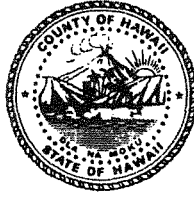


Harry Kim
Mayor



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

January 9, 2007

Mr. Donald Rullo
75-5782 Kuakini Highway, Suite C2C
Kailua-Kona, HI 96740

Dear Mr. Rullo:

SUBJECT: VARIANCE-VAR 06-075 (Variance Decision-Conditions)
Additional Information-Option to Appeal VAR 06-075
General Petition for Appeal of Decisions by Planning Director
Applicant: DONALD RULLO
Owner: DONALD RULLO
Request: Variance from Chapter 23, Subdivisions
Tax Map Key: 8-7-013:006, (PUD 05-000002)

By previous letter dated January 5, 2007, the Planning Director certified approval of Variance-VAR 06-075 subject to variance conditions. The variance is from Condition No. 5, "Compliance with Department of Water Supply Standards" of PUD 05-000002 approved November 22, 2005; and, Hawaii County Code, Chapter 23, Subdivisions, Division 2, Improvements Required, Section 23-84, Water Supply, (1)(2). The variance letter dated January 5, 2007 inadvertently omitted an option for the applicant-owner to appeal the Planning Director's decision and variance conditions dated January 5, 2007.

DETERMINATION-VAR 06-075: Decision and Conditions-Dated: January 5, 2007

The variance requested to allow a proposed subdivision of the subject TMK property without providing a water system meeting DWS standards to PUD 05-000002 and construction of an alternative privately owned water supply system was **approved** subject to variance conditions dated **January 5, 2007**.

In accordance with a recent charter amendment and Ordinance No. 99-111, you may appeal the director's variance decision and variance conditions dated January 5, 2007 and request the following:

- (a) Any person aggrieved by the decision of the director in the administration or application of this chapter, may, within thirty days after the date of the director's written decision, appeal the decision to the board of appeals.
- (b) A person is aggrieved by a decision of the director if:
 - (1) The person has an interest in the subject matter of the decision that is so directly and immediately affected, that the person's interest is clearly distinguishable from that of the general public; and
 - (2) The person is or will be adversely affected by the decision.
- (c) An appeal shall be in writing, in the form prescribed by the board of appeals and shall specify the person's interest in the subject matter of the appeal and the grounds of the appeal. A filing fee of \$250 shall accompany any such appeal. The person appealing a decision of the director shall provide a copy of the appeal to the director and to the owner of the affected property and shall provide the board of appeals with the proof of service.
- (d) The appellant, the owners of the affected property, and the director shall be parties to an appeal. Other persons may be admitted as parties to an appeal. Other persons may be admitted as parties to an appeal, as permitted by the board of appeals.

The board of appeals may affirm the decision of the director, or it may reverse or modify the decision, or it may reverse or modify the decision or remand the decision with appropriate instructions if based upon the preponderance of evidence the board finds that:

- (1) The director erred in its decision; or
- (2) The decision violated this chapter or other applicable law; or
- (3) The decision was arbitrary or capricious or characterized by and abuse of discretion or clearly unwarranted exercise of discretion.

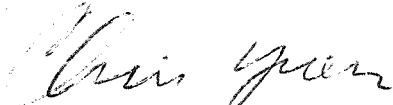
Mr. Donald Rullo

Page 3

January 9, 2007

In view of the above, we have enclosed GENERAL PETITION FOR APPEAL OF DECISIONS
BY PLANNING DIRECTOR.

Sincerely,



CHRISTOPHER J. YUEN

Planning Director

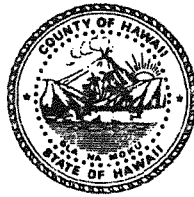
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Enclosure

xc: DPW-Engineering Branch (w/o enclosure)
DWS-Engineering Branch (w/o enclosure)
PUD 05-002 (w/o enclosure)

Harry Kim
Mayor



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PLANNING DEPARTMENT

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(808) 961-8288 • FAX (808) 961-8742

January 5, 2007

Mr. Donald Rullo
75-5782 Kuakini Highway, Suite C2C
Kailua-Kona, HI 96740

Dear Mr. Rullo:

SUBJECT: VARIANCE-VAR 06-075

Applicant: DONALD RULLO

Owner: DONALD RULLO

Request: Variance from Chapter 23, Subdivisions

Tax Map Key: 8-7-013:006, (PUD 05-000002)

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 06-075 subject to variance conditions. The variance is from Condition No. 5, "Compliance with Department of Water Supply Standards" of PUD 05-000002 approved November 22, 2005; and, Hawaii County Code, Chapter 23, Subdivisions, Division 2, Improvements Required, Section 23-84, Water Supply, (1)(2).

BACKGROUND

1. **Location.** The referenced TMK property, containing approximately 167.814 +/- acres, is located approximately 15 miles south of the town of Captain Cook, sea (makai) side of the Mamalahoa Highway, and situated at Opihihali 1st, South Kona, Hawaii.
2. **Zoning.** The subject property is zoned Agricultural (A-5a) by the County and designated Agriculture "A" and Conservation "C" by the State Land Use Commission (LUC). A portion of the property is within the Special Management Area (SMA).

