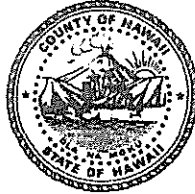


Harry Kim  
Mayor



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

May 3, 2007

Ms. Stephanie H. Kleiman  
15-192 South Road  
Pahoa, HI 96778

Dear Ms. Kleiman:

**VARIANCE-VAR 07-016**

**Applicant:** STEPHANIE KLEIMAN

**Owner:** STEPHANIE H. KLEIMAN

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

**Tax Map Key: 1-5-001:014, (SUB 05-000096)**

After reviewing the subject variance application, the Planning Director certifies the approval of Variance-VAR 07-016 subject to conditions. The variance permits proposed 2-lot subdivision (SUB 05-000096) 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 referenced TMK property, containing approximately 12.978 acres being a portion of Lot 8 of Kaohe Homesteads and portion of Grant 4976 to Walter A. Carpenter, is situated at Kaohe, Puna, Hawaii.

2. **Zoning.** The subject property is zoned Agricultural (A-5a) by the County and designated Agriculture "A" by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** The applicant or subdivider submitted a subdivision application (SUB 05-000096) and preliminary plat map (PPM), dated April 7, 2005, proposing to subdivide subject TMK property into 2-lots. Further action on the subdivision application was deferred pursuant to letter dated March 14, 2006 in SUB 05-000096.
4. **Variance Application.** The applicant submitted the variance application and submittals on March 6, 2007. The application includes the following statement:

"In accordance with Rule 22 I am attaching this map dated Monday, MARCH 5, 2007 showing the property receives (sic) in excess of 60" annual rainfall. It is felt that the proposed 2 lot subdivision meets with rule 22,"

5. **Agency Comments and Requirements (VAR 07-016):**

a. The State of Hawaii Department of Health (DOH) memorandum is dated March 15, 2007 (Refer to DOH memorandum in variance file).

b. The Hawaii Fire Department (HFD) memorandum dated April 4, 2007 states:

"In that the catchment 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 April 9, 2007, states in part:

"We have reviewed the subject application and our comments in our memorandum, dated January 31, 2006 (sic), to you still stand.

The nearest Department of Water Supply facility is an existing 8-inch waterline within Pahoa-Kalapana Road, approximately 1.8 miles from the subject property. Further, the subject parcel is located at an elevation such that the Department's existing water system facilities cannot provide adequate pressure."

**Note:** The DWS forwarded the following memorandum dated May 3, 2007 which states in part:

“This letter shall amend our memorandum to you dated April 9, 2007.

Please correct the date in line 1 of the memorandum referenced above from January 31, 2006 to July 22, 2005. The rest of the letter shall remain unchanged.”

6. **Notice to Surrounding Owners.** The applicant submitted a list of surrounding property owner(s) within 300 feet of subject TMK and affixed mailing receipt dated March 15, 2007. Subsequent to the foregoing, the applicant submitted a copy of notice sent to surrounding property owners on April 27, 2007 for subject variance file. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on March 20, 2007.

**Posted Sign.** The applicant submitted an affidavit dated April 9, 2007 regarding sign posted on subject TMK property and photograph(s) of the original posted sign and corrected sign for subject variance file.

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 applicant’s variance application and variance background information including rainfall information, and agency comments, the Planning Director has determined that there are special or unusual circumstances applying to subject 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 22, 2005 in subdivision file (SUB 05-000096) 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. Currently, sufficient funding is not available and no time schedule is set.”

Ms. Stephanie H. Kleiman

Page 4

May 3, 2007

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 05-000096) 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 "variance from water supply" 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."

Ms. Stephanie H. Kleiman

Page 5

May 3, 2007

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 map extract submitted by the applicant compared with the isohyet map study from Planning Department's GIS data base denotes subject TMK or proposed subdivision is situated between the 118.11 inch isohyet line and 157.48 inch isohyet line; and, pursuant to other rainfall information maintained by the Hawaii State Climate Office (HSCO), the proposed 2-lot subdivision is near active rain gauge "PAHOA 65". The mean annual rainfall (1970-2002) for "65" was 129.63 inches. The analysis of the applicant's submittals, Planning Department's isohyet map study, and historical or annual rainfall data maintained by HSCO for an active 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.

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 owner(s), 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 05-000096. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting 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:

Ms. Stephanie H. Kleiman

Page 6

May 3, 2007

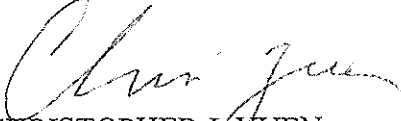
- a. The applicant or subdivider agrees and accepts the fact that a County dedicable public water system is not now able to service the proposed subdivision SUB 05-000096. Should the Council adopt a Unified Impact Fees Ordinance setting forth criteria for the imposition of exactions or the assessment of impact fees, conditions included herein shall be credited towards the requirements of the Unified Impact Fees Ordinance.
- b. No further subdivision of lots created by SUB 05-000096 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
- c. Any-lots created by SUB 05-000096 may not be made subject to a condominium property regime.
- d. Any dwelling constructed on a 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 any lot created by SUB 05-000096 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 05-000096, the owner(s) of the lot(s) created by SUB 05-000096 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.

Ms. Stephanie H. Kleiman  
Page 8  
May 3, 2007

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:cd  
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xc: Manager-DWS  
SUB 05-000096