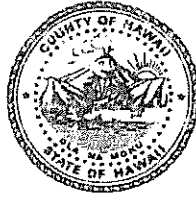


Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED™ AP
Deputy Director

County of Hawaii
PLANNING DEPARTMENT

101 Aupuni Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • FAX (808) 961-8742

March 3, 2006

Mr. Brian T. Nishimura, Planning Consultant
101 Aupuni Street, Suite 217
Hilo, HI 96720-4221

Dear Mr. Nishimura:

SUBJECT: VARIANCE PERMIT NO. VAR 05-098
Agent: BRIAN T. NISHIMURA, PLANNING CONSULTANT
Applicants: LORINE RAYCRAFT
Owners: LORINE RAYCRAFT, ET AL.
Request: Variance from Chapter 23, Subdivisions
Tax Map Key: 1-3-002:025, (SUB 02-0101)

After reviewing your variance application, the Planning Director certifies the approval of your variance application subject to variance conditions. VAR 05-098 permits proposed 2-lot subdivision (SUB 02-0101) without a water supply system and constructing additional roadway improvements. The applicant is requesting a variance from Hawaii County Code, Chapter 23, Subdivisions, Division 2, Improvements Required, Section 23-84, Water Supply, (1)(2), and agricultural pavement and roadway requirements required by the Department of Public Works (DPW) or Chapter 23, Subdivisions, Article 6, Improvements, Division 2, Improvements Required, Section 23-87, Standard for non-dedicable street; escrow maintenance fund.

BACKGROUND

1. **Location.** The subject TMK property, being a subdivision of Grant 2164:1 to Kamili, Kaia and Kaole, is situated at Kamaili Homesteads, Puna, Hawaii.
2. **Zoning.** The subject property is zoned Agricultural (A-10a) by the County and designated Agriculture ("A") by the State Land Use Commission (LUC).

MAR 06 2006

3. **Subdivision Request/PPM.** The owner's submitted proposed 2-lot subdivision application (SUB 02-0101). Further action on this pending 2-lot subdivision application and the application's preliminary plat map (PPM) is being deferred according to a letter dated January 17, 2003 in the subdivision file.
4. **Variance Application.** The subject variance application was acknowledged by Planning Department letter dated November 28, 2005. The agent's background report states in part:

Page 4:

"The applicant and co-owner are seeking to complete the subdivision of the property as ordered by the court. They understand that the County water system is situated approximately 4.2 miles from the subject property and the required improvements to provide water to the property would be cost prohibitive. The applicant and co-owner agree that the annual rainfall of the subject property is approximately 100 inches per year and a private water catchment system will adequately serve their needs.

The applicant and co-owner agree that the existing access easement serving proposed Lot A and the Homestead Road serving proposed Lot B are adequate and sufficient for their needs. The construction of a 20 foot wide agricultural pavement conforming to requirements contained in Section 23-87 of the Subdivision Code would be cost prohibitive."

5. **Agency Comments and Requirements: VAR 05-098:**
 - a. The County of Hawaii Fire Department memorandum dated December 12, 2005 states:

"In that the catchment system will also be used for fire protection, it is recommended that the fire department connection to the tank be located in an area accessible by fire apparatus."
 - c. The Department of Water Supply (DWS) memorandum dated December 14, 2005 states in part:

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

Mr. Brian T. Nishimura, Planning Consultant

Page 3

March 3, 2006

The nearest Department water facility is at the end of an existing 12-inch water line along the Pahoa-Kalapana Road, which is approximately 4.2 miles from the property.”

- c. The State Department of Health (DOH) memorandum is dated February 1, 2006 (Refer to memorandum in file).
6. **Notice to Surrounding Owners/Posted Sign.** The applicant’s agent submitted affidavits regarding a notice mailed to property owners to list of surrounding property owners and photograph of a sign posted on subject property. According to the agent’s affidavits and submittals, it appears that a notice was mailed on or about December 5, 2005; and, the required sign was posted on subject property on or about December 8, 2005.

Note: The applicant’s agent submitted other information on or about January 25, 2006 for the variance record/file.

7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received. No written objections to the variance application were received from surrounding property owners or public.

ALTERNATIVES/SPECIAL AND UNUSUAL CIRCUMSTANCES

- **Water Supply.** The first alternative requires the applicant or owners to extend and/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.

The imposition of extending or improving the existing public DWS water system or providing an approved alternative private water system meeting DWS standards for the pending 2-lot subdivision would be putting excessive demands upon the applicant or owners when a more reasonable alternative (e.g. private individual rainwater catchment system for potable and emergency requirements) is available.

Mr. Brian T. Nishimura, Planning Consultant

Page 4

March 3, 2006

Lot Access/Roadways. The first alternative requires the subdividers to construct a 20-foot wide agricultural pavement according to Standard Detail R-39 within the "Access and Utility Easement" between the property and Kamaili Road and further physical access within the proposed subdivision according to DPW comments in the subdivision file and Chapter 23, Subdivisions.

The second alternative acknowledges the subject TMK property current access via a private roadway within existing access and utility easement on adjoining property (TMK: 1-3-002:029) to Kamaili Road and acknowledge the subdivision currently has frontage along and can access a public road or Homestead Road denoted on the PPM or a "Road in Limbo".

INTENT AND PURPOSE OF THE SUBDIVISION CODE

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 rainfall maps at the Planning Department and rainfall information provided by the applicant's agent 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 active rain gage station "65" (PAHOA) which received 114.62 inches of rain during 2002. Other historical rainfall data records for a rain gage station "67.11" (LEILANI ESTATES) near the proposed subdivision shows a mean rainfall average of 138 + inches between the years 1982 and 1991. The analysis of the applicant's submittals compared with recent rainfall data and historical rainfall data for the surrounding areas indicate the proposed subdivision will receive approximately 100 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) will be addressed by the applicant or future lot owner(s) of the proposed lots.

