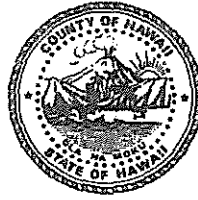


Harry Kim
Mayor



County of Hawaii
PLANNING DEPARTMENT

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

Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED® AP
Deputy Director

May 12, 2006

Mr. John D. Weeks II
JOHN D. WEEKS INC.
78-6877 Mamalahoa Highway
Holualoa, HI 96725

Dear Mr. Weeks:

SUBJECT: VARIANCE PERMIT-VAR 06-012

Applicants: ERNEST DE LUZ, ET AL.

Owners: ERNEST DE LUZ, ET AL.

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

Tax Map Key: 4-5-003:017, Lot F, (SUB 05-000092)

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 the proposed 2-lot subdivision and allows 1-proposed lot to be created without providing 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 TMK property, Lot F containing approximately 11.447 acres, being a portion of Lot 36, Grant 8579 to Guelhermina Gonsalves, is situated at Kaao Homesteads, Hamakua, Hawaii.

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2. **Zoning.** The subject property is zoned Agricultural (A-5a) by the County and designated Agriculture ("A") by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** The applicant/owner filed a subdivision application (SUB 05-000092) and preliminary plat map (PPM), dated May 13, 2006, proposing to subdivide subject TMK property into 2-lots on May 17, 2006. Further action on the proposed subdivision application was deferred pursuant to an earlier letter dated July 6, 2005 in SUB 05-000092.
4. **Variance Application.** The applicant submitted the variance request and subject variance application on or about February 14, 2006.
5. **Agency Comments and Requirements-VAR 06-012:**

- a. The State Department of Health (DOH) memorandum is dated March 23, 2006. (Refer to memorandum in variance file).
- b. The Hawaii County Fire Department memorandum dated March 28, 2006 states:

"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 area accessible by fire apparatus with approved fire connection."

- c. The Department of Water Supply (DWS) memorandum, dated April 11, 2006, states in part:

"We have reviewed the subject application and the comments in our memorandum of July 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."

Note: Refer to DWS memorandum dated July 19, 2005 is in subdivision file (SUB 05-000092).

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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 March 25, 2006; and, the required sign was posted on subject property on or about March 28, 2006. Notice of subject variance application was published in the Hawaii Tribune Herald and West Hawaii Today on April 3, 2006.
7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received. The following letter was received from surrounding property owners or public.

7a. Objection letter dated April 24, 2006 from John C. Walters.

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 for the additional lot.

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 proposed 2-lot 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

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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 subdivision is near rain gage station "HONOKAA TOWN ("215"). According to HSCO rainfall records, between the years 1949 and 2000, rain gage station "215" averaged 79.49 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 70 inches +/- of rainfall yearly.

The application was submitted prior to the adoption of Rule No. 22-Water Variance. Historical "mean" annual rainfall information for an active rain gauge at a lower elevation than proposed subdivision indicates the Honokaa Town and surrounding areas "mauka" of "215" would receive in excess of 60 inches of rainfall annually. 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 17, 2006. Pursuant to a letter dated April 20, 2006, applicant's agent requested additional time to submit the original mail receipts and granted the Planning Director an extension of time to render decision on subject variance application to May 16, 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.

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VARIANCE DECISION-CONDITIONS

The variance request to allow a proposed 2-lot subdivision of the subject TMK property without providing a water system meeting DWS standards for 1-lot 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 shall confer with the DWS and designate or assign the existing water service to 1- proposed lot being created by proposed 2-lot subdivision (SUB 05-000092).
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 05-000092. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting proposed lot not serviced by a County water system created by 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 05-000092. 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 05-000092 not serviced by a County water system. No further subdivision of the lots created by SUB 05-000092 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
 - c. Any lots created by SUB 05-000092 may not be made subject to a condominium property regime.

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- 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.
- g. In the event that the County notifies the owner(s) of the lot(s) created by 05-000092 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 05-000092, the owner(s) of the lot(s) created by SUB 05-000092 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

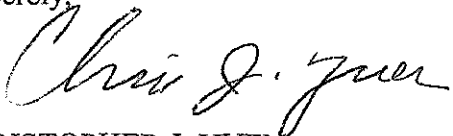
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circumstances applying to the property which deprive the owner of substantial property rights or to a degree which obviously interferes with the best use or manner of development of the property, and hence, no grounds exist or will exist for a variance 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 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 05-000092.
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.

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:mad
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xc: Manager-DWS
SUB 05-000092
John C. Walters