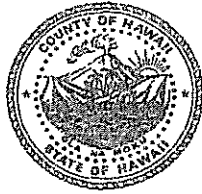


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
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May 10, 2004

Chrystal T. Yamasaki, L.P.L.S.
WES THOMAS ASSOCIATES
75-5749 Kalawa Street
Kailua-Kona, HI 96740

Dear Mrs. Yamasaki:

VARIANCE PERMIT NO. 1440 WH (VAR 04-036)
Agent: WES THOMAS ASSOCIATES
Applicant: WES THOMAS ASSOCIATES
Owner(s): DAVID WILKINSON, ET AL.
Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required,
Section 23-84, Water Supply, (1) (2)
Tax Map Key: 7-6-002:034, Lot 2-A, (SUB 02-0126)

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. The approval of your variance is subject to other variance conditions, including the condition that no variance can be requested from the minimum subdivision's roadway improvements for the proposed 4-lot subdivision within the privately owned roadway fronting the TMK property (Lot 11) pursuant to the standard of the Department of Public (DPW) standards.

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

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1. **Location.** The subject property, Lot 2-A containing 4.000 acres, being portions of R.P. 6716, L.C. Aw. 4887 to Thomas Sam and R.P. 7819, L.C. Aw. 8559-B, Ap. 8 to W.C. Lunalilo, and situated at Puapuaa 1st and Puapuaa 2nd, North Kona, Hawaii.
2. **Zoning.** The subject property is zoned Agricultural (A-1a) 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 02-0126) which includes a preliminary plat map (PPM), dated July 3, 2002, to subdivide subject TMK property (lot 40) into four (4) lots. Further action on the proposed 4-lot subdivision application was deferred pursuant to letter dated May 28, 2003 in SUB 02-0126.
4. **Variance Application.** The applicant submitted the subject variance application on or about March 2, 2004.

For the Record: The subject TMK property (Lot 2-A) was created by a 2-lot subdivision of "LOT 2". "LOT 2" was originally created by Waiono Meadows approved on April 3, 1987 (SUB 5528). Lot 2-A was created on March 31, 1999 (SUB 97-0106) pursuant to a subdivision submitted by subdivider/owner(s)-David Wilkinson, Et al. Agency comments in SUB 97-0106 (SUB 7101) include:

Department of Water Supply (DWS) memorandum, dated June 1, 1998, in SUB 7101 which states in part:

"For your information, although the applicant has two (2) existing meters that are servicing Parcel 25, (sic) additional storage, transmission /distribution and booster pumps should be constructed in accordance with Department of Water Supply."

And, the tentative approval letter and subdivision conditions dated June 23, 1998 (SUB 97-0106), required that access to the approved 2-lot subdivision (Lot 2-A and Lot 2-B) be via a "12-foot wide nondedicable pavement from Mamalahoa Highway to the proposed Lot 2-B, conforming to Standard Detail R-39".

Subdivision records indicate the proposed 2-lot subdivision of TMK: 7-6-002:025 (SUB 97-0106) was granted final subdivision approval (SUB 7101); creating the

subject TMK property, Lot 2-A, containing 4.000 acres-"More or Less" on March 31, 1999.

5. **Agency Comments and Requirements (VAR 04-036):**

- a. The Hawaii County Fire Department's memorandum is dated April 19, 2004. (Refer to memorandum in variance file).
- b. The State Department of Health (DOH) memorandum is dated May 3, 2004. (Refer to memorandum in variance file).
- c. The Department of Water Supply (DWS) memorandum, dated April 21, 2004, states in part:

"We have reviewed the subject application for the proposed subdivision. Please refer to our December 26, 2002, memorandum for our comments and requirements."

The DWS memorandum in SUB 02-0126 states in part:

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

Please be informed that the property is situated at an elevation where water can not be delivered from the Department's existing water system facilities to the proposed subdivision at adequate pressure and volume under peak-flow conditions at this time. Extensive improvements and additions, including, storage, transmission, booster pumps, and distribution facilities, must be constructed. Currently, sufficient funding is not available and no time schedule is set."

