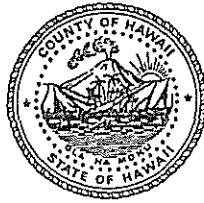


Harry Kim
Mayor



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

December 15, 2004

Mr. Sidney Fuke
SIDNEY FUKU PLANNING CONSULTANT
100 Pauahi Street, Suite 212
Hilo, HI 96720

Dear Mr. Fuke:

VARIANCE PERMIT NO. 1497 (VAR 04-081)
Agent: SIDNEY FUKU PLANNING CONSULTANT
Applicant: MUHAMMAD YUNIS, JR.
Owner: MUHAMMAD YUNIS, JR., ET AL.
Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required,
Section 23-84, Water Supply, (1) (2)
Tax Map Key: 1-8-006:006, (SUB 03-0157)

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 9-lot subdivision without a water system meeting without providing the minimum requirements 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:

Hawai'i County is an equal opportunity provider and employer.

MOB 1772

DEC 22 2004

BACKGROUND

1. **Location.** The subject property, Lot 12 containing approximately 48.614 acres, is within Olaa New Tract Lots, being Grant 8901 to Marie De Mello Barrozo, and situated at Olaa, Puna, Hawaii. 8091
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-owner submitted subdivision application (SUB 03-0157) which includes a preliminary plat map (PPM), dated September 26, 2004, proposing to subdivide subject TMK property into nine (9) lots. Further action on the proposed subdivision application was deferred pursuant to letter dated May 7, 2004 in SUB 03-0157.
4. **Variance Application.** The applicant submitted the original variance application on or about July 8, 2004. A subsequent letter and request dated September 10, 2004 to amend the original variance application (deleting a variance from the subdivision's roadway requirements) was received from the applicant's agent on September 10, 2004.
5. **Agency Comments and Requirements (VAR 04-081):**
 - a. The Hawaii County Fire Department memorandum is dated September 27, 2004. (Refer to memorandum in variance file).
 - c. The Department of Water Supply (DWS) memorandum, dated October 6, 2004, states in part:

“We have reviewed the subject application and the comments in our memorandum of December 26, 2003, still stand. (A copy is enclosed.)”

The attached copy of the DWS memorandum, dated December 26, 2003, states in part:

“We have reviewed the subject application for the proposed subdivision.

Mr. Sidney Fuke
SIDNEY FUKU PLANNING CONSULTANT
Page 3
December 15, 2004

Please be informed that the Department's existing water system facilities cannot support the proposed subdivision at this time. Extensive improvements 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."

- c. The State Department of Health (DOH) memorandum is dated October 11, 2004. (Refer to memorandum in variance file).
6. **Notice to Surrounding Owners.** The applicant's forwarded an affidavit and copy of a notice dated September 27, 2004 sent to a list of surrounding property owner(s), and other submittals. Pursuant to the affidavit, it appears that the notice was mailed on or about September 27, 2004.
7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received. No objections from surrounding property owner(s) or public were received:

Therefore, after considering the circumstances and variance background information, rainfall information provided by the applicant, 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 deprives the applicant or owner 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 applicant. The first alternative requires the applicant 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 extending or improving the existing public water system or providing an approved alternative water system for the proposed 9-lot subdivision would be putting excessive demands upon the applicant when a more reasonable alternative is available.

Mr. Sidney Fuke
SIDNEY FUKU PLANNING CONSULTANT
Page 4
December 15, 2004

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 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 analysis of existing rainfall within the subject property utilizing maps at the Planning Department, DPW, and 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 subdivision. According to a map- Plate 6-WATER-RESOURCES INVESTIGATIONS REPORT 95-4212, the proposed 9-lot subdivision appears to be nearest active rain gage station "91.14" (KURTISTOWN) which received 177.51 inches of rain in 2002. The analysis of the applicant's submittals compared with recent rainfall data and historical rainfall data for the area show the subject TMK property and surrounding areas receive approximately 160 inches +/- of rainfall yearly.

Given the unusual nature of the subdivision and annual rainfall within the immediate area, the proposed subdivision the variance request is reasonable. The provisions for water storage, water distribution, and construction of private rain water catchment system(s) for the proposed 9-lot(s) subdivision without county water will be addressed by the applicant or future lot owner(s).

The subject variance application was acknowledged by letter dated September 15, 2004 and additional time to complete the variance background was necessary. The applicant agreed to extend the date on which the Planning Director shall render a decision on the subject variance to no later than December 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

Mr. Sidney Fuke
SIDNEY FUKU PLANNING CONSULTANT
Page 5
December 15, 2004

The variance request to allow a proposed 9-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 applicant, 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 03-0157. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting lots not serviced by a County water system or pending 5-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 subdivision SUB 03-0157. 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 lots created by SUB 03-0157 not serviced by a County water system. No further subdivision of the lots created by SUB 03-0157 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
 - c. Any lots created by SUB 03-0157 may not be made subject to a condominium property regime.

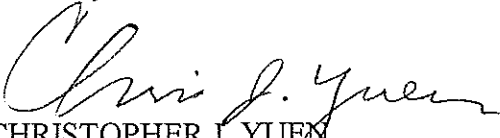
- d. Any farm dwelling constructed on a proposed lot not serviced by a County water system shall be provided with and maintain a private potable rain catchment system which includes a minimum 6000-gallon water storage capacity for domestic consumption or potable uses. This private water catchment system 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.
- h. In the event that the County notifies the owner(s) of the lot(s) created by SUB 03-0157 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 03-0157, the owner(s) of the lot(s) created by SUB 03-0157 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.

Mr. Sidney Fuke
SIDNEY FUKU PLANNING CONSULTANT
Page 7
December 15, 2004

- i. 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 other agency requirements to permit SUB 03-0157.
3. The subdivision's (SUB 03-0157) final plat map (minimum lot size, minimum average lot size requirements, etc.) shall meet all the requirements of the Hawaii County Zoning Code and the Subdivision Code not covered by this variance. No other variance from Chapter 23, Subdivisions, shall be granted to permit subdivision application SUB 03-0157.
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:cd
P:\WP60\WRY\FORMLETT\VARAPPSUBTMK18006006.FUKEYUNIS

xc: Manager-DWS
Planning Dept.-Kona
SUB 03-0157