Mr. Brian T. Nishimura, Planning Consultant

Page 5

March 3, 2006

Roadway Variance. The intent and purpose of access requirements to a proposed subdivision is to ensure legal and physical access to the proposed lots that is clearly defined and accessible from a public road by domestic and farm vehicles, police, fire, and other service vehicles under various weather conditions without constant maintenance.

The proposed subdivision and adjoining areas are agricultural in character. The status of property access and status of ownership of the privately owned and/or publicly owned network of rights-of-way within this district was created before statehood and prior to adoption of the 1967 Zoning and Subdivision Codes by the County of Hawaii. The subject TMK property (without subdividing) can access Kamaili Road via a utility and access easement on the adjoining property and has frontage along and can directly access the "Homestead Road" (Public Road) identified on the PPM. Therefore, given that proposed "Lot B" can access a cinder roadway within the Homestead Road identified on the PPM, there should be no adverse impact by allowing the proposed subdivision to continue using the existing privately owned roadway within the access and utility easement on the adjoining property. Road maintenance for the roadway within the existing privately owned access and utility easement on the adjoining parcel ("29") will be continued to be privately addressed and shared among the current owners and users. The current owners of the subject TMK property or subdividers must consider and insure that "physical access" within the subdivision and between proposed "Lot A" or "Lot B" via the existing easement situated on "29" between the subject TMK property and Kamaili Road is maintained and/or recognize that proposed "Lot B" may request an access to a cinder roadway (According to the recent photographs in the variance file and the applicant's agent-The cinder road within the Homestead Road is approximately 12 feet + wide) within the "Homestead Road" identified on the PPM from the appropriate agency.

Therefore, based on the representations made by the applicant's agent and evaluation of existing easement to the subject TMK property and other access to the subject TMK property or proposed "Lot B" utilizing the Homestead Road, the Planning Director has concluded that the DPW comments to install a 20-foot agricultural pavement conforming to Standard Detail R-39 within the privately owned access and utility easement situated on "29" to the subject TMK property are not required to permit the proposed 2-lot subdivision; and, physical lot access within the subdivision or physical access between both proposed lots to the Kamaili Road and/or Homestead Road will be addressed privately by the subdividers.

The subject variance application was acknowledged by letter dated November 28, 2005. Additional time was requested by the applicant to complete the variance background report. The applicant agreed to extend the decision date to on or before March 10, 2006.

Mr. Brian T. Nishimura, Planning Consultant
Page 6
March 3, 2006

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.

DETERMINATION-VARIANCE CONDITIONS

The variance requested to allow a proposed 2-lot subdivision of the subject TMK property without providing a water system meeting DWS standards and allow a proposed 2-lot subdivision to utilize the access and utility easement on an adjoining property fronting the subdivision and/or direct access to Homestead Road (40-foot wide), is hereby **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 02-0101. 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 02-0101. 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 02-0101 not serviced by a County water system. No further subdivision of the lots created by SUB 02-0101 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
- c. Any lots created by SUB 02-0101 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.

Mr. Brian T. Nishimura, Planning Consultant

Page 8

March 3, 2006

- g. In the event that the County notifies the owner(s) of the lot(s) created by SUB 02-0101 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 02-0101, the owner(s) of the lot(s) created by SUB 02-0101 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.
 - h. 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. ROAD VARIANCE. The subdivider, owners, their assigns, or successors understand that the 2-lots arising out of SUB 02-0101 will use and maintain the privately owned road and utility easement on their own without any expectation of governmental assistance to maintain the existing access or roadway improvements within the privately owned 20,396 square feet access and utility easement identified on the subdivisions preliminary plat map or any other necessary access and utility easement(s) within the proposed subdivision.

The applicant, 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 02-0101. The proposed lots shall form an Homeowner or Road Association or include appropriate deed language, being covenants, conditions, and restrictions, which affect the entire property and/or proposed lots arising from the approval of the pending subdivision application and be duly recorded at the Bureau of Conveyances of the State of Hawaii by the Planning Department at the cost and expense of the applicant:

- a. The applicant and/ or owner(s) shall indemnify and defend the State of Hawaii or County of Hawaii from any and all liability arising out of vehicular access to and from the subject property utilizing this existing private utility and access easement.

Upon written demand of the County of Hawaii, the applicant and /or owners, their assigns, or successors shall agree to participate and pay their fair share percentage of any improvement district adopted for the purpose of roadway improvements serving the proposed lot(s) arising out of SUB 02-0101 or/and the "Kamaili Road" or "Homestead Road" fronting SUB 02-0101. Should the improvement district require acquisition of any privately owned rights-of-way fronting the lots arising out of SUB 02-0101, such rights-of-way shall be dedicated to the County without cost and the value of the dedication credited to the fair share contribution of the respective lot owner(s). 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 future lot owner(s) agree to participate in any road maintenance agreement or/and pay their fair share to maintain the existing access and utility easement containing 20,396 square feet.

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.

4. The subdivision application's (SUB 02-0101) 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 variances from Chapter 23, Subdivisions, shall be granted to permit subdivision application SUB 02-0101.

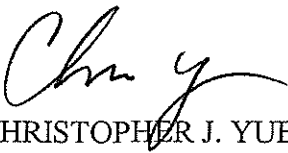
Mr. Brian T. Nishimura, Planning Consultant
Page 10
March 3, 2006

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 this Variance Permit null and void.

Thank you for your understanding and patience during our review.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

WRY/DSA:cd
P:\WP60\WRY\FORMLETT\VARAPP05-098SUBTMK13002025.NSHIMURA

xc: DPW-Engineering Branch
DWS-Engineering Branch
SUB 02-0101