JAN 15 2007

3. **PUD 2005-000002.** PUD 05-000002 was issued on November 22, 2005 to allow the development of a 33-lot agricultural subdivision on the property zoned Agricultural A-5a and designated SLU-"A", subject to PUD conditions and subdivision approval. One of the PUD conditions dated November 22, 2005, page 6, relating to water requirements for the subdivision states in part:

"C. Subdivision Approval. Subdivision approval shall be subject to the following conditions:"

"5. Compliance with Department of Water Supply Standards. The construction plans shall be submitted to the Department of Water Supply for review to determine whether the proposed system meets DWS' standards."

4. **Variance Application.** The subject variance application was acknowledged by Planning Department letter dated September 26, 2006. The variance application includes a background report prepared by Riehm Ownensby Planners Architects, dated January 27, 2006. The background report states in part:

Page 2. "On November 22, 2005 the Planning Director approved PUD 2005-000002 subject to certain conditions. Condition #5 in the approval subjects the project to submit construction plans to the Department of Water Supply for review to determine whether the proposed system meets DWS standards.

Contained within the PUD Application 2005-02 specifically in Section 4.12.1 WATER: is the statement to wit: "The petitioner intends to drill a well and establish a private water supply to meet with the standards of the Department of water (sic) Supply with some exceptions in the form of variances".

Subsequent to the variance background report, the applicant's fax received on November 6, 2006 states in part:

"To clarify our intention (sic) is to create a private water system comprised of a new water well along with two separate steel water storage tanks with minimum capacities of 30,000 gal. each. One for daily distribution and one as an emergency supply for fire protection. A pump house and back up water pump on hand as a back up to the primary pump. These will be located on TMK (3) 8-7-013-089 being lot 4 situated at Opihihale 1st, South Kona, Island, County and State of Hawaii. This facility will be fenced off from public access.

A distribution system engineered by a licensed engineering firm of the State and County of Hawaii shall be installed to distribute water to each lot. Purification requirements shall be imposed on each lot owner for potable water, as the water shall also be used to supply irrigation for agricultural endeavors.”

5. **Agency Comments and Requirements: VAR 06-075:**

- a. The State Department of Health (DOH) memorandum is dated October 3, 2006. (Refer to DOH memorandum in variance file).
- b. The County of Hawaii Fire Department memorandum dated October 16, 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 an area accessible by fire apparatus.”

Note: The applicant is proposing to construct a private water system within the approved PUD and proposed subdivision. (Refer to variance conditions).

- c. The Department of Water Supply (DWS) memorandum is dated October 16, 2006. (Refer to DWS memorandum in variance file).

6. **Notice to Surrounding Owners/Posted Sign.** The applicant a transmittal letter and copy of notice and copy of certified mail receipts sent to surrounding property owners. In addition the applicant submitted a notarized affidavit dated September 20, 2006 and photograph of a sign posted on subject property.

Note: Subsequent to the above, the applicant submitted the original mail receipts and further background information on November 6 and November 9, 2006, respectively.

7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received. No written objections to the variance application were received from surrounding property owners or public.

Mr. Donald Rullo

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January 5, 2007

ALTERNATIVES/SPECIAL AND UNUSUAL CIRCUMSTANCES

Water Supply. The first alternative requires the applicant or owners to extend and/or improve the existing county water system and provide the necessary dedicable water system improvements within the approved PUD and proposed subdivision in accordance with DWS standards.

The second alternative would be to design, drill and develop private wells and install a privately owned alternative water system meeting DWS standards.

The imposition of extending or improving the existing public DWS water system or providing an approved alternative private water system meeting DWS standards for the PUD or proposed subdivision would be putting excessive demands upon the applicant or owners when a more reasonable alternative (e.g. constructing a privately owned well, storage and water distribution system to supply potable and emergency water within the proposed subdivision) is available.

INTENT AND PURPOSE OF THE SUBDIVISION CODE

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 subject 168 property was itself created as a separate lot by a subdivision under a water variance which provided that "no portion of the subject property may be further subdivided without first having a water system meeting with the standards of the Department of Water Supply." While this does not definitely prohibit consideration of a further water variance, it demonstrates that the owner has no reasonable expectation that the property can be subdivided without a water system meeting with the requirements of the Department of Water Supply, and provides at least one basis to differentiate this application from others involving private water systems. The owner has not provided any pump tests showing that the water from the proposed well is of potable quality.

The above referenced DWS memorandum dated October 16, 2006 states in part:

"In response to the Planned Unit Development application, the subject parcel is not within the service limits of the Department's existing water system facilities. The nearest point of connection is from an existing 8-inch waterline within Mamalahoa Highway, approximately 7 miles away at the Hookena Junction."

