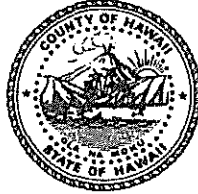


Harry Kim
Mayor



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
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October 11, 2006

Mrs. Denise Drake
P. O. Box 7145
Hilo, HI 96720

Dear Mrs. Drake:

VARIANCE-VAR 06-052

Applicant: DENISE DRAKE

Owners: DENISE DRAKE, ET AL.

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

Tax Map Key: 1-6-004:039, (SUB 05-000212)

After reviewing subject variance application, the Planning Director hereby certifies the approval of variance-VAR 06-052 subject to variance conditions. The variance permits a proposed 3-lot subdivision (SUB 05-000212) to be created without a water supply system. 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 1305-e containing 20.002 acres, as shown on Map 96, Ld. Ct. Application 1053, is situated at Keaau, Puna, Hawaii.
2. **Zoning.** The subject property is zoned Agricultural (A-1a) by the County and designated Agriculture "A" by the State Land Use Commission (LUC).

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3. **Subdivision Request/PPM.** The applicant/owner filed a subdivision application (SUB 05-000212) and preliminary plat map (PPM), dated October 19, 2005, proposing to subdivide the subject TMK property into 3-lots. Further action on the proposed subdivision application was deferred pursuant to an earlier letter dated May 18, 2006 in the subdivision file.
4. **Variance Application.** The applicant submitted the variance application and other submittals on or about July 24, 2006.

5. **Agency Comments and Requirements (VAR 06-052):**

- a. The Hawaii County Fire Department memorandum is dated August 22, 2006. (Refer to memorandum in variance file).
- b. The Department of Water Supply (DWS) memorandum, dated August 25, 2006, states in part:

“We have reviewed the subject variance application and our comments from our memorandum of May 31, 2006, to you still stand:

“Please be informed that the subject parcel 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 an existing 12-inch waterline along Keaau-Pahoa Highway, approximately 1.5 miles from the property.”

Further as the applicant has indicated that they will utilize private rainwater catchment systems for each lot, we have no objection to the proposed application.

Should there be any questions please contact Mr. Finn McCall of our Water Resources and Planning Branch at 961-8070, extension 255.”

- c. The State Department of Health (DOH) memorandum is dated September 6, 2006. (Refer to memorandum in variance file).

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6. **Notice to Surrounding Owners/Posted Sign.** The applicant submitted 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 July 28, 2006; and, the required sign was posted on subject property on or about August 1, 2006. **Note:** According to the applicant's designee, the original sign or information on the sign was modified or changed to include information required by variance acknowledgment letter dated July 12, 2006.
7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received and no objections were received. The following objection letter was received.

7a. Objection letter from Robert and Sharla Sare dated September 20, 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

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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. According to a map- Plate 6-WATER-RESOURCES INVESTIGATIONS REPORT 95-4212, the proposed subdivision appears to be nearest the 160 inch isohyet line; and, pursuant to other rainfall information available at the State Climate Office (HSCO), the proposed subdivision is situated within in an area receiving between 120 inches and 160 inches of rainfall annually. The analysis of the applicant's submittals together with rainfall maps and other published rainfall data for the area indicate the subject TMK property or proposed subdivision will receive at least 60+ inches of rainfall annually. The proposed subdivision meets Rule No. 22-Water Variance.

The subject variance application was acknowledged by letter dated August 9, 2006. Additional time was requested by the applicant to submit proof of posting a sign and for staff to review and reconsider alternative access to the proposed subdivision. The applicant agreed to extend the decision date to on or before October 13, 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 05-000212. 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 05-000212. 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 05-000212 not serviced by a County water system. No further subdivision of the lots created by SUB 05-000212 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
 - c. Any lots created by SUB 05-000212 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.
- g. In the event that the County notifies the owner(s) of the lot(s) created by SUB 05-000212 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 05-000212, the owner(s) of the lot(s) created by SUB 05-000212 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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3. The subdivision's (SUB-000212) 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-000212.
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:cd

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xc: Manager-DWS
SUB 05-000212
Robert and Sharla Sare