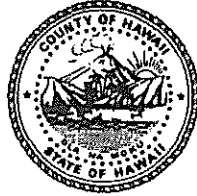


Harry Kim
Mayor



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

October 20, 2006

Mr. Francis McClelland-Agent
Re: Ms Elizabeth Gray and Mr. Robert Gray
P. O. Box 104
Naalehu, HI 96772

Dear Mr. McClelland:

VARIANCE PERMIT-VAR 06-013

Agent: FRANCIS McCLELLAND
Applicants: ELIZABETH GRAY, ET AL.
Owners: ELIZABETH GRAY, ET AL.
Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required,
Section 23-84, Water Supply, (1)(2)
Tax Map Key: 9-4-005:035, (SUB 05-000146)

After reviewing the subject variance application submitted on behalf of the applicants/owners, the Planning Director approves a variance to allow proposed 2-lot subdivision (SUB 05-000146) to be created without providing a water system meeting the minimum requirements of the County-DWS subject to variance conditions. 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, containing approximately 10.5311 acres, Portion of Lot 7, portion of Grant 3635 to Kealohaai, and situated at Waiomao, Kau, Hawaii.

Mr. Francis McClelland-Agent
Re: Ms Elizabeth Gray and Mr. Robert Gray
Page 2
October 20, 2006

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 owners/subdividers filed a subdivision application (05-000146) to subdivide the subject TMK property on or about August 10, 2005. The subdivision application file includes a preliminary plat map (PPM), dated June 6, 2005, which proposes to subdivide the subject TMK property into 2-lots. Further action on the subdivision application was deferred according to letter dated December 12, 2005 in the subdivision application file to February 12, 2005.
4. **Variance Application.** The applicants/owner's agent submitted a variance application on or about February 10, 2006 and other required submittals on or about April 13, 2006.

The agent's letter dated April 11, 2006 states in part the following:

"The subject property is approximately at an elevation of 2,000 feet above sea level.

According to the University of Hawaii Hydrology Dept. data the 60 inch rainfall line falls directly across Hwy 11 within the 20 acre parcel, tmk# 3-9-4-5-37. It couldn't be more than 3-400 feet away from the subject property.

Any shortfall in rainfall could be supplemented by the availability of any numerous water hauling companies that currently service this area.

The northern 1,353 feet boundary of this property abuts to Mamalahoa highway which is State Highway 11, a public roadway. The closest fire hydrant is .7 of a mile west on South Point Rd. The closest eastern fire hydrant is located 2.6 miles by Haa Springs road. Emergency firefighting services would have adequate access to the property if needed.

A water tank is located at the corner of Hwy 11 & South Point Rd approximately 1,500 feet west of the subject property.

Mr. Francis McClelland-Agent
Re: Ms Elizabeth Gray and Mr. Robert Gray
Page 3
October 20, 2006

A conversation with Cyrus, Dept of Water Supply @ 929-9111, in Waiohinu revealed that there are no immediate plans to extend the water line, located approximately 1,200 feet west of the subject property makai side of hwy 11, however, he wouldn't rule out that improvements could be made to the pipeline in the future. Those improvements would give greater consideration for the extension along Hwy 11 to the eastern bound property owners."

5. **Agency Comments and Requirements-VAR 06-013:**

- a. The County of Hawaii Fire Department memorandum dated April 18, 2006 states:

"We have no comments to offer at this time in reference to the above-mentioned Variance application request."

- b. The State Department of Health (DOH) memorandum dated April 18, 2006 states:

"There are no additional concerns those made previously."

Note: Refer to DOH memorandum dated October 19, 2005 in the subdivision file.

- c. The Department of Water Supply (DWS) memorandum, dated April 26, 2006 states in part:

"We have reviewed the subject application and our comments from our memorandum of October 4, 2005, to you still stand (sic).

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 from the Department for such improvements and no time schedule is set."

Note: Refer to DWS memorandum dated October 4, 2005 in the subdivision file.

Mr. Francis McClelland-Agent
Re: Ms Elizabeth Gray and Mr. Robert Gray
Page 4
October 20, 2006

6. **Notice to Surrounding Property Owners/Posted Sign.** The applicants/owner's agent forwarded notarized affidavit dated April 26, 2006 and other attachments regarding notice sent to list of surrounding property owner(s). According to the affidavit the notice was mailed on or about April 19, 2006. The notice of was published in the Hawaii Tribune Herald and West Hawaii Today on or about April 19, 2006.

