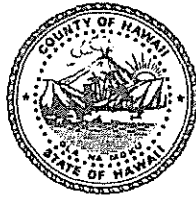


Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
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County of Hawaii
PLANNING DEPARTMENT

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

December 20, 2006

Mr. Michael and Mrs. Nora O'Friel
RR 2 Box 4325
Pahoa, HI 96778

Dear Mr. and Mrs. O'Friel: ..

VARIANCE-VAR 06-089

Applicant: MICHAEL O'FRIEL, ET AL.

Owner: MICHAEL O'FRIEL, ET AL.

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

Tax Map Key: 1-3-002:010, Lot 2, (SUB 06-000316)

After reviewing the subject variance application, the Planning Director certifies the approval of Variance-VAR 06-089 subject to conditions. The variance permits proposed 5-lot subdivision (SUB 06-000316) to be created without providing a water system meeting the minimum requirements of the Department of Water Supply (DWS). The variance 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 property, Lot 2 containing approximately 6.104 acres, portion of Grant 2164:2 to Kamihi Et al., is situated at Kamaili, 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). A portion of the "pole" of the existing TMK property is within the Special Management Area (SMA).

3. **Subdivision Request/PPM.** The applicant/owner submitted a subdivision application (SUB 06-000316) and preliminary plat map (PPM), dated March 6, 2006, proposing to subdivide subject TMK property into 5-lots. Further action on the proposed subdivision application was deferred pursuant to a letter dated August 9, 2006 in SUB 06-000316.
4. **Variance Application.** The applicant submitted the variance application on or about October 25, 2006.

The attachment submitted with the applicant states in part:

"The applicants propose to install and utilize a water catchment system to service the proposed lots. Rainfall in the area is sufficient to provide water for potential agricultural activities, as well as for domestic and firefighting purposes. The closest rain gauge to the Property is located in Kapoho Beach. According to the 2005 Hawai'i County Data Book, the annual rainfall in Kapoho Beach was 73.5 inches in 2000, 69.09 inches in 2001, 77.93 inches in 2002, 51.93 inches in 2003 and 97.78 inches in 2004 (see attached Exhibit B). In addition to the annual rainfall levels measured at the Kapoho Beach rain gauge, the Property lies in between an 80 inch annual rainfall area and a 120 inch annual rainfall area on the United States Geological Survey map included in the Water-Resources Investigations Report 95-4212 (see attached Exhibit C)."

Note: The dwelling(s) and accessory building positions identified on the variance site plan map ("FIRST REVISION") dated March 6, 2006 are subject to the minimum yard and use requirements of Chapter 25, Zoning. The subject variance application does not address any building encroachments into the property's minimum yards or minimum yards created by the proposed subdivision.

5. **Agency Comments and Requirements (VAR 06-089):**

- a. The Hawaii County Fire Department memorandum dated November 11, 2006 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 Department of Water Supply (DWS) memorandum, dated November 13, 2006, states in part:

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"We have reviewed the subject application.

Please be informed that the subject property was subdivided under a previous variance and 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 the end of an existing 8-inch waterline along Kapoho-Kalapana Road, approximately 6 miles from the property."

- c. The State Department of Health (DOH) memorandum is dated November 22, 2006. (Refer to memorandum in variance file).

- 6. **Notice to Surrounding Owners.** The applicant's forwarded a transmittal letter signed on November 20, 2006, copy of notice sent to surrounding property owner(s) within 300 feet of subject TMK property, and mailing receipts dated November 13, 2006. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on November 14, 2006.

Posted Sign. The applicant submitted an affidavit regarding the posting of sign on subject TMK property dated November 20, 2006 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, 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.

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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

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 map-Plate 6-WATER-RESOURCES INVESTIGATIONS REPORT 95-4212, the proposed subdivision appears to be nearest the "80" inch isohyet line; and, pursuant to other rainfall information available at the State Climate Office (HSCO) the proposed subdivision is near rain gauge "KAPOHO BEACH 93.11". According to the HSCO the mean annual rainfall (1975-2000) for "93.11" is 80.80 inches. 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.

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 5-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 06-000316. 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 5-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 06-000316. 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 06-000316 not serviced by a County water system. No further subdivision of the lots created by SUB 06-000316 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
 - c. Any lots created by SUB 06-000316 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 06-000316 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 06-000316, the owner(s) of the lot(s) created by SUB 06-000316 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.

Mr. Michael and Mrs. Nora O'Friel

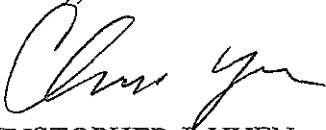
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3. The subdivision application's final plat map shall meet all the requirements of the Hawaii County Zoning Code and the Subdivision Code not covered by this variance.
4. The subdivider, owner(s), their assigns or successors shall pay any outstanding 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/DSA/CJY:cd

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xc: Manager-DWS
SUB 06-000316