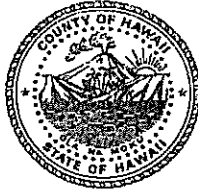


Harry Kim
Mayor



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

April 7, 2004

Mr. James B. Dusel
P. O. Box 2264
Kailua-Kona, HI 96745-2264

Dear Mr. Dusel:

SUBJECT: VARIANCE PERMIT NO. 1421 WH (VAR 03-073)
Applicant: JAMES B. DUSEL
Owners: JOHN MATUCHA, ET AL.
Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required,
Section 23-84, Water Supply, (1) (2)
Tax Map Key: 7-4-003:007, (SUB 03-0089)

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 2-lot subdivision without improving existing water system meeting and meeting all requirement 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, Lot 2 consisting of approximately 21.725 acres +/-, being portion of Grant 6272 to K. Kapae, is situated at Kealakehe Homesteads, North Kona, Hawaii.

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2. **Zoning.** The subject property is zoned Family Agricultural (FA-3a) and Agricultural (A-10a) by the County and designated Agriculture (A) by the State Land Use Commission (LUC).

The subject TMK property is subject to conditions stipulated by Ordinance No. 03 98.

3. **Subdivision Request/PPM.** The applicant/owners submitted a subdivision application (SUB 03-0089) which includes a preliminary plat map (PPM), dated June 18, 2003, proposing to subdivide subject TMK property (Lot 2) into two (2) lots: "LOT 2-A" containing "3.000 ACRES" and "LOT 2-B" containing "18.725 ACRES". Further action on the proposed 2-lot subdivision application was deferred pursuant to letter dated August 7, 2003 in SUB 03-0089.
4. **Variance Application.** The applicant submitted the variance request and subject variance application on or about October 28, 2003.
5. **Agency Comments and Requirements WH (VAR 03-073):**

- a. The Hawaii County Fire Department's memorandum dated December 3, 2003 states:

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

- b. The Department of Water Supply (DWS) memorandum, dated December 16, 2003, states in part:

"We have reviewed the subject application.

Please refer to our August 25, 2003, memorandum to you for our comments and requirements."

A copy of the DWS memorandum (fax) dated August 25, 2003 states in part:

"We have reviewed the subject application and have the following

comments.

Although there is an existing service for each lot (Account Nos. 880-30725 and 880-30726), a portion of the property is not within the pressure limits of the Department's existing water system facilities.

For your information, this area is serviced from the Queen Liliuokalani Trust Reservoir with an overflow elevation of 1,703 feet and service elevation of 1,600 feet, or a static 40 psi pressure limit. The Department allows only one lot outside of this service elevation of 1,600 feet. All other lots must be completely within this limitation with the upper property line located no greater than 1,600-foot elevation.

Therefore, final subdivision approval is subject to the applicant complying with following requirements:

1. The final plan map shall be configured to meet the above requirement.
2. The existing services shall be noted on the final plat map and which lot each will service.
3. A new "Out of Bounds Letter" for Lots A and B and new Elevation Agreement for Lot 2-B."
- b. The State Department of Health (DOH) memorandums is dated December 24, 2003. (Refer to copy of the memorandum in variance file).
- c. **Notice to Surrounding Owners.** The applicant submitted an affidavit and other submittals on December 4, 2003. Pursuant to the submittals, it appears that said notice was mailed to a list of surrounding property owners on or about December 2, 2003.
6. **Comments from Surrounding Property Owners or Public.** No other agency comments or objections from a surrounding property owner(s) were received:

Therefore, after considering the circumstances and variance background information and agency comments to the variance application, 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

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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 cost to upgrade the public (DWS) water system currently servicing the property would be substantial and unfair when considering the DWS comments to the proposed 2-lot subdivision and other special and unusual circumstances or conditions affecting the property pursuant to Ordinance No. 03 98.

The cost to upgrade the DWS water system servicing the subdivision or providing an approved alternative water system would be putting excessive demands upon the subdividers 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 property was recently rezoned, service to the proposed subdivision is available from the DWS, and subject TMK property is subject to conditions stipulated by Ordinance No. 03 98. However, a portion of the TMK property is not within the pressure limits of the DWS system. As such, development within this portion of area will be addressed by the applicants or future lot owner(s) and subject to DWS approval and/or variance conditions.

The subject variance application was acknowledged by letter dated November 20, 2003. Additional time was required to obtain DWS comments to the variance and proposed 2-lot subdivision. The applicant agreed to extend the decision date to on or before March 31, 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

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providing a water system meeting all DWS standards is approved and subject to the DWS memorandum dated August 25, 2003 and following variance 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, applicant or owner(s), their assigns or successors shall confer with the DWS and designate or identify which account number (Account No. 880-30725 and Account No. 880-30726) or DWS water meter is assigned to the respective lots created by SUB 03-0089 and file the required "Out of Bounds Letter" or "Elevation Agreement" at the DWS before final subdivision approval is granted. The subdivision application's final plat map (FPM) shall include information required by DWS memorandum dated August 25, 2003, Ordinance No. 03-98, and/or denote any other information required by the DWS and/or agencies.
3. WATER VARIANCE: The subdivider, owner(s), 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 03-0089. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting the lots 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. 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.
 - b. In the event that the County notifies the owner(s) of the lot(s) created by SUB 03-0089 that the County Water System will be upgraded, the owner(s) of the lot(s) created by SUB 03-0089 shall pay their pro-rata

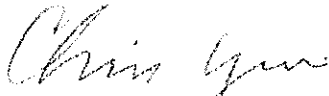
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share of the upgrade as determined by the Department of Water Supply.

- c. Restrictive covenants in the deeds of all agricultural lots arising out of SUB 03-0089 shall give notice that the terms of this variance shall prohibit condominium property regimes. A copy of the proposed covenant(s) to be recorded with the State of Hawai'i Bureau of Conveyances shall be submitted to the Planning Director for review and approval prior to the issuance of Final Subdivision Approval. A copy of the recorded document shall be filed with the Planning Department upon its receipt from the Bureau of Conveyances.
4. The subdivision's (SUB 03-0089) final plat map (minimum lot size, minimum average lot size requirements, etc.) shall meet all the requirements of the Hawaii County Zoning Code, address the requirements stipulated by DWS memorandum dated August 25, 2003, and Ordinance No. 03 98 conditions. No other variance from Chapter 23, Subdivisions, shall be granted to permit subdivision application SUB 03-0089.
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 03-0089
Planning Dept. - Kona