In addition to the above, the applicants/owner's agent forwarded a second notarized affidavit dated May 1, 2006 together with photographs of a sign, roadway, etc. The sign was posted on April 27, 2006.

7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received. The following letter and request was received:

7a. Letter signed by David C. Vance received on May 4, 2006.

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.

Variances can be granted, but under section 23-15, no variance may be granted unless it is found that:

- (a) There are special or unusual circumstances applying to the subject property which exist either to a degree which deprives the owner or applicants of substantial property rights that would otherwise be available or to a degree which obviously interfere with the best use or manner of development of that property; and
- (b) There are no other reasonable alternatives that would resolve the difficulty; and
- (c) The variance will be consistent with the general purpose of the district, the intent and purpose of this chapter, and the County general plan and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or to adjoining properties.

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.

Mr. Francis McClelland-Agent
Re: Ms Elizabeth Gray and Mr. Robert Gray
Page 5
October 20, 2006

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 proposed subdivision is located approximately 1200 +/- feet away from the end of the nearest DWS system. According to the DWS memorandum(s), the closest DWS system cannot service the proposed subdivision until "extensive improvements and additions" to upgrade this DWS are constructed; and, "sufficient funding is not available from the Department for such improvements and no time scheduling is set". The proposed subdivision application and variance application were both filed prior to the effective date of Rule 22-Water Variance.

The proposed 2-lot subdivision is located at or just below the 60 inch isohyet line. Therefore, given the special and unusual circumstances regarding the property's proximity to the DWS system and benefit of the doubt that annual rainfall within property is approximately 60 inches, the applicant's request to install private rainwater catchment systems for potable and emergency needs within the proposed subdivision until the DWS system is upgraded and service to the lots created by the proposed subdivision is made available is reasonable. The owner(s) of the proposed lots utilizing rainwater catchment for potable and emergency needs will be required by variance conditions and recorded deed covenants will require the lots created by the proposed subdivision to connect to a County DWS system when the DWS notifies the owner(s) that the lots without County water are eligible to connect to a County water system.

The subject variance application was acknowledged by letter dated April 7, 2006. Additional time was requested by the applicant to submit further background information and other submittals on behalf of the current owners. The applicant agreed to extend the decision date to on or before October 31, 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 meeting DWS standards is **approved** subject to the following variance conditions:

Mr. Francis McClelland-Agent
Re: Ms Elizabeth Gray and Mr. Robert Gray
Page 6
October 20, 2006

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 05-000146. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting the lots not serviced by a County water system 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 05-000146. 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 05-000146 not serviced by a County water system. No further subdivision of the lots created by SUB 05-000146 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
 - c. Any lots created by SUB 05-000146 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.

Mr. Francis McClelland-Agent
Re: Ms Elizabeth Gray and Mr. Robert Gray
Page 7
October 20, 2006

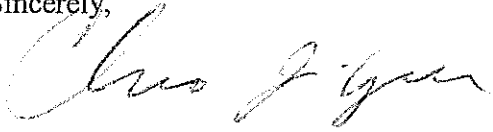
- e. Each permitted dwelling shall be provided with and maintain a private water supply system which includes an additional minimum 3,000 gallon water storage capacity for fire fighting and emergency purposes. The location and capacity of the emergency water supply system, including the necessary compatible 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 or Department of Water Supply (DWS) notifies the owner(s) of the 2-lot(s) created by SUB 05-000146 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots without a DWS water service created by SUB 05-000146, the owner(s) of the lot(s) without County water created by SUB 05-000146 shall participate in such improvement district or shall pay their pro-rata share of the upgrade and installation of laterals/water meters, as determined by the DWS.
- 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.

Mr. Francis McClelland-Agent
Re: Ms Elizabeth Gray and Mr. Robert Gray
Page 8
October 20, 2006

4. The subdivision application's (SUB 05-000146) 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 05-000146.
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 you have any questions on the variance decision or the appeal procedure, please feel free to contact our Hilo office at telephone (808) 961-8288.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

WRY/CJY:cd
P:\WP60\WRY\FORMLETT\VAR06-013SUBWATERTMK94005035.GRAY-McCLELLAND

Enclosure

xc: Manager-DWS
SUB 05-000146
David C. Vance