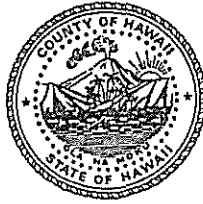


Harry Kim
Mayor



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

February 15, 2005

Ms. Leila J. Duim
74-4900 Kiwi Street
Kailua-Kona, HI 96740

Dear Ms. Duim:

VARIANCE PERMIT NO. 1504 WH (VAR 04-085)

Applicants: LEILA DUIM, ET AL.

Owners: LEILA DUIM, ET AL.

**Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required,
Section 23-84, Water Supply, (1) (2)**

Tax Map Key: 7-1-005:052, (SUB 02-0027)

After reviewing subject variance application and information submitted, the Planning Director certifies the approval of your variance request to permit a 2-lot subdivision (SUB 02-0027) of the subject TMK property without providing a water system meeting the minimum requirements of County Department of Water Supply (DWS) or variance from Tentative Approval Letter dated June 27, 2002, Conditions No(s). 1, 2 and 3. The variance request is from Hawaii County Code, Chapter 23, Subdivisions, Division 2, Improvements Required, Section 23-84, Water Supply, (1) (2).

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.

MR 068786
FEB 25 2005

BACKGROUND

1. **Location.** The subject property, Lot 9 containing 2.000 acres, being portion of Lot 9 of the Puuanahulu Homesteads (Grant 5914 to Kinihaa Amona) and Lot 21 of the Puuanahulu Homesteads (Grant 6153 to I. Sanford), and situated at Puuanahulu, 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 (SLUC).
3. **Subdivision Request/PPM.** The applicant-owner submitted subdivision application (SUB 02-0027) which includes a preliminary plat map (PPM), dated March 12, 2002 to subdivide subject TMK property into two (2) lots. Tentative Subdivision approval was granted to the PPM subject on June 27, 2002 subject to conditions.
4. **Variance Application.** The applicant submitted the variance request and subject variance application on or about September 29, 2004.
5. **Agency Comments and Requirements WH (VAR 04-085):**
 - a. The Hawaii County Fire Department memorandum dated October 8, 2004 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 October 18, 2004, states in part:

"We have reviewed the subject application and refer to our April 29, 2002, memorandum to you and our May 30, 2002, letter to Mr. Gregory Mooers for our comments and requirements. (Copies of each document are enclosed.)

The copy of the DWS memorandum dated April 29, 2002 states in part:

"We have reviewed the preliminary plat map for the proposed subdivision and have the following comments.

Please be informed that the existing water system in the area is privately owned and operated.

Therefore, pursuant to Section 23-84 of the Hawaii County Code regulating subdivisions, the following minimum requirements must be complied with for subdivision approval:

1. Provide a water system designed to deliver water at adequate pressure and volume under peak-flow conditions in accordance with the Water System Standards, State of Hawaii, and the Rules and Regulations of the Department of Water Supply. The water system shall include, but not be limited to, the installation of extensive improvements and additions, including source, storage, transmission booster pumps, and distribution facilities.
2. Submit construction plans for our review and approval.
3. Pay a fee of four-tenths of 1 percent of the estimated cost for the construction of the water system, but not less than \$25.00 to cover the cost for plan review, testing, and inspection.”

The copy of the DWS memorandum dated May 30, 2002 states in part:

“This is in response to your letter of May 28, 2002, to the Planning Department.

Please be informed that subdivisions that are serviced by private water systems must meet the subdivision code as well as the Department’s Water System Standards and Rules and Regulations. Subject to these conditions, water mains capable of delivering water at adequate pressure and volume under peak-flow and fire-flow conditions must be constructed. Pursuant to the A-1a zoning, the minimum diameter of mains shall be 6 inches, a fire hydrant must be located within 300 feet from the front of each lot, and meters fronting each lot.

Therefore, final subdivision approval is subject to the applicant complying with the following options;

1. Submit an as-built plan showing the existing water system subject to the requirements in Paragraph 2 for our review and approval.

2. Comply with the requirement in our April 29, 2002, memorandum to the Planning Department's information."
- c. The State Department of Health (DOH) memorandum is dated November 4, 2004. (Refer to memorandum in variance file).
6. **Notice to Surrounding Owners.** The applicant's forwarded a copy of a notice dated November 3, 2004 sent to a list of surrounding property owner(s), and other submittals. Pursuant to these submittals, it appears that the applicant's notice was mailed on or about November 5, 2004.
7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received. No objections from surrounding property owner 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 in accordance with DWS standards 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 analysis of the applicant's submittals show the both dwellings within the subdivision currently obtain potable water from a privately owned water system (Puu Waa Waa Water Works) and the subdivision is near a volunteer fire department.

Given the unusual nature of the subdivision and current availability of private potable water to the proposed subdivision, the variance request is reasonable. The provisions and cost to maintain the existing private water distribution to the proposed lots and water for emergency purposes will be addressed and borne 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 February 4, 2005.

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 proposed 2-lot subdivision of the subject TMK property without providing a water system meeting DWS standards or variance from Tentative Approval Letter dated June 27, 2002, Conditions No(s). 1, 2 and 3 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 02-0027. 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 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:

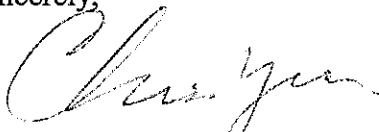
- a. The owners agree and accept the fact that a County dedicable public water system is not now able to service the proposed subdivision SUB 02-0027. Should the Council adopt a Unified Impact Fees Ordinance setting forth criteria for the imposition of exactions or the assessment of impact fees, conditions 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 02-0027 not serviced by a County water system. No further subdivision of the lots created by SUB 02-0027 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
 - c. Any lots created by SUB 02-0027 may not be made subject to a condominium property regime.
 - d. 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.
 - e. In the event that the County notifies the owner(s) of the lot(s) created by SUB 02-0027 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 02-0027, the owner(s) of the lot(s) created by SUB 02-0027 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.
3. The subdivision's (SUB 02-0027) final plat map (minimum lot size, minimum average lot size requirements, etc.) shall meet the remaining conditions of tentative subdivision approval and requirements of the Hawaii County Zoning Code and Subdivision Code.

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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 02-0027