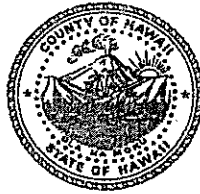


Harry Kim
Mayor



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

November 21, 2003

Mr. John Clifford Rhoads
P. O. Box 868
Pahoa, HI 96778

Dear Mr. Rhoads:

VARIANCE PERMIT NO. 1395 (VAR 03-053)
Applicant: JOHN CLIFFORD RHOADS
Owner: JOHN CLIFFORD RHOADS
Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required,
Section 23-84, Water Supply, (1) (2)
Tax Map Key: 1-3-002:019, Lot 20 (SUB 03-0047)

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 for a propose 2-lot subdivision can be approved based on the following findings:

BACKGROUND

1. **Location.** The subject property, Lot 20 containing 25.92 acres, being all of Grant 5529, and situated at Kamaili, Puna, Hawaii.

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2. **Zoning.** The subject property is zoned Agricultural (A-10a) 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 03-0047) which includes a preliminary plat map (PPM) dated June 2, 2003 proposing to subdivide Lot 20 into 2-lots (LOT 20A and LOT 20B). Further action on the proposed 2-lot subdivision application has been deferred pending resolve of the water requirements pursuant to letter dated July 30, 2003 in SUB 03-0047.
4. **Variance Application.** The applicant submitted a revised variance application on or about September 8, 2003. The applicant is requesting a variance to permit a 2-lot subdivision (SUB 03-0047) of the subject tax map key (TMK) property without providing water system improvements for the proposed 2-lot subdivision pursuant to Hawaii County Code, Chapter 23, Subdivisions, Division 2, Improvements Required, Section 23-84, Water Supply, (1) (2).

The applicant's letter dated September 5, 2003, states in part:

"According to the Department of Water Supply the proposed 2-lot subdivision is not within the service limits of the Department's existing water systems facilities. The nearest point of adequacy is an existing 8-inch waterline along the Kapoho-Kalapana Road approximately 7.5 miles from the property. The estimated cost of a waterline extension would exceed the value of the property.

The University of Hawaii's Dept. of Geography's Atlas of Hawaii says the annual precipitation in the area can be anywhere from 100 inches to 150 inches per year. Therefore the property receives sufficient rainfall to support a water catchment system to store and supply water for an average family."

5. **Agency Comments and Requirements (VAR 03-053):**
 - a. The State Department of Health (DOH) memorandum is dated October 2, 2003. (Refer to memorandum in variance file .
 - b. The Hawaii County Fire Department's memorandum dated October 9, 2003, states:

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

- c. The Department of Water Supply (DWS) memorandum, dated October 23, 2003, states in part:

“We have reviewed the subject application; and as the subject property is well outside of any County water service zone, we have no objections to the granting of the variance.”

6. **Notice to Surrounding Owners.** The applicant submitted a copy of a notice sent to surrounding property owners together with a mailing receipt dated September 29, 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 03-0047) 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 a DLNR report/Map- Plate 6-WATER-RESOURCES INVESTIGATIONS REPORT 95-4212 in the Planning Department, and proximity to the nearest active rain gage station "67.11", it appears that the TMK property and surrounding areas receive approximately 80 to 120 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 September 12, 2003. Additional time to incorporate agency comments and complete the variance background report was necessary. The applicant agreed to extend the decision date to on or before November 26, 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. 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 03-0047. 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 03-0047. 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 03-0047 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 03-0047 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,

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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 03-0047 that the Hawaii County Water System has been upgraded or an improvement district initiated to enable service to any lot created by SUB 03-0047 without County water, the owner(s) of the affected lot created by SUB 03-0047 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

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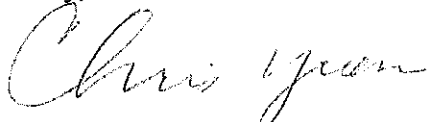
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water supply requirements to permit further subdivision of the subject property.

3. The subdivision's (SUB 03-0047) final plat map shall meet all other requirements of the Hawaii County Zoning Code and Subdivision Code not covered by this variance.
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

WRY:pak

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xc: Manager-DWS
SUB 03-0047
Planning Dept. - Kona