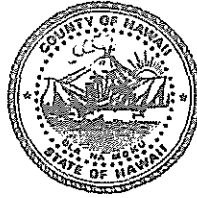


Harry Kim  
Mayor



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

February 16, 2007

Ms. Marcia Johnson  
P. O. Box 228  
Naalehu, HI 96772

Dear Ms. Johnson:

**VARIANCE-VAR 06-086**

**Agent: MARCIA JOHNSON**

**Applicant: JOHN WELCH**

**Owner: JOHN WELCH**

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

**Tax Map Key: 9-3-004:031, (SUB 06-000276)**

After reviewing the subject variance application, the Planning Director certifies the approval of Variance-VAR 06-086 subject to variance conditions. The variance allows proposed 2-lot subdivision (SUB 06-000276) to be created without providing 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 referenced TMK property, Lot 30 containing approximately 44.189 acres, being a portion of Grant 9819 to Naomi Kauhane Cockett, is situated at Kiolakaa-Keaa, Kau, Hawaii.

2. **Zoning.** The subject property is zoned Agricultural (A-20a) 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 06-000276) and revised preliminary plat map (PPM), proposing to subdivide subject TMK property into 2-lots. Further action on the proposed subdivision application was deferred pursuant to letter dated July 20, 2006 in the subdivision file.
4. **Variance Application.** The applicant submitted the variance request and revised application on or about December 28, 2006.

The application includes or agent's background report dated December 26, 2006 which states in part:

Page 4. "After analysis of existing conditions of site conditions, official rainfall maps maintained by various government agencies and other historical rainfall summaries, the information available appears to indicate the subject property receives adequate natural rainfall within the property to support private rain water catchment systems for potable & emergency uses (sic). Provisions for water storage, water distribution & construction of private rain water catchment systems on the property or proposed lots are available (sic)."

5. **Agency Comments and Requirements (VAR 06-086):**

- a. The Hawaii County Fire Department memorandum dated January 26, 2007 states in part:  
  
"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 with approved fire connection."
- b. The State Department of Health (DOH) memorandum is dated January 29, 2007. (Refer to memorandum in variance file).
- c. The Department of Water Supply (DWS) memorandum, dated February 1, 2007, states in part:

"We have reviewed the subject application and our comments from our memorandum to you of July 27, 2006 still stand.

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.

As the applicant has indicated that they will provide individual rainwater catchment systems for each lot, we have no objection to the proposed subdivision, subject to the applicant understanding and accepting that the Department cannot provide service."

6. **Notice to Surrounding Owners.** The applicant's agent forwarded a copy of notice sent to surrounding property owner(s) within 300 feet of subject TMK property, and copies of mailing receipts dated January 16, 2007. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on January 14, 2007.

**Posted Sign.** The applicant submitted an affidavit dated January 17, 2007 regarding the posting of sign on subject TMK property and photograph of the required sign.

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.

Therefore, after considering the circumstances and variance background information, rainfall information provided by the applicant, and agency comments, 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**

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. The State Department of Health has no specific rules or regulations relating to the utilization, construction or inspection of private roof or rain catchment water systems for potable or emergency uses.

The alternative to a water system proposed by the applicant "private rain water catchment system" for proposed lots can meet the intent and purpose of the Subdivision Code; and allowed pursuant to Planning Department Rule 22-Water Variance, effective February 25, 2006. Generally, Rule 22 is both a rule and statement of criteria to be used so that consistent decisions can be made on water variance requests. Section 23-84 of the Subdivision Code requires a water system, and Rule 22 limits subdivisions requesting a variance from water supply to six (6) lots, and, requires that a proposed subdivision (limited to 2 lots) requesting a variance to allow individual rainwater catchment systems for potable and emergency needs must receive a minimum 60 inches of annual rainfall for each lot served by catchment. Rule 22, states in part:

"22-4 Minimum rainfall.

Except as provided in Rule 22-6, all lots to be served by catchment shall be served by catchment shall have an average annual rainfall of not less than 60". The annual rainfall can be proven by rainfall records at comparable rain gauges, or by the USGS rainfall map."

Rule 22 allows the rainfall to be proved by either the USGS rainfall map or by rain gauge data. The analysis of the information and comparison of maps attached to the variance application and other rainfall maps including a USGS layer at the Planning Department, etc. shows the 60" isohyet line bisects the subject property; and, therefore, according to the PPM and USGS (layer) map, the property receives at least 60 inches of rainfall annually.

According to USGS map layer and rainfall data in the Planning Department, property's elevation is approximately between 2120 feet and 2200 feet. The 60" isohyet line passes thru the subject TMK property at approximately the 2120 feet elevation. Therefore, the applicant's request to allow individual rainwater catchment systems for potable and emergency purposes within the proposed 2-lot subdivision could be allowed pursuant to Rule 22-Water Variance which requires the proposed subdivision or lots to receive minimum 60" annual rainfall.

Based on the foregoing findings and Rule 22, the 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:

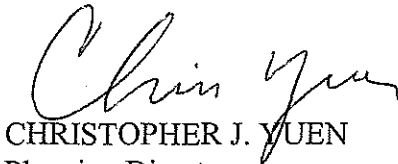
1. The applicant, owners, their assigns, or successors shall be responsible for complying with all stated conditions of approval.
2. **WATER VARIANCE:** The owners, their assigns, or successors shall file a written agreement or approved written document with the Planning Department within one (1) year from the issuance of tentative subdivision approval and prior to receipt of final subdivision approval of SUB 06-000276. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting the lots not serviced by a County water system or 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 06-000276. 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 06-000276 not serviced by a County water system. No further subdivision of the lots created by SUB 06-000276 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
- c. Any lots created by SUB 06-000276 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 06-000276 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 06-000276, the owner(s) of the lot(s) created by SUB 06-000276 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.
- 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.
  - 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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Ms. Marcia Johnson  
Page 8  
February 16, 2007

xc: Manager-DWS  
SUB 06-000276