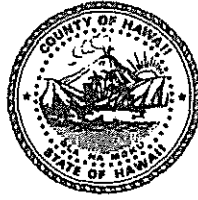


Harry Kim
Mayor



Christopher J. Yuen
Director

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County of Hawaii
PLANNING DEPARTMENT

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September 10, 2007

Roger M. Caires, LPLS
CLS HAWAII
P.O. Box 777
Kalaheo, HI 96741

Dear Mr. Caires:

VARIANCE-VAR 07-012

Applicant: ROGER M. CAIRES/CLS HAWAII

Owner: DONALD LYLE BEARD TRUST

**Request: Variance from Chapter 23, Subdivisions,
Improvements Required**

Tax Map Key: 1-7-009:002, (SUB 06-000360)

After reviewing the subject variance application, the Planning Director certifies the approval of Variance-VAR 07-012 subject to conditions. The variance permits proposed 2-lot subdivision (SUB 06-000360) 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, Article 6, 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, containing approximately 40.006 acres, being Grant 4169 to J. A. Martinez, portion of Olaa Reservation Lots, is situated at Keaau, Puna, 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 06-000360) and preliminary plat map (PPM), dated March 24, 2006, proposing to subdivide subject TMK property into 2-lots. Further action on the proposed subdivision application is being deferred according to July 10, 2006 letter.
4. **Variance Application.** The applicant submitted the variance request and subject variance application on February 20, 2007 and letter dated August 24, 2007 requesting an extension.

The applicant's letter or background report states in part:

"The Annual Rain Fall gages in the area far exceed the minimum required of sixty (60) inches per year. Attached is the map showing the Gage Stations nearest the project, which indicate an average yearly rain fall from 125.40 inches (low) at Pahoa, to 162.40 inches (high) in Waiakea Uka."

5. **Agency Comments and Requirements (VAR 07-012):**
 - a. The State Department of Health (DOH) memorandum dated March 2, 2007 states:

"There are no additional concerns to those made previously."
 - b. The Hawaii County Fire Department memorandum dated March 13, 2007 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 with approved fire connection."
 - c. The Department of Water Supply (DWS) memorandum, dated March 29, 2007, states in part:

“We have reviewed the subject application and our comments from our memorandum of July 19, 2006, to you still stand.

The nearest water system facility is an existing 12-inch waterline within Volcano Highway, approximately 2,100 feet from the property.”

6. **Notice to Surrounding Owners.** The applicant's forwarded a copy of a notice dated March 12, 2007 sent to a list of owners dated March 12, 2007, and affidavit dated August 24, 2007. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on March 10, 2007.

Posted Sign. The applicant submitted an affidavit regarding the posting of sign on subject TMK property dated April 12, 2007 and photograph of the posted 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

The DWS memorandum dated July 19, 2006 for the subdivision application (SUB 06-000360) states in part the following:

“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. The applicant is to submit how they will meet the above requirements in accordance with the Department's Rules and regulation and the Water System Standards.”

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The first alternative requires the applicant to make "extensive improvements and additions" to the existing county DWS water system in accordance with the DWS memorandum in the subdivision file. The second alternative would be to design, drill and develop private wells and install the necessary water system improvements in accordance with DWS standards.

In view of the above, there are no other reasonable alternatives in resolving the difficulty of the applicant. The imposition of improving the existing public water system or providing an approved alternative private water system meeting DWS standards for proposed 2-lot subdivision (SUB 06-000360) 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.

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 or "RULE 22. WATER VARIANCE" to allow and utilize privately owned individual rain water catchment systems for proposed 2-lot subdivision 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 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."

The analysis of existing rainfall within the subject property utilizing maps at the Planning Department and information provided by the applicant 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. The isohyet map study from Planning Department's GIS data base denotes subject TMK or proposed subdivision is situated near the 157.48 inch isohyet line; and, pursuant to historical rainfall information maintained by the Hawaii State Climate Office (HSCO), the proposed 2-lot subdivision is near rain gauge "MOUNTAIN VIEW 91". The mean annual rainfall (1949-1985) for "91" was 185.61 inches. The analysis of the applicant's submittals, Planning Department's isohyet map study and historical or annual rainfall data maintained by HSCO for a rain gauge near subject TMK property indicate the 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 February 28, 2007. Additional time was required to incorporate additional information submitted by the applicant to complete the variance background report. The applicant agreed to extend the decision date to on or before September 15, 2007.

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 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 06-000360. 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 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 06-000360. 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 lot(s) created by SUB 06-000360 not serviced by a County water system. No further subdivision of the lots created by SUB 06-000360 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
 - c. Any lots created by SUB 06-000360 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.

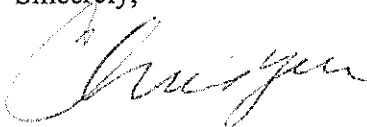
- e. Each permitted dwelling shall be provided with and maintain a private water supply system which includes an additional minimum 3,000 gallon water storage capacity for fire fighting and emergency purposes. The location and capacity of the emergency water supply system, including the necessary compatible 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 06-000360 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 06-000360, the owner(s) of the lot(s) created by SUB 06-000360 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 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 null and void.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

WRY:cd

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xc: Manager-DWS
SUB 06-000360