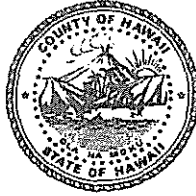


Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
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Deputy Director

County of Hawaii
PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
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February 16, 2007

Mr. Vladimir Shtogrin
c/o SIDNEY FUKE,
PLANNING CONSULTANT
100 Pauahi Street, Suite 212
Hilo, HI 96720

Dear Mr. Shtogrin:

VARIANCE-VAR 06-095

Agent: SIDNEY FUKE, PLANNING CONSULTANT
Applicant: VLADIMIR SHTOGRIN
Owner: VLADIMIR SHTOGRIN
Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required,
Section 23-84, Water Supply, (1)(2)

Tax Map Key: 2-8-016:005, (SUB 06-000313)

After reviewing subject variance application, the Planning Director certifies the approval of Variance-VAR 06-095 subject to conditions. The variance permits proposed 7-lot subdivision (SUB 05-000313) to be created without providing water supply system for 6 lots. The variance request is from Hawaii County Code, Chapter 23, Subdivisions, Article 6, 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:

BACKGROUND

1. **Location.** The subject TMK property, containing 9.896 acres, being a portion of Lot 7, Grant 7,884 to Agnes Kema Kaaukai Low and Grant 12, 281 to Agnes Kema Kaaukai Low, is situated at Kulaimano, South Hilo, Hawaii.

Mr. Vladimir Shtogrin
c/o SIDNEY FUKE,
PLANNING CONSULTANT

Page 2

February 16, 2007

2. **Zoning.** The subject property is zoned Agricultural (A-1a) by the County and designated Agriculture "A" by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** The applicant/owners submitted a subdivision application (SUB 06-000313) and preliminary plat map (PPM), dated March 26, 2005, proposing to subdivide subject TMK property into 7-lots. Further action on the proposed subdivision application was deferred according to August 9, 2006 letter in the subdivision file.
4. **Variance Application.** The applicant's agent submitted a variance application on December 5, 2006 and other required submittals on December 13, 2006 to complete the variance application.

The variance application includes a background report prepared by the applicant's agent dated November 24, 2006, which states in part:

Page 1. "Although this area is serviced by a County Department of Water Supply (DWS) water system, the limited source, however, enables the Department to provide only one unit per existing lot of record. Hence, the proposed 6 additional lots would not be able to receive County water unless extensive off-site improvements are made. The applicant is thus requesting relief or variance from the provision of a County dedicable water system for the 6 additional lots created by this 7-lot subdivision application."

Page 2. "The applicant is unable to make the extensive water source improvements required by the Water Development (sic) or to develop its own water well meeting with the Water Department's standards. The applicant is thus requesting a variance from the minimum water requirements (Chapter 23, Article 6, Division 2, Section 23-84, Hawaii County Code) by having a water catchment system for a maximum of six (6) lots."

5. **Agency Comments and Requirements (VAR 06-095):**
 - a. The State Department of Health (DOH) memorandum is dated December 26, 2006. (Refer to memorandum in variance file).

Mr. Vladimir Shtogrin
c/o SIDNEY FUKU,
PLANNING CONSULTANT

Page 3

February 16, 2007

- b. The Hawaii County Fire Department memorandum dated December 28, 2006, states in part:

"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 with approved fire connection."

- c. The Department of Water Supply (DWS) memorandum, dated January 18, 2007, states in part:

"We have reviewed the subject application and have the following comments and conditions"

Our comments from our June 28, 2006, memorandum still stand. Please be informed that the subject parcel is currently served by one (1) existing 5/8-inch meter (Account No. 490-68000). Should the subject subdivision application be approved, the applicant shall notify the Department, in writing, which lot within the proposed subdivision will be served with the existing service." (Refer to variance conditions).

6. **Notice to Surrounding Owners.** The applicant's agent or designee forwarded a transmittal letter dated December 29, 2006, copy of notice sent to surrounding property owner(s) within 300 feet of subject TMK property, and mailing receipts dated December 29, 2006. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on December 30, 2006.

Posted Sign. The applicant's agent submitted an affidavit dated February 9, 2007 and picture of the posted sign on the property. The affidavit and photograph of a sign were received by the Planning Department on February 12, 2007 together with a clarification letter dated February 14, 2007.

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.

Mr. Vladimir Shtogrin
c/o SIDNEY FUKU,
PLANNING CONSULTANT

Page 4

February 16, 2007

Therefore, after considering the circumstances and variance background information, rainfall information, and 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 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 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.

