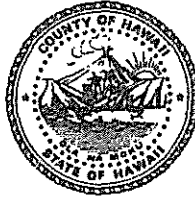


Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED® AP
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-4224
(808) 961-8288 • FAX (808) 961-8742

September 28, 2007

Roy A. Vitousek, III, Esq.
CADES SCHUTTE, LLP
75-170 Hualalai Road, Suite 303
Kailua-Kona, HI 96740

Dear Mr. Vitousek:

VARIANCE-VAR 07-038

Applicant: ROY A. VITOUSEK III/CADES SCHUTTE, LLP

Owner: EDWARD J. RAPOZA, ET AL.

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

Tax Map Key: 7-1-005:027, 062 (Por.), and 020 (Por.), (SUB 06-000286)

After reviewing the subject variance application, the Planning Director certifies the approval of Variance-VAR 07-038 subject to conditions. The variance permits proposed 2-lot subdivision (SUB 06-000286) to be serviced by a privately owned water supply system not 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 subject TMK property(s), containing approximately 10.7 acres, are makai of the North Kona Belt Road and situated between the 20 mile and 21 mile markers near Puuanahulu Baptist Church and situated at Puuanahulu Homesteads, North Kona, 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/owner submitted a subdivision application (SUB06-000286) and revised preliminary plat map (PPM), dated June 20, 2007, proposing to subdivide subject TMK property into 2-lots. Further action on the proposed subdivision application is being deferred pursuant to letter dated October 9, 2006 in the subdivision file.
4. **Variance Application.** The applicant, on behalf of the owners submitted the variance request and subject variance application was acknowledged by letter dated June 5, 2007.
5. **Agency Comments and Requirements-VAR 07-038:**
 - a. The County of Hawaii-Hawaii Fire Department (HFD) memorandum is dated June 25, 2007 states:

"In regards to the above-mentioned change of zone application, we offer the following response:

Private water supply shall be in accordance with NFPA 1142."
 - b. The Department of Water Supply (DWS) memorandum, dated June 27, 2007, states in part:

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

Although the private water system owner, Na Puu Water, Inc., cannot guarantee that the existing water system meets the Department's current Water System Standards, we have no objection to the proposed application as there are existing services for each lot and the water system in the area is privately owned and operated."
 - c. The State Department of Health memorandums are dated June 14, 2007 and dated July 6, 2007. (Refer to the DOH memorandums in variance file).

6. **Notice to Surrounding Owners.** The applicant's forwarded a transmittal letter dated June 18, 2007, copy of notice sent to surrounding property owner(s) within 300 feet of subject TMK property, and affidavit dated June 18, 2007. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on June 17, 2007.

Posted Sign. The applicant submitted an affidavit regarding the posting of sign on subject TMK property dated May 25, 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 variance background information provided by the applicant, agency comments, 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 first alternative requires the applicant to construct a county water system and provide the necessary dedicable water system improvements in accordance with DWS standards.

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 to construct a dedicable public water system or approved alternative private water system meeting DWS standards for the proposed subdivision would be putting excessive demands upon the applicant when a more reasonable alternative is available.

The applicant's background report (page 3) states in part:

"The county water system currently does not extend to the Puuanahulu area, and the County has expressed no intention of acquiring the private water system at Puuanahulu. This area has been and is currently served by a private water system which has met the requirements of the Public Utilities Commission and is committed to service the subject properties."

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 applicant's background report (page 2 and 3) states in part:

"The proposed lots, B-1 and B-2 have separate water meters and currently receive water from Napuu Water, Inc. Copies of the owners' water bills (Island Utility Services, Inc., and Puu Waa Waa Waterworks) are attached as Exhibit 9. By letter dated March 15, 2007, from Napuu Water, Inc., to Edward J. Rapoza, Napuu Water, Inc. confirms that it currently provides water service to the subject property as part of an existing agreement between the owners and the previous owner of Napuu Water, Inc. Exhibit 10."

In addition to receiving water from Napuu Water, Inc., the owners plan to supplement their water service by installing a catchment system with a holding tank on each lot of at least 6,000-gallon capacity to be used as irrigation of landscaping and agricultural crops. The tanks will be fitted for fire-fighting purposes if necessary. The tanks can be filled with water from the Napuu Water, Inc., system during seasons of low rainfall, if necessary."

The subject variance application was acknowledged by letter dated June 5, 2007 and additional time to complete the variance background report was necessary. An extension of time was granted by the owner to complete the variance background report and render decision on subject variance application to on or before October 3, 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 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 2-lot subdivision of the subject TMK property to be serviced by a private water supply system not 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.

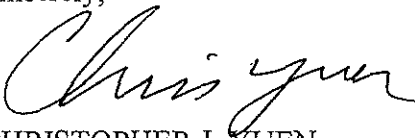
2. WATER VARIANCE: The owners, their assigns, or successors shall file a written agreement or approved written document with the Planning Department within one (1) year from the issuance of tentative subdivision approval and prior to receipt of final subdivision approval of SUB 06-000286. This written 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 06-000286.
 - 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 lots created by SUB 06-000286 not serviced by a County water system. No further subdivision of the lots created by SUB 06-000286 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
 - c. Any lots created by SUB 06-000286 may not be made subject to a condominium property regime.
 - d. The location and capacity of any other catchment system or water holding system sited on the proposed lots shall include a compatible connector for emergency purposes meeting 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 3000 gallon water storage system for fire fighting and emergency purposes.

- e. 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.
 - f. In the event that the County notifies the owner(s) of the lot(s) created by SUB 06-000286 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 06-000286, the owner(s) of the lot(s) created by SUB 06-000286 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.
 - g. 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.

Roy A. Vitousek, III, Esq.
CADES SCHUTTE, LLP
Page 7
September 28, 2007

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/CJY:cd
P:\WP60\WRY\FORMLETT\VAR07-038SUBWATER.RAPOZA-VITOUSEK

xc: Manager-DWS
SUB 06-000286