6. **Notice to Surrounding Owners.** The applicant submitted a transmittal letter dated April 19, 2004 and proof of mailing sent to surrounding property owners. Pursuant to these submittals, it appears that a notice was mailed on or about April 16, 2004.
7. **Comments from Surrounding Property Owners or Public.** No other agency comment received. The following letters and comments were received:

- a. Letter from Tomoe Nimori, dated April 26, 2004, endorsing the request was received. Comments about past engineering reports and other drainage concerns are mentioned in the letter.
- b. Letter from Brian Murray was received on April 20, 2004.

Therefore, after considering the circumstances, 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 costs associated with improving the public water system located within the Mamalahoa Highway or providing an approved alternative water system on the property for three (3) of the proposed four (4) lots 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 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 three (3) of the proposed 4-lots.

According to an extract of a map- Plate 6-WATER-RESOURCES INVESTIGATIONS REPORT 95-4212, submitted by the applicant, denoting the approximate location of the

proposed subdivision or "SUBJECT PROPERTY (approx. location)" and proximity to the nearest active rain gage station ("68.2"). The analysis of the applicant's submittals and other rainfall data indicate the property receives approximately 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, the subject 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 General Plan Hawaii County. 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. If, however, the subdivision created additional lots without meeting minimum road requirements, it would not be consistent with the intent and purposes of the Subdivision Code, Zoning Code, and The General Plan Hawaii County.

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 variance 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 02-0126. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting the all lots 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 additional lot without public water created by SUB 00-0093. 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. 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 additional lot created by SUB 02-0126 not serviced by a County water system. No further subdivision of the lots created by SUB 98-0093 will be permitted unless county water system requirements and other requirement of Chapter 23, Subdivisions, are met.
- c. Any lots created by SUB 02-0126 may not be made subject to a condominium property regime.
- d. No additional farm dwelling or second farm dwelling shall be permitted on any lot create by SUB 02-0126.
- e. 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.
- f. 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.

- e. 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.
 - f. In the event that the County notifies the owner(s) of the lot(s) created 02-0126 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 02-0126, the owner(s) of the lot(s) created by SUB 02-0126 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.
 - g. 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 minimum roadway requirements or other agency requirements to permit SUB 02-0126, or any further subdivision of parcels resulting from SUB 02-0126 without full compliance with the standards of Chapter 23, Subdivisions.
3. The subdivider, owner(s), their assigns or successors shall construct minimum 20 feet wide dedicable pavement, paved shoulders, and other drainage and roadway improvements within existing privately owned right-of-way (Road Lot 11) from the intersection of Mamalahoa Highway and Road Lot 11 to proposed 4-lot subdivision stipulated by the DPW memorandum dated January 10, 2003.

4. The subdivision's (SUB 02-0126) final plat map shall be revised to show that all lots have frontage and access from Road Lot 11. Proposed flaglots identified on the PPM(s) will not be allowed. All proposed lots shall have frontage and have direct access to the required subdivision roadway within Road Lot 11. Lot geometry, minimum lot size, minimum average lot size requirements, etc. and final plat map shall meet all the requirements of the Hawaii County Zoning Code and the Subdivision Code not covered by this variance. Submit proof of legal access from Road Lot 11. No other variance from Chapter 23, Subdivisions, shall be granted to permit the proposed 4-lot subdivision or subdivision application SUB 02-0126.
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.

Furthermore, because the subject variance contains a number of significant conditions, which include no variances from the minimum roadway requirements, etc., you or your client has the right to appeal the variance decision/conditions. Therefore, in accordance with a recent charter amendment and Ordinance No. 99-111, you may appeal the director's decision and request the following:

Any person aggrieved by the decision of the director in the administration or application of this chapter, may, within thirty days after the director's decision, appeal the decision to the board of appeals.

Pursuant to Board of Appeal (BOA) Rule, PART 8. APPEALS, 8-15 General Standards for Appeals (Non-Zoning):

"A decision appealed from may be reversed or modified or remanded only if the Board finds that the decision is:

- (1) In violation of the Code or other applicable law; or
- (2) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

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- (3) Arbitrary, or capricious, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.”

In view of the above, enclosed is form-**GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR.**

Thank you for your patience and understanding.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

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Enclosure

xc: Manager-DWS (Ltr. only)
Planning Dept.-Kona (Ltr. only)
SUB 02-0126 (Ltr. only)
Ms. Tomoe Nimori (Ltr. only)
Mr. Brian Murray (Ltr. only)