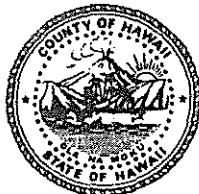


Harry Kim
Mayor



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

March 15, 2006

Mr. Robert Patey
68 Keokea Loop
Hilo, HI 96720

Dear Patey:

VARIANCE PERMIT NO. VAR 05-080

Applicant: ROBERT PATEY

Owner: ROBERT PATEY

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

Tax Map Key: 2-4-007:002, (SUB 05-0051)

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 3-lot subdivision. The variance allows the proposed 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, containing approximately 11.496 acres and being a portion of L. P. Grant S-15,554 to Elizabeth Andrews, is situated at Waiakea, South Hilo, Hawaii.

2. **Zoning.** The subject property is zoned Agricultural (A-3a) 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 05-0051) and revised preliminary plat map (PPM), dated March 7, 2005, proposing to subdivide subject TMK property into 3-lots. Further action on the proposed subdivision application was deferred pursuant to a letter dated August 1, 2005 in SUB 05-0051.
4. **Variance Application.** The applicant submitted the variance request and subject variance application on or about October 27, 2005.
5. **Agency Comments and Requirements (VAR 05-080):**
 - a. The Hawaii County Fire Department memorandum is dated November 8, 2005. (Refer to memorandum in variance file).
 - b. The Department of Water Supply (DWS) memorandum, dated November 15, 2005, states in part:

"We have reviewed the subject application and our comments from our memorandum of May 25, 2005, to you still stand. The subject parcel is not within the Department's existing service limits. The Department's existing water system facilities would require extensive additions and improvements including booster pumps, transmission lines, and storage facilities. Currently, funding is not available from the Department for such improvements and no time schedule is set."
 - c. The State Department of Health (DOH) memorandum is dated December 1, 2005. (Refer to memorandum in variance file).
6. **Notice to Surrounding Owners.** The applicant's forwarded a list of surrounding property owners, mailing receipts, and other submittals on November 15, 2005. According to these submittals, it appears that a notice or variance was mailed to surrounding property owners on or about November 8, 2005.
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. Robert Patey
Page 3
March 15, 2006

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 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 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 3-lot subdivision appears to be nearest active rain gage station "88.2" (WAIAKEA SCD) which received 181.89 inches of rain during 2002. The analysis of the applicant's submittals compared with other historical records or "mean" rainfall data records (1953-2000) for this station and surrounding areas indicate the proposed subdivision receives at least 190" inches +/- of rainfall annually.

Mr. Robert Patey
Page 4
March 15, 2006

Given the nature of the subdivision and annual rainfall within the immediate area, the proposed 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 October 27, 2005 and additional time to complete the variance background report was necessary. The applicant agreed to extend the date on which the Planning Director shall render a decision on the subject variance to no later than March 17, 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 3-lot subdivision of the subject TMK property 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 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 05-0051. 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 3-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:

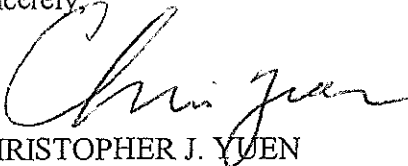
- a. The owners agree and accept the fact that a County dedicable public water system is not now able to service the proposed subdivision SUB 05-0051. Should the Council adopt a Unified Impact Fees Ordinance setting forth criteria for the imposition of exactions or the assessment of impact fees, conditions 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 lots created by SUB 05-0051 not serviced by a County water system. No further subdivision of the lots created by SUB 05-0051 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
- c. Any lots created by SUB 05-0051 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 05-0051 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 05-0051, the owner(s) of the lot(s) created by SUB 05-0051 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.
3. The subdivision application's (SUB 05-0051) 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 05-0051.
4. 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.

Mr. Robert Patey
Page 7
March 15, 2006

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/CJY:cd
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xc: Manager-DWS
SUB 05-0051