Given the location of the property and nature of the approved PUD, the request to construct a privately owned and maintained water distribution system for the PUD or proposed subdivision is reasonable, with conditions to protect public health and safety. The applicant intends to drill a well and construct a privately owned water distribution pursuant to plans prepared by a licensed engineer. The following is a brief description of the proposed privately owned and maintained water system:

Source: Drill a single water well source pursuant to a permit issued by the State of Hawaii on TMK (3) 8-7-013:089, Lot 4. Install a primary pump and pump house. A second "back-up" water pump shall be maintained in the pump house or on Lot 4 to replace the primary pump in the event of failure of the primary pump.

Storage: Construct two (2) steel 30,000 gallon water storage tanks on Lot 4. One tank will be part of the privately owned water distribution system and one tank will be used to store water for emergency supply and fire protection. Install necessary access and security fencing on Lot 4 to protect the proposed well site, pumps, and steel water storage tanks. Access to the steel 30,000 gallon water tank and provisions to connect the tank with emergency and fire fighting apparatus shall meet with the approval of the Hawaii County Fire Department.

Transmission/Distribution Waterlines: The above privately owned and maintained well, pump(s), storage tanks, and waterline distribution system including necessary service laterals to each proposed lot shall be engineered by a licensed engineering firm. Purification requirements shall be imposed on each lot owner for potable water, as the water shall also be used to supply irrigation for agricultural endeavors.

The above source-well, pumps, 2- 30,000 gallon steel water storage tanks, waterlines, service laterals, etc. will be designed and constructed pursuant to the PUD prior and completed or bonded prior to issuance of final subdivision approval and subject to variance conditions. Upkeep, maintenance, and management of this proposed privately owned water system will be borne by an association of users and owners.

The subject variance application was acknowledged by letter dated September 26, 2006 and additional time was requested by the applicant to submit background information describing the alternative water supply and design of the alternative water distribution system. The applicant agreed to an extension of time to complete the variance background report and render a decision on the subject variance.

Based on the foregoing findings, this variance request, with the additional protective conditions imposed herein, 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.

The Department of Water Supply requires a minimum of 100,000 gallons of storage in a water system. To follow the principle that the private system should be functionally equivalent to the public system, the variance conditions will require 100,000 gallons storage.

DETERMINATION-VARIANCE CONDITIONS

The variance requested to allow a proposed subdivision of the subject TMK property without providing a water system meeting DWS standards to PUD 05-000002 and construction of an alternative privately owned water supply system, is hereby **approved** subject to the following variance conditions:

1. The subdivider, applicant or owner, their assigns, or successors shall be responsible for complying with all stated conditions of approval.
2. Prior to final subdivision approval, the subdivider shall submit evidence of a well under applicant's control on TMK: (3)8-7-013:089 producing water of potable quality and sufficient quantity to support domestic water requirements for the proposed subdivision. Such evidence shall include proof that the Commission on Water Resources Management has issued a pump installation permit or equivalent approval authorizing the pumping of the well at the necessary volume, and laboratory testing that the water is of potable quality.
3. Submit alternative water system construction plans for PUD 05-000002's water system and construct alternative water supply system from a single well source State of Hawaii Permit-Well No. 1652-02 and 2 separate steel 50,000 gallon water storage tanks, and other water system appurtenances on TMK: (3) 8-7-013:089, or single 100,000 gallon steel tank, together with water lines and service stubbed out to each lot arising out of PUD 05-000002 excepting proposed lot (No. 33-PUD 05-000002) which is to remain in its natural state undeveloped containing approximately 44.09 acres. The private water distribution system shall be designed and engineered by a licensed professional engineer, to provide water at domestic volume and pressure to buildable lots arising out of PUD 05-000002 or proposed subdivision; and, the engineer shall determine and certify that the

requested alternatives to the DWS standards will provide functionally equivalent service. The subdivider shall provide connections to the water tank or tanks as requested by the Fire Department for firefighting purposes. The plans shall be approved, and the necessary improvements bonded or constructed prior to final subdivision approval.

4. The applicant or subdivider shall obtain and have ready for installation into the well a "back-up" water pump in the event of the failure of the primary pump. Upon formation of the association to maintain the water system, the backup pump shall be transferred to the association.
5. Any deed to the 44 acre lot that is to not be provided with water shall contain a covenant stating that no residential use of the property shall be allowed, and the final subdivision map shall denote that residential use of the property is prohibited.
6. The deeds for all lots arising out of PUD 05-000002 or proposed subdivision shall contain deed language or covenants in a form approved by corporation counsel acknowledging that the lots are served by a private water system, and that the owner has obtained the lot in the understanding and realization that there are no special or unusual circumstances which would justify further variance from the subdivision code requirements to permit further subdivision.
7. The owner shall manage the private water system or shall form an association of lot owners to manage the system. The managing entity shall have the power to file and enforce liens against any lot owners who fail to pay any charges or assessments for the private water system.
8. The proposed subdivision application's final plat map shall meet all the requirements of PUD 05-000002 and the Subdivision Code not covered by the PUD or variance conditions.
9. 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. Donald Rullo
Page 8
January 5, 2007

Should any of the foregoing stated conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Thank you for your understanding and patience during our review.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

WRY/DSA/CJY:cd:pak
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xc: DPW-Engineering Branch
DWS-Engineering Branch
PUD 05-002