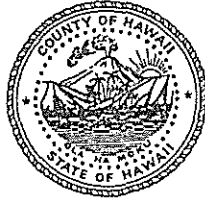


Harry Kim
Mayor



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 28, 2004

Mr. David A. Mortz
3869 Nikolo Street
Honolulu, HI 96815

Dear Mr. Mortz:

VARIANCE PERMIT NO. 1494 (VAR 04-083)
Applicants: DAVID A. MORTZ, ET AL.
Owners: DAVID A. MORTZ, ET AL.
Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required,
Section 23-84, Water Supply, (1) (2)
Tax Map Key: 2-4-007:194, (SUB 04-0064)

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 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:

BACKGROUND

1. **Location.** The subject property, Lot F containing 6.489 acres, being portion of Lot 3, Waiakea Homesteads, 3rd Series, and portion Grant 12697 to Ethel Rapoza, is situated at Waiakea, South Hilo, Hawaii.

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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-owner submitted subdivision application (SUB 04-0064) which includes a preliminary plat map (PPM), dated March 10, 2004, proposing to subdivide subject TMK property into two (2) lots. Further action on the proposed subdivision application was deferred pursuant to letter dated September 1, 2004 in SUB 04-0064.
4. **Variance Application.** The applicants submitted the variance application on or about September 23, 2004.

Note: VAR 842 (TMK: 2-4-007:191 from water supply was granted in 1997 to permit a 2-lot subdivision of parcel 191 or Lot C, near the applicant's proposed subdivision of Lot F (SUB 04-0064).

5. **Agency Comments and Requirements (VAR 04-083):**

- a. The Hawaii County Fire Department memorandum is dated October 8, 2004. (Refer to memorandum in variance file).
- b. The State Department of Health (DOH) memorandum is dated October 11, 2004. (Refer to memorandum in variance file)
- c. The Department of Water Supply (DWS) memorandum, dated October 15, 2004, states in part:

“We have reviewed the subject application and the comments in our memorandum of July 14, 2004, still stand. (A copy is enclosed.)”

The DWS memorandum dated July 14, 2004 states in part:

“We have reviewed the subject application and have the following comments.

Please be informed that the subject property is not within the service limits of the Department's existing water system facilities.

The nearest Department of Water Supply's water system facility is at the end of an existing 6-inch waterline along the Mamalahoa Highway approximately 1.8 miles from the property.

Further, the property is at an elevation where water from the Department's existing water system facility will not reach.

Therefore, extensive improvements and additions are required, including storage, transmission, booster pumps, and distribution facilities, that must be constructed. Currently, sufficient funding is not available and no time schedule is set."

6. **Notice to Surrounding Owners.** The applicant's transmittal letter dated November 8, 2004 and copies of other submittals were received on November 12, 2004. Pursuant to the letter and attached mailing receipts, it appears that a notice was mailed on or about October 7, 2004.
7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received. No written 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 2-lot subdivision would be putting excessive demands upon the applicant 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 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 2-lot subdivision appears to be nearest the following active rain gage station(s): "88.2" (WALAKEA SCD) and "91.14" (KURTISTOWN) which 181.89 inches and 177.51 inches of rain, respectively, 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 2-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 30, 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

The variance request to allow a proposed 2-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 04-0064. This written agreement shall contain the following deed language, being covenants, conditions, and ² restrictions affecting lots not serviced by a County water system or pending ⁵lot 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 04-0064. 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 04-0064 not serviced by a County water system. No further subdivision of the lots created by SUB 04-0064 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
 - c. Any lots created by SUB 04-0064 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 04-0064 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 04-0064, the owner(s) of the lot(s) created by SUB 04-0064 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.

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- i. The subdivider and all grantees, successors, and assigns acknowledge that the parcel was created by a variance from the normal subdivision requirements of Hawaii County, and that there are no special or unusual circumstances applying to the property which deprive the owner of substantial property rights or to a degree which obviously interferes with the best use or manner of development of the property, and hence, no grounds exist or will exist for a variance from the subdivision code to permit further subdivision of the property, and that changes in the owner's personal or financial situation after acquiring the property also will not constitute grounds for a variance from the subdivision code to permit further subdivision of the property.
3. The subdivision's (SUB 04-0064) 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.
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
Planning Dept.-Kona
SUB 04-0064