

William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

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County of Hawai'i
PLANNING DEPARTMENT

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February 16, 2016

Chrystal Thomas Yamasaki, LPLS
Wes Thomas Associates
75-5749 Kalawa Street, 201
Kailua-Kona, HI 96740-1818

Dear Ms. Yamasaki:

SUBDIVISION WITHDRAWN
SUBDIVIDER: LYNCH, James
NEW OWNERS: HAYWARD, Nathaniel Downing & Katherine Ann
Proposed Subdivision of Lot 13,
As shown on Map 1 of Land Court Application 1332,
Into Lots 13-A, 13-B & 13-C, Inclusive,
Niuli'i, North Kohala, Island of Hawai'i, Hawai'i
TMK: 5-2-008:015 (SUB-05-000117)

On August 18, 2015, we requested a status report on the subject subdivision application. However, as of this date, we have not received any further correspondence on this matter.

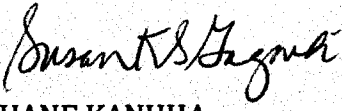
In view of the above, we are deeming it **withdrawn** and removing it from our active files. In addition, approved variance **VAR-07-000018** is also being declared **null and void**. A new application, complete with filing fees, must be submitted should the owner wish to subdivide the property.

Pursuant to Article 4, Section 23-60(c), Chapter 23, Subdivision Control Code, a portion of the filing fee equivalent of ten percent (10%) of the fee or fifty dollars (\$50.00), whichever is greater, shall be retained for applications which have been withdrawn or denied before granted tentative approval. However, Tentative Approval was granted on June 5, 2008 to the preliminary plat map, and therefore, no refund is due.

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Should you have any questions, please feel free to contact Jonathan Holmes of this department.

Sincerely,

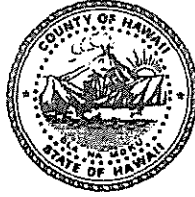

DUANE KANUHA
Planning Director

JRH:lnm

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xc: **Manager, DWS**
 Director, DPW
 District Environmental Health Program Chief, DOH
 District Engineer, DOT
 Nathaniel Downing and Katherine Ann Hayward
 VAR-07-000018

Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED® AP
Deputy Director

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May 4, 2007

Ms. Chrystal Thomas Yamasaki, L.P.L.S.
WES THOMAS ASSOCIATES
75-5749 Kalawa Street
Kailua-Kona, HI 96740

Dear Ms. Yamasaki:

VARIANCE-VAR 07-018

Applicant: WES THOMAS ASSOCIATES
Owner: JAMES LYNCH
Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required,
Section 23-84, Water Supply, (1)(2)

Tax Map Key: 5-2-008:015, (SUB 05-000117)

After reviewing the subject variance application, the Planning Director certifies the approval of Variance-VAR 07-018 subject to conditions. The variance allows proposed 3-lot subdivision (SUB 05-000117) to be created without providing a water system to two (2) proposed lots 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, Lot 13 containing approximately 58,318 square feet, Land Court Application 1332, is situated at Niulii, North Kohala, Hawaii.
2. **Zoning.** The subject property is zoned Single-Family Residential (RS-15) by the County and designated Urban "U" by the State Land Use Commission (LUC).

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3. **Subdivision Request/PPM.** The applicant/owner submitted subdivision application (SUB 05-000117) on June 22, 2005 proposing to subdivide subject TMK property into 3-lots. Further action on this application was deferred pursuant to letter dated August 5, 2005 in SUB 05-000117.
4. **Variance Application.** The applicant submitted the variance application on March 8, 2007.
5. **Agency Comments and Requirements (VAR 07-018):**
 - a. The State Department of Health (DOH) memorandum is dated March 29, 2007. (Refer to DOH memorandum in variance file).
 - b. The Department of Water Supply (DWS) memorandum, dated April 13, 2007, states in part:

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

Our comments from our August 17, 2005, memorandum to you, still stand. Please be informed that the subject parcel is currently served by one (1) existing 5/8-inch meter (Account No. 760-10420). Should the subject subdivision application be approved, the applicant shall notify the Department, in writing, which lot within the proposed 3-lot subdivision will be served with the existing service.”
6. **Notice to Surrounding Owners.** The applicant's forwarded a transmittal letter dated March 26, 2007 and mailing receipts dated March 26, 2007. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on March 29, 2007.

Posted Sign. The applicant forwarded transmittal letter dated March 26, 2007 together with an affidavit dated March 23, 2007 regarding posting a sign on subject TMK property, and photograph of the posted sign. Subsequently, the applicant, on behalf of the owner, forwarded a follow-up letter dated April 5, 2007 regarding the Planning Department's request to relocate the sign within the property's access easement or closer to the Government Road.

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 August 17, 2005 in subdivision file (SUB 05-000117) 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.”

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 3-lot subdivision (SUB 05-000117) 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.

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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 "water catchment systems" utilizing privately owned individual rain water catchment systems for 2-lots within proposed 3-lot subdivision can meet the intent and purpose of the Subdivision Code; and, generally 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 or potable and emergency needs ("on agriculturally-zoned property") 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."

After considering other similar and approved water variances within the immediate area, analyzing historical rainfall data within the immediate area, and other historical rainfall records including historical rainfall information provided by the applicant, there is adequate rainfall within the subject TMK property to support individual or separate private rainwater catchment systems for potable and emergency uses for 2-lots of the proposed 3-lot subdivision. Information submitted by the applicant indicates that a rain gauge "Niulii" is at an elevation of 79 feet (sic). According to historical annual rainfall records obtained from the Hawaii State Climate Office (HSCO), the mean annual rainfall (1949-1975) for "179" was 59.46 inches. Other State of Hawaii publications indicate rain gauge "179" is 75 feet above sea level. A recent Planning Department's map study of the property shows the property's elevation is 200' + above sea level, whereby, annual rainfall within the subject TMK property would be more than the annual rainfall measured at "179". Thus, the proposed subdivision receives at least 60+ inches of rainfall annually.

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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 subdivision of the subject TMK property without providing a water system meeting DWS standards to 2-proposed lot of pending 3-lot subdivision 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. Pursuant to DWS memorandum dated April 13, 2007, the applicant/owner or subdivider shall contact the DWS in writing and assign existing DWS-5/8-inch meter (Account No. 760-10420) to proposed lot being created by proposed subdivision (SUB 05-000117). The applicant or DWS shall identify and confirm the proposed lot number and notify the Planning Department-Subdivision Section-SUB 05-000117, in writing, prior to issuance of tentative subdivision approval.
3. 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 05-000117. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting the 2-lots not serviced by a County water system created by pending 3-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 05-000117. 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.

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- 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 05-000117 not serviced by a County water system. No further subdivision of the lots created by SUB 05-000117 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
- c. Any lots created by SUB 05-000117 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.

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- g. In the event that the County notifies the owner(s) of the lots not serviced by a County water system created by SUB 05-000117 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 05-000117, the owner(s) of the lot(s) created by SUB 05-000117 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.
4. 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.
 5. 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.

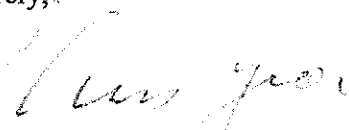
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Should any of the foregoing stated conditions not be complied with, the Planning Director may proceed to declare the subject Variance null and void.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

WRY/DSA:cd

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xc: Manager-DWS
SUB 05-000117