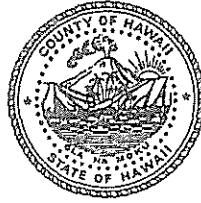


Harry Kim
Mayor



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

October 26, 2005

Mr. Wataru Kotomori
c/o Mr. Donald Kuratsu
99-019 Horio Place
Aiea, HI 96701

Dear Mr. Kotomori:

VARIANCE PERMIT NO. VAR 05-008

Applicant: WATARU KOTOMORI

Owner: WATARU KOTOMORI

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

Tax Map Key: 1-7-020:001 and 010, (SUB 04-0140)

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 proposed 5-lot subdivision. The variance allows 2-lots of proposed 5-lot subdivision to be created 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

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

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1. **Location.** The subject property(s) consisting of approximately 5.03 + acres, being Lot 1, Lot 10, and Lot 11 and portions of Grant 4087 to William B. Nailima, O'laa Reservation Lots, O'laa, Puna, Hawaii.
2. **Zoning.** The subject property is zoned Residential and Agricultural (RA-5a) by the County and designated Urban (U) by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** The applicant/owner submitted a subdivision application (SUB 04-0140) and revised preliminary plat map (PPM), dated August 9, 2004, proposing to consolidate three existing lots and re-subdivide the subject TMK properties into five (5) lots. Further action on the proposed subdivision application was deferred pursuant to an earlier letter dated November 16, 2004 in SUB 04-0140. Three of the proposed lots may not have to comply with the requirements of the Subdivision Code under Section 23-7, which states that such "...consolidation and resubdivision action resulting in the creation of the same or fewer number of lots than that which existed prior to the consolidation/resubdivision action."
4. **Variance Application.** The applicant submitted the variance request and subject variance application on or about January 14, 2005.
5. **Agency Comments and Requirements (VAR 05-008):**
 - a. The Hawaii County Fire Department memorandum dated February 11, 2005 states:

"We have no comments to offer at this time in reference to the above-mentioned variance application."
 - b. The Department of Water Supply (DWS) memorandum, dated February 22, 2005, states in part:

"We have reviewed the subject application and our comments and conditions are as follows.

For your information, Parcel 1 has water service with the Department, Account No. 060-07300. Under the current water availability conditions for this area, 1 unit of water at an average of 400 gallons per day is available to each preexisting lot of record.

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Therefore, water is available to 3 of the 5 lots within this subdivision application from the 6-inch waterline in Volcano Highway fronting Parcel 1. Water is not available for the 2 additional lots as the Department's existing water system facilities requires extensive improvements and additions, including source, storage, transmission, booster pumps, and distribution facilities. Currently, sufficient funding is not available and no schedule is set.

The Department understands that the applicant assigns the existing meter to Lot 2 of the Preliminary Plat Map. Should this request be granted, the Department requests that the applicant meet the following conditions for final subdivision approval:

1. The applicant shall designate which 2 lots besides Lot 2 will have a service lateral for a 5/8-inch meter from the Department. Should the lot not front the water meter, the customer shall sign a "Policy & Conditions for Water Service (Premises Not Within Service Limits of the Department)" prior to water service being granted.
2. Construct necessary water system improvements, which shall include, but not be limited to, installation of service laterals that will accommodate a 5/8-inch meter to each of the 2 lots designated by the applicant and the consumer line to the appropriate lot(s) should the meter not front the lot(s).
3. Submit construction plans for 2 service lateral installations prepared by a professional engineer, registered in the State of Hawai'i, for our review and approval.
4. Remit the prevailing facilities charge, which is subject to change, of \$2,380.00, or \$1,190.00 per existing lot of record. This is due and payable upon completion of the installation of the required water system improvements and prior to final subdivision approval being granted.

Should there be any questions, please call Ms. Shari Komata of our Water Resources and Planning Branch at 961-9070, extension 252."

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- c. State Department of Health (DOH) memorandum is dated March 16, 2005. (Refer to memorandum in variance file).
6. **Notice to Surrounding Owners.** The applicant's submitted proof of mailing notice to surrounding property owner(s). Pursuant to the applicant's submittals and copy(s) of mailing receipts received on October 24, 2005, it appears that a notice was mailed on or about March 9, 2005.
7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received and no objections were received from surrounding property owners or public.

Therefore, after considering the circumstances and variance background information, rainfall information provided by the applicant, agency comments, and other comments from a surrounding property owner, the Planning Director has determined that there are special or unusual circumstances applying to the TMK properties which exist either to a degree which deprives the applicant or co-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 properties.

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 improving the existing public water system or providing an approved alternative water system for the proposed 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 two lots within the proposed 5-lot subdivision is to assure that adequate water is available for human consumption and fire protection.

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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 and information provided by the applicant show the subject TMK property receives or surrounding areas received adequate rainfall or more than 60-inches of rainfall annually to support individual or separate private rainwater catchment systems for potable and emergency uses for the proposed subdivision. According to applicant and rain gauge/rainfall information available from National Oceanic and Atmospheric Administration (NOAA) the proposed 2-lot subdivision is nearest active rain gage station Glenwood No. 2 or "55.4". According to recent NOAA data submitted by the applicant, "55.4" annually received 261.16 inches and 234.10 inches of rainfall during 2001 and 2002, respectively. The analysis of the applicant's submittals together with other available historic rainfall data for the immediate area indicate the subject TMK property or proposed subdivision will receive at least 100 + inches of rainfall annually.

Given the limited extent and unusual nature of the subdivision for family or estate purposes, the variance request is reasonable. The provisions for water storage, water distribution, and construction of private rain water catchment system(s) for the proposed 3lots without county water will be addressed by the applicants and/or future lot owner(s).

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 5-lot subdivision of subject TMK property(s) without providing a water system meeting DWS standards to 2-lots of proposed 5-lot subdivision 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. The subdivider/owner(s) shall comply with the following requirements or 4-conditions stipulated by DWS memorandum dated February 22, 2005:

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- “1. The applicant shall designate which 2 lots besides Lot 2 will have a service lateral for a 5/8-inch meter from the Department. Should the lot not front the water meter, the customer shall sign a “Policy & Conditions for Water Service (Premises Not Within Service Limits of the Department)” prior to water service being granted.
 2. Construct necessary water system improvements, which shall include, but not be limited to, installation of service laterals that will accommodate a 5/8-inch meter to each of the 2 lots designated by the applicant and the consumer line to the appropriate lot(s) should the meter not front the lot(s).
 3. Submit construction plans for 2 service lateral installations prepared by a professional engineer, registered in the State of Hawai’i, for our review and approval.
 4. Remit the prevailing facilities charge, which is subject to change, of \$2,380.00, or \$1,190.00 per existing lot of record. This is due and payable upon completion of the installation of the required water system improvements and prior to final subdivision approval being granted.”
3. 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 04-0140. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting 2-lots not serviced by a County water system of the 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 04-0140. 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.

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- 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 2-lots created by SUB 04-0140 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 requirements of Chapter 23, Subdivisions, are met.
- c. Any lots created by SUB 04-0140 may not be made subject to a condominium property regime.
- d. Any 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 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.

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- h. In the event that the County notifies the owner(s) of the lot(s) created by SUB 04-0140 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 04-0140, the owner(s) of the lot(s) created by SUB 04-0140 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.
 - 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.
- 4. The subdivision's (SUB 04-0140) final plat map 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 04-0140.
- 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.

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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/CJY:cd
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xc: Manager-DWS
SUB 04-0140