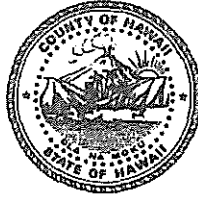


Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED® AP
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

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

May 3, 2006

Mr. Nematollah Najibi
1950 Dorrance Court
San Jose, CA 95125

Dear Mr. Najibi:

SUBJECT: VARIANCE PERMIT-VAR 05-108
Applicant: NEMATOLLAH NAJIBI
Owners: MEMATOLLAH NAJIBI, ET AL.
Request: Variance from Chapter 23, Subdivisions,
Improvements (Water Supply) Required
Tax Map Key: 3-2-002:107, (SUB 05-000188)

After reviewing your variance application, the Planning Director certifies the approval of your variance application subject to variance conditions. Variance Permit-VAR 05-108 permits proposed 2-lot subdivision (SUB 05-000188) without providing water supply system to 1-lot of proposed 2-lot subdivision. The variance request is from Hawaii County Code, Chapter 23, Subdivisions, Division 2, Improvements Required, Section 23-84, Water Supply, (1)(2).

BACKGROUND

1. **Location.** The subject TMK property, Lot 6 containing 2.764 acres, is within Ninole Oceanfront Estates, being a portion of Grant 4964 to Frank Porse, portion of Grant 11070 to Hakalau Plantation Company, portion of Grant 12586 to Hakalau Plantation Company, and situated at Waikaumalo-Maulua Homesteads, Kapena, North Hilo, Hawaii.

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2. **Zoning.** The subject property is zoned Rural and Agricultural (RA-.5a) by the County and designated Rural ("R") by the State Land Use Commission (LUC). The property is in the Special Management Area (SMA) and subject to Special Management Area Minor Permit No. 05-000013 (SMM 05-13) conditions dated August 30, 2005.
3. **Subdivision Request/PPM.** The owners submitted a subdivision application (SUB 05-000108) and revised preliminary plat map (PPM) dated December 7, 2005 proposing a (2)-lot subdivision of the subject TMK property into proposed "LOT 6-A" and "LOT 6-B". Further action on the proposed subdivision application is being deferred according to a letter dated November 21, 2005 in the subdivision file. Proposed access to the 2-lot subdivision is from the Hawaii Belt Road utilizing easements on adjoining property TMK: 3-2-002:106 (Easement "B") and TMK: 3-2-002:107 (Easement "A") and Easement "C" on subject TMK property.
4. **Variance Application.** The subject variance application was acknowledged by Planning Department letter dated March 10, 2006. The applicant's original background "VARIANCE FOR WATER" report states in part:

"Due to lack of funding Department of Water Supply can not (sic) accommodate the proposed 2 lot subdivision at this time. This 2.764 acre parcel which is zoned RA 0.5 acre has only one water (sic) meter and is located in populated area in Ninole (just passed the 10 mile marker on the ocean side. This parcel of land is ocean/cliff front) where the rain fall annually exceeds the minimum requirement, hereby making it suitable for a catchment system."

Additional information regarding attached to the variance from roadway requirements states in part:

"Mr. and Mrs. Sims (owners of tmk 3-2-2-106 who are in the process of building their home) are very much would love the existing ambience and its beauty preserved (sic)."

"The easement C which used to be a part of the old high way (one can assume that it was engineered property by the county) has been repaved recently and is in excellent condition (sic)."

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5. **Agency Comments and Requirements: VAR 05-108:**

- a. The Department of Water Supply (DWS) memorandum dated March 20, 2006 states in part:

“Please refer to our October 17, 2005, memorandum to you for our comments and requirements.”

The DWS memorandum dated October 17, 2005 memorandum states in part:

“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.”

- b. The County of Hawaii Fire Department memorandum dated March 20, 2006 states:

“In that (sic) 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 with approved fire connection.”

- c. The State Department of Health (DOH) memorandum is dated March 24, 2006 (Refer to memorandum in file).

- d. The Department of Public Works (DPW) memorandum dated April 3, 2006 states in part:

“The DPW still believes that to safeguard public welfare and safety, road improvement to satisfy Section 23-86 of the Hawaii County Code (HCC) should be provided. However, if the Planning Director finds that the applicant’s reasons provide valid grounds to justify HCC, Section 23-15, the DPW defers to that determination.”

Note: The DPW comments dated March 9, 2006 regarding access for the revised preliminary plat map (PPM) for a 2-lot subdivision of the subject TMK property states in part:

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“Access from Hawaii Belt Road to the subdivision is provided by existing Access Easements A and B over nearby properties, TMK: 3-2-002:105 & 106. §23-63. Verify the subdivision’s right of access over the nearby private properties.”

“§23-80. The DPW defer to the Hawaii Department of Transportation (HDOT) for access requirements onto Hawaii Belt Road.”

In view of revised PPM and DPW comments dated March 9, 2006 a variance from roadway improvements for proposed 2-lot subdivision of subject TMK property is not necessary or required.

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 February 8, 2006; and, the required sign was posted on subject property on or about March 17, 2006.

7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received. A recent objection letter received from the adjoining property owners (Sims, Et al.) was rescinded by a subsequent letter. (Refer to letters dated April 19, 2006 and May 2, 2006 in variance file. Pursuant to recent telephone discussions with applicant and other meetings with Sims, Et al., the “FOR SALE” sign located on the subject TMK property (see photograph attached to April 19, 2006 letter) will be removed.

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 for the proposed additional lot 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.

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The imposition of extending or improving the existing public DWS water system or providing an approved alternative private water system meeting DWS standards for 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.

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 and Hawaii State Climate Office (HSCO) records, the proposed (2)-lot subdivision is near rain gage station "HONOHINA" ("137") which was discontinued circa 1993 according to HSCO records. According to HSCO "mean" rainfall records, between the years 1949 and 1993, rain gage station "137" averaged 135.59 inches of rainfall yearly. The analysis of the applicant's submittals compared with past rainfall data and rain fall maps indicate the proposed subdivision could receive up to 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) will be addressed by the applicant or future lot owner(s) of the proposed lots.

The subject variance application was acknowledged by letter dated March 10, 2006. 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 May 5, 2006.

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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 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. The subdivider shall contact the DWS and designate or assign the existing water service to 1-proposed lot being created by subdivision application (SUB 05-000188).
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 05-000188. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting the lot not serviced by a County water system 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 a lot created by proposed subdivision SUB 05-000188. 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 lot(s) created by SUB 05-000188 not serviced by a County water system. No further subdivision of the lots created by SUB 05-000188 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
- c. Any lots created by SUB 05-000188 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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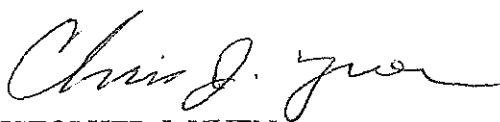
- g. In the event that the County notifies the owner(s) of the lot(s) created by SUB 05-000188 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 05-000188, the owner(s) of the lot(s) created by SUB 05-000188 shall participate 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.
4. No permit shall be granted to allow an ohana dwelling or building permit issued to allow construction of an "ohana" dwelling shall be granted to the subject TMK property or lots created by SUB 05-000188, subject to provisions of the Zoning Code or State Law which may change from time to time.
 5. The subdivision application's (SUB 05-000188) 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 05-000188.
 6. The subdivider, owner(s), their assigns or successors shall pay any outstanding real property taxes, meet SMM 05-13 conditions, and comply with 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 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
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xc: DPW-Engineering Branch
DWS-Engineering Branch
SUB 05-000188
Marion D. Sims III, Et al.