INTENT AND PURPOSE-WATER VARIANCE

Section 23-84 of the Subdivision Code requires that all new subdivisions have a water system meeting with the minimum requirements of the Department of Water Supply. The State Department of Health has no specific rules or regulations relating to the utilization, construction or inspection of private roof or rain catchment water systems for potable or emergency uses.

The alternative to a water system proposed by the applicant "water catchment system" or privately owned individual rain water catchment systems for 6 proposed lots of the proposed 7-lot subdivision can meet the intent and purpose of the Subdivision Code; and, allowed pursuant to Planning Department Rule 22-Water Variance, effective February 25, 2006. Generally, Rule 22 is both a rule and statement of criteria to be used so that consistent decisions can be made on water variance requests. Section 23-84 of the Subdivision Code requires a water system, and Rule 22 limits subdivisions requesting a variance from water supply to six (6) lots, and, requires that a proposed subdivision requesting a variance to allow individual rainwater catchment systems for potable and emergency needs must receive a minimum 60 inches of annual rainfall for each lot served by catchment. Rule 22, states in part:

"22-4 Minimum rainfall.

Mr. Vladimir Shtogrin
c/o SIDNEY FUKU,
PLANNING CONSULTANT

Page 5

February 16, 2007

Except as provided in Rule 22-6, all lots to be served by catchment shall be served by catchment shall have an average annual rainfall of not less than 60". The annual rainfall can be proven by rainfall records at comparable rain gauges, or by the USGS rainfall map."

The analysis of existing rainfall within the subject property utilizing maps at the Planning Department, DWS, and information provided by the applicant 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 6 lots not serviced by the DWS water supply system. According to map-Plate 6-WATER-RESOURCES INVESTIGATIONS REPORT 95-4212, the proposed subdivision appears to be near the "160" inch isohyet line; and, pursuant to other rainfall information available at the State Climate Office (HSCO) the proposed subdivision is nearest active rain gauge "PAPAUKOU 144.1". The mean annual rainfall (1949-2000) for "144.1" was 143.25 inches. The analysis of the applicant's submittals together with other rainfall maps and published rainfall data for the subject TMK property and surrounding areas indicate the proposed 6-lots utilizing private rainwater catchment systems for potable water and emergency needs will receive in excess of 60 + inches of rainfall annually. The proposed subdivision will meet the minimum requirements of Rule No. 22-Water Variance.

The subject variance application was acknowledged by letter dated December 18, 2006 and additional time to allow the applicant's agent to submit required affidavit regarding the posting of a sign and photograph of posted sign was necessary. In consideration of the foregoing, the applicant submitted a letter dated February 10, 2007 granting the Planning Director an extension of time to February 28, 2007 to February 28, 2007; and, clarification letter dated February 14, 2007 acknowledging the extension of time was necessary to incorporate the affidavit and photograph of the sign posted on the property into the variance file.

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

Mr. Vladimir Shtogrin
c/o SIDNEY FUKU,
PLANNING CONSULTANT

Page 6

February 16, 2007

The variance request to allow a proposed subdivision of the subject TMK property without providing a water system meeting DWS standards to 6-proposed lots of pending 7-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. Pursuant to the DWS memorandum dated January 18, 2007, the applicant or subdivider shall contact the DWS in writing and assign existing DWS to proposed lot being created by proposed subdivision (SUB 06-000313). The applicant or DWS shall identify and confirm the proposed lot number and notify the Planning Department-Subdivision Section-SUB 06-000313, in writing, prior to issuance of tentative subdivision approval.
3. WATER VARIANCE: The owner(s), 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 06-000313. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting those lots not serviced by a County (DWS) water system created by pending 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 06-000313. 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 06-000313 not serviced by a County water system. No further subdivision of lots created by SUB 06-000313 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.

Mr. Vladimir Shtogrin
c/o SIDNEY FUKU,
PLANNING CONSULTANT

Page 7

February 16, 2007

- c. Any lots created by SUB 06-000313 may not be made subject to a condominium property regime.
- d. Any dwelling or farm dwelling constructed on proposed lots 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.
- g. In the event that the County notifies the owner(s) of the lot(s) created by 06-000313 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 06-000313, the owner(s) of the lot(s) created by SUB 06-000313 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.

Mr. Vladimir Shtogrin
c/o SIDNEY FUKE,
PLANNING CONSULTANT

Page 8

February 16, 2007

- 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. The subdivision application's final plat map shall meet all the requirements of the Hawaii County Zoning Code and the Subdivision Code not covered by this variance.
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 the subject Variance Permit null and void.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

WRY:cd

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xc: Manager-DWS
SUB 06-00313