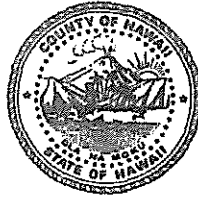


Harry Kim  
Mayor



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

June 5, 2006

Ms. Sherrill A. Erickson, Esq.  
Attorney at Law  
c/o ARCHITECT-NEIL C. ERICKSON  
82 Ponahawai Street  
Hilo, HI 96720

Dear Ms. Erickson:

**VARIANCE PERMIT-VAR 05-049**

**Agent:** ARCHITECT-NEIL C. ERICKSON or  
SHERRILL ERICKSON, ESQ.  
**Applicant:** CHRISTIAN SIEBER  
**Owner:** CHRISTIAN SIEBER  
**Request:** Variance from Chapter 23, Subdivisions,  
Article 6, Division 2, Improvements Required,  
Section 23-84, Water Supply, (1) (2)  
**Tax Map Key: 2-9-004:035, (SUB 05-000161)**

After reviewing the subject variance application, the Planning Director certifies the approval of Variance Permit-VAR 05-049 subject to variance conditions. The variance permits a subdivision of subject TMK property without providing a water supply system to 1-lot of proposed 2-lot subdivision (SUB 05-000161). 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:

**BACKGROUND**

1. **Location.** The subject TMK property, Lot 6-A-1 containing 20 acres, Kaiwiki 3<sup>rd</sup> Homesteads, portion of Grant 6003, and situated at Kaiwiki, South Hilo, Hawaii.

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2. **Zoning.** The subject property is zoned Agricultural (A-10a) by the County and designated Agriculture ("A") by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** The applicant/owner submitted a subdivision application (SUB 05-000161) and preliminary plat map (PPM), dated July 15, 2005, proposing to subdivide subject TMK property into 2-lots. Further action on the proposed subdivision application is being deferred according to letter dated October 11, 2005 in SUB 05-000161.
4. **Variance Application.** The applicant submitted the original variance request and subject variance application on May 25, 2005 and additional information amending the variance request on or about March 10, 2006. An extension of time to render a decision on subject variance application to before or by June 15, 2006 was granted by the applicant (Refer to applicant's letter dated March 10, 2006 in variance file).
5. **Agency Comments and Requirements (VAR 05-049):**
  - a. The Department of Water Supply (DWS) memorandum, dated April 25, 2006, states in part:

"We have reviewed the subject Variance application and our comments from our memorandum of October 19, 2005, still stand.

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.

Further, should the subdivision application be approved, we request that the applicant inform this Department, in writing, which lot within the proposed subdivision will be serviced with the existing meter (Account No. 500-00941)."

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Note: The above DWS comments are essentially the same comments in DWS memorandum dated October 19, 2005 in the subdivision application file (SUB 05-000161); and, the following copy of a DWS letter dated May 9, 2006 addressed to the applicant's agent states in part:

"This is in response to your letter of May 1, 2006.

We acknowledge that the existing account assigned to the subject parcel (Account No. 500-00941) will be assigned to Lot 6-A-1-A of the proposed subdivision, should the subject variance and subdivision applications be approved." (Refer to variance conditions).

"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 State Department of Health (DOH) memorandum is dated May 1, 2006. (Refer to memorandum in variance file).
  - c. No comments were received from the Hawaii County Fire Department.
6. **Notice to Surrounding Owners/Posted Sign.** The applicant's agent submitted affidavits dated April 19, 2006 and other submittals regarding a notice mailed to surrounding property owners and posting of sign on or near subject property. According to the affidavits, exhibits, and photographs, etc., it appears that a notice was mailed to an attached updated list of names and addresses of property owners within 300 feet of the perimeter boundary of subject TMK property on or about April 13, 2006; and, the required sign was posted on or near subject property on or about April 19, 2006. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on or about April 12, 2006.
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.

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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 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 for the proposed additional lot 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 2-lot subdivision would be putting excessive demands upon the applicant or subdivider 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 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 utilizing maps at the Planning Department, DWS, and information provided by the applicant 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.

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According to information provided by the applicant and data available from the Hawaii State Climate Office (HSCO) the proposed subdivision is near active rain gage station "KAHUNA FALLS 138.2". According to historic rainfall data maintained by the HSCO, the mean annual rainfall for "138.2" for the years 1993-2000 was 224.41 inches. The analysis of the HSCO rainfall information and other information provided by the applicant indicates the subject TMK property or proposed subdivision or lot without a water meter will receive at least 170 + inches of rainfall annually and the proposed subdivision will receive in excess of 60 inches minimum annual rainfall and meets Rule 22-Water Variance.

The original variance application together with supplemental information was acknowledged by letter dated March 31, 2006 and the agent-applicant agreed to an extension of time to render a decision on the variance to no later June 15, 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.

#### **VARIANCE DECISION-CONDITIONS**

The variance request to allow a proposed (2)-lot subdivision of the subject TMK property without providing a water system to 1-lot meeting DWS standards 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 or designee shall assign (Account No. 500-00941) to "Lot 6-A-1-A" being created by proposed 2-lot subdivision application (SUB 05-000161) in accordance with DWS memorandum dated May 9, 2006.
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 05-000161.

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This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting lot 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 000161. 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 lot created by SUB 000161 not serviced by a County water system. No further subdivision of the lots created by SUB 000161 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
- c. Any lots created by SUB 000161 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.

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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 SUB 05-000161 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 05-000161, the owner(s) of the lot without a water service created by SUB 05-000161 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.

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4. The subdivision's 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 05-000161.
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/DSA/CJY:cd

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xc: Manager-DWS  
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