALL LLP

Page 4

March 5, 2004

7. **Comments from Surrounding Property Owners or Public.** No other agency comments 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 03-0066) would be putting excessive demands upon the subdivider or owner 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 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.

The map-WATER-RESOURCES INVESTIGATIONS REPORT 95-4212 in the Planning Department appears to indicate that the proposed 2-lot subdivision is near active rain gage station "88.2", and, that it appears that the subject property and adjoining areas receive between 160

Steven S.C. Lim, Esq.
CARLSMITH BALL LLP
Page 5
March 5, 2004

inches to 200 inches of rainfall annually. The Atlas of Hawaii Third Edition-Map (Page 87) denotes "Lines of equal average annual rainfall in inches" on the map indicates that the subdivision appears to be within a region receiving between 150 inches to 200 inches per year. Therefore, the property receives sufficient rainfall to support a private rainwater catchment system to store and supply rainwater for an average family (4 persons) cited in the applicant's background report and supply rainwater for a separate private rainwater catchment system for emergency needs.

Given the limited extent of the proposed 2-lot subdivision and the uncertainty and expense of drilling a well and other improvements necessary for a 2-lot subdivision, 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 July 28, 2003. Additional time to review comments to the subdivision application and incorporate agency comments was necessary. The applicant agreed to extend the decision date to on or before March 15, 2004.

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 proposed "Lot 3-A-1" and "Lot 3-A-2" without meeting DWS standards is approved subject to the following conditions:

1. The owner(s), his/their assigns, or successors shall be responsible for complying with all stated conditions of approval.

Steven S.C. Lim, Esq.
CARLSMITH BALL LLP

Page 6

March 5, 2004

2. **WATER VARIANCE**: The owner(s), his/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 03-0066. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting proposed "Lot 3-A-1" and proposed "Lot 3-A-2" without public water of the pending 2-lot subdivision application (SUB 03-0066) 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 subdivider or owner(s) agree and accept the fact that a County dedicable public or DWS water system is not now able to service the proposed lots created by SUB 03-0066. 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 lot(s) created by SUB 03-0066 may not be made subject to a condominium property regime. No permit shall be granted to allow an ohana dwelling or building permit issued to allow construction of an "ohana" dwelling on any lots created by SUB 03-0066 or proposed "Lot 3-A-1" and "Lot 3-A-2".
 - c. The owner(s) agree and accept the fact that the County will not, at this time, bear the responsibility of supplying public water to the lots created by SUB 03-0066 not serviced by a County water system.
 - d. Any farm dwelling constructed on proposed "Lot 3-A-1" and "Lot 3-A-2" not serviced by a County (DWS) 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 rainwater 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.

Steven S.C. Lim, Esq.
CARLSMITH BALL LLP

Page 7

March 5, 2004

- 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 subdivider, 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 03-0066 that the Hawaii County Water System has been upgraded or an improvement district initiated to enable service to any lot created by SUB 03-0066 without County water, the owner(s) of the affected lot created by SUB 03-0066 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 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 or other agency requirements to permit subdivision (SUB 03-0066) or any request to further subdivide any lots

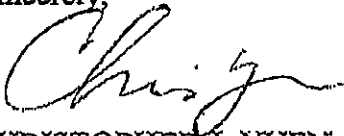
Steven S.C. Lim, Esq.
CARLSMITH BALL LLP
Page 8
March 5, 2004

arising out of SUB 03-0066 unless the requirements of Chapter 23, Subdivisions and other agencies are met.

3. The subdivider or owner(s), their assigns or successors shall comply with other agency requirements not covered by this variance and the subdivision's (SUB 03-0066) final plat map shall comply with the requirements of the Chapter 23, Subdivisions.
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.

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 02-0066
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