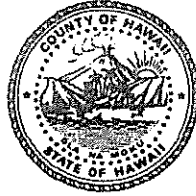


Harry Kim
Mayor



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

April 8, 2007

Mr. David Rudacille
P. O. Box 445
Naalehu, HI 96772

Dear Mr. Rudacille:

VARIANCE APPLICATION-VAR 07-013 (DENIAL)

Applicant: DAVID RUDACILLE
Owner: DAVID RUDACILLE, ET AL.
Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required,
Section 23-84, Water Supply, (1)(2)
Tax Map Key: 9-3-004:010, (SUB 06-000461)

After reviewing your variance application, the Planning Director denies your application and variance request from Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply, (1)(2), to allow proposed 9-lot subdivision (SUB 06-000461) to be served by private residential catchment systems.

The Planning Director has concluded that the variance from the minimum subdivision water system requirements required by Chapter 23, Subdivisions, be **denied** based the following findings and Rule 22-Water Variance:

BACKGROUND

1. **Location.** The referenced TMK property, containing 310.486 acres, was created by SUB 04-000121 on June 13, 2006, and is situated at Keaa 1st, 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).

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3. **Subdivision Request/PPM.** The applicant-owners submitted subdivision application (SUB 06-000461) and preliminary plat map (PPM) proposing to subdivide the subject TMK property containing 320.488 acres into 9-lots. Further action on the proposed 9-lot subdivision was deferred according to a letter dated February 5, 2007 in the subdivision file.
4. **Variance Application.** The applicant-owners submitted a variance application on February 21, 2007 to the Planning Department in Hilo.

The applicant's background information dated February 16, 2007, page 1, states in part the following:

“1. The applicant received a memorandum from the DEPARTMENT OF WATER SUPPLY, COUNTY OF HAWAII dated February 9, 2007 stating that the Departments existing water system facilities cannot support the proposed subdivision at the time of application. Extensive improvements and additions, including source, storage, transmission, booster pumps and distribution facilities must be constructed.

2. The attached analysis of existing site conditions and rainfall information maintained by various agencies (government) can be used to support an individual or separate private rainfall catchment system for potable and emergency uses. The annual rainfall, according to a map published on the U.S. Department of Commerce, National Climatic Data Center is approximately sixty inches. The annual rainfall map created by the Oregon Climate Service with Precipitation Data From N.O.A.A. Cooperative Stations, shows greater than 60 inches per year.

3. The proposed Subdivision fits the outlined (sic) by rule 22 of the County of Hawaii Planning Department's Rules of Practice and Procedure Relating to Water Variance and are addressed as follows:

a. Section 22-3, Eligibility

The subject property is not within the Service Limits of the Department of Water Supplies (sic) nearest water system. The nearest Department of Water Supply system is a positioning of water meters located on Kamaoa Rd. at the west end of Discovery Harbor Subdivision. This location is approximately 6000 feet away.

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b. Section 22-4, Maximum Rainfall

Over the past years, the annual median rainfall for this area (this parcel) is approximately 60 inches per year. This data can be substantiated by the government rainfall presented elsewhere in this application.

c. Section 22-5, Maximum Number of Lots

The number of lots proposed for this Catchment Subdivision is nine (9)."

5. **Agency Comments and Requirements-VAR 07-013:**

- a. The State Department of Health (DOH) memorandum is dated March 2, 2007. (Refer to memorandum in variance file).
- b. The Department of Water Supply (DWS) memorandum, dated March 29, 2007 states in part:

"We have reviewed the subject application and have the following comments and conditions.

The Department's existing water system facilities cannot support the proposed subdivision. Please be informed that the subject parcel is currently served by one (1) existing 5/8-inch meter (Account No. 950-27700). Should the subject subdivision application be approved, the applicant shall notify the Department, in writing, which lot within the proposed subdivision will be served with the existing service."

6. **Notice to Surrounding Property Owners/Sign.** The applicant forwarded copy of notice dated March 4, 2007 and other submittals on March 22, 2007. According to affixed postal receipts it appears that a notice was mailed to surrounding property owner(s) on or about March 12, 2007. The public notice was published in the Hawaii Tribune Herald and West Hawaii Today on March 10, 2007.

Posted Sign. The applicant forwarded affidavit dated March 1, 2007 and picture of posted sign.

7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received. The following letter was received:

7a. Letter from Gary and Rosemary Sizar dated March 13, 2007.

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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 residential catchment systems" by the individual lot owner(s) would not meet the intent and purpose of the Subdivision Code; and is not 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 6 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 applicant's background information and maps attached to the variance application were analyzed and compared with other rainfall maps and recent rainfall data available at the Planning Department and/or available from other local agencies, etc. monitoring rainfall on Hawaii Island. The property's elevation is between approximately 1480 feet and 1960 feet above sea level. In view of the applicant's submittals, e.g. "data" or "government rainfall presented elsewhere" included with the variance application compared with a rainfall map or map extract showing isohyet lines, the lower portion of the proposed subdivision or proposed lots: "LOT 7-A", "LOT 7-B", "LOT 7-C", "LOT 7-E", and "LOT 7-E", are situated near and above the 39+" isohyet line and/or the proposed 9-lot subdivision is **below** the 59+" isohyet line. Therefore, the subject TMK property and proposed 9-lot subdivision does not receive minimum 60" annual rainfall and the applicant's request for variance to allow individual rainwater catchment systems for potable and emergency use(s) is not allowed or eligible pursuant to Rule 22-Water Variance which requires the proposed subdivision to receive minimum 60" annual rainfall.

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VARIANCE DECISION

In view of the above, the proposed variance would not fulfill the intent of the Subdivision Code and does not meet with all the requirements or Rule 22-Water Variance. Therefore, the applicant's variance application to allow proposed 6-lot subdivision without providing a water supply pursuant to Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply, (1)(2), or request to allow the proposed 9-lot subdivision to be served by private catchment systems is **denied**.

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

Any person aggrieved by the decision of the director in the administration or application of this chapter, may, within thirty days after the director's decision, appeal the decision to the board of appeals.

Pursuant to Board of Appeal (BOA) Rule, PART 8. APPEALS, 8-15 General Standards for Appeals (Non-Zoning):

"A decision appealed from may be reversed or modified or remanded only if the Board finds that the decision is:

- (1) In violation of the Code or other applicable law; or
- (2) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (3) Arbitrary, or capricious, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion."

In view of the above, enclosed is form-**GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR**.

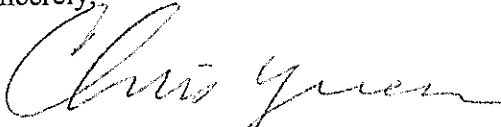
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Should you have any questions on the variance decision or the appeal procedure, please feel free to contact our Hilo office at telephone (808) 961-8288.

Sincerely,



CHRISTOPHER J. YUEN

Planning Director

WRY:cd

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Enclosure

xc: Manager-DWS
SUB 06-000461
Gary Sizar, Et al.