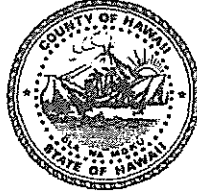


Harry Kim  
Mayor



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

February 10, 2006

Ms. Amy L. Dunn  
P. O. Box 218  
Hilo, HI 96721

Dear Ms. Dunn:

**VARIANCE PERMIT NO. VAR 05-073**

**Applicant: AMY L. DUNN**

**Owner: AMY L. DUNN**

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

**Tax Map Key: 2-9-004:020, (SUB 04-0239)**

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 2-lot subdivision. The variance allows a 2-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**

1. **Location.** The subject property, Lot 20 containing approximately 28.82 acres, being Grant 6057 to Manuel Medeiros, is situated at Kaiwiki 3<sup>rd</sup>, 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 04-0239) and preliminary plat map (PPM), dated November 12, 2004, proposing to subdivide subject TMK property into two (2) lots. Further action on this subdivision application is being deferred according to a letter dated June 3, 2005 in SUB 04-0239.
4. **Variance Application.** The applicant submitted the variance request and subject variance application on or about July 22, 2005.
5. **Agency Comments and Requirements (VAR 05-073):**
  - a. State Department of Health (DOH) memorandum is dated September 1, 2005. (Refer to DOH memorandum in variance file).
  - b. The Department of Water Supply (DWS) memorandum, dated September 7, 2005, states in part:

"We have reviewed the subject application; and the comments in our memorandum of February 22, 2005 still stand and are as follows:

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

The nearest Department of Water Supply water system facility is at the end of an existing 6-inch waterline along Government Main Road, approximately 3.6 miles from the property in the vicinity of the Hakalau School.

Further, the property is at an elevation beyond the service limits of the Department's existing water system facilities.

Therefore, 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 considered. Currently, sufficient funding is not available and no time limit is set."

6. **Notice to Surrounding Owners.** The applicant's submitted proof of mailing notice(s) to surrounding property owner(s). Pursuant to the applicant's submittals and mailing receipts, it appears that a notice was mailed on July 22, 2005 and September 8, 2005 to a list of surrounding property owners.
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 2-lot 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.

Ms. Amy L. Dunn  
Page 4  
February 10, 2006

The analysis of rainfall or rain gauge data nearest the subject property and other historic rain information for the immediate area indicates the subject TMK property or adjacent property(s) receive 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 rain gauge/rainfall information available from Hawaii State Climate Office (HSCO) the proposed 2-lot subdivision is nearest rain gage station Hakalau 142 or "142". According to recent data published by the HSCO, "142's" mean annual rainfall measured between 1949 and 1994 was 132.75 inches. The analysis of the applicant's submittals compared with available historic rainfall for the immediate area or within the South Hilo district shows the subject TMK property's annual rainfall will be more than 60 inches or at least 100 + inches of rainfall annually.

The provisions for water storage, water distribution, and construction of private rain water catchment system(s) for the proposed subdivision or 2-lots without county water will be addressed by the subdivider and/or future lot owner(s).

The subject variance application was acknowledged by letter dated August 23, 2005. Additional time was required to complete the variance background report. The applicant agreed to extend the decision date to on or before February 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 subject TMK property(s) without providing a water system 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 VAR 05-073 and all stated variance 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 04-0239. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting the proposed 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 04-0239. 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 2-lots created by SUB 04-0239 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 04-0239 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.

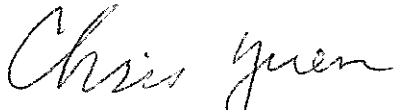
- e. Each permitted dwelling shall be provided with and maintain a private water supply system which includes an additional minimum 3,000 gallon water storage capacity for fire fighting and emergency purposes. The location and capacity of the emergency water supply system, including the necessary compatible 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.
- h. In the event that the County notifies the owner(s) of the lot(s) created by SUB 04-0239 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 04-0239, the owner(s) of the lot(s) created by SUB 04-0239 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.

Ms. Amy L. Dunn  
Page 7  
February 10, 2006

4. The subdivision's (SUB 04-0239) 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 04-0239.
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 04-0239