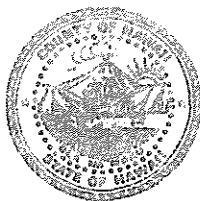


Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED® AP
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County of Hawaii

PLANNING DEPARTMENT

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

February 19, 2008

Ms. Lori Mikkelson
All Aina Services
P. O. Box 291
Laupahoehoe, HI 96764

Dear Ms. Mikkelson:

SUBJECT: VARIANCE-VAR 07-051

Agent: ALL AINA SERVICES
Applicants: MANUEL J. SOUZA, JR., ET AL.
Owners: MANUEL J. SOUZA, JR., ET AL.
**Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required,
Section 23-84, Water Supply, (1)(2)**
Tax Map Key: 4-4-008:035, (SUB 06-000447)

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 07-051 subject to variance conditions. The variance permits proposed 3-lot subdivision (SUB 06-000447) without providing a water system to 2 proposed lots 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 applicant's variance application can be **approved** based on the following background and findings:

BACKGROUND

1. **Location.** The subject TMK property, containing approximately 18.624 acres, being Lot 58 of Kalopa Homesteads and a portion of Grant 8989 to Wm. George Lawson, is situated at Kalopa, Hamakua, Hawaii.

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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 06-000447) and revised preliminary plat map (PPM), dated November 10, 2006, proposing to subdivide subject TMK property into 3-lots. Further action on subdivision application (SUB 06-000447) was deferred pursuant to letter dated June 20, 2007 in the subdivision file.
4. **Variance Application.** The applicant's agent submitted the variance application and submittals on October 10, 2007. The application's background states in part the following:

"The applicant would like to request a variance for TMK (3) 4-4-008:035. The owners are in the process of subdividing their parcel into three (3) lots, however that subdivision is pending on a subdivision variance for water requirements. It has been determined that county water will not be available to the parcels. Therefore, the owners would like to install individual catchment water tanks on the parcels, in order to accommodate." (sic)

Note: The subdivision application's PPM dated November 10, 2006 includes "NOTES" (7-Notes. Note "4." States the following:

"At present the DOW (sic) does not have sufficient water pressure to supply the newly created lots. Therefore the domestic water will be by catchment and has adequate rainfall to conform to the minimum requirements. The one and only water meter will be assigned to Lot 58-A."

5. **Agency Comments and Requirements-VAR 07-051:**
 - a. The State of Hawaii Department of Health (DOH) memorandum is dated October 25, 2007. Refer to DOH memorandum in variance file.

- b. The County of Hawaii-Hawaii Fire Department (HFD) memorandum dated October 29, 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 November 15, 2007, states in part:

“Please be informed that we have no objection to the subject application. The applicant has informed the Department that the existing service (Account No. 690-24400) will be designated to Lot 58-A within the proposed subdivision.”

6. **Notice to Surrounding Owners.** The applicant’s agent submitted copy of notice(s) sent to surrounding property owner(s) within 500 feet and 300 feet of subject TMK property according to list(s) attached to respective notices and US postal receipts dated July 9, 2007 and December 17, 2007. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on October 30, 2007.

Posted Sign. The applicant submitted an affidavit dated July 27, 2007 regarding sign posted on subject TMK property and photograph of 2-posted signs regarding subdivision and variance applications.

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 regarding the status of the current DWS system, 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.

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ALTERNATIVES

The DWS memorandum dated November 15, 2006 in subdivision file (SUB 06-000447) 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.

Should a variance be approved by your Department, we request that the applicant inform our office, in writing, which lot the existing service (Account No. 690-244400) will be assigned to.”

(Note: Refer to subsequent DWS memorandum dated November 15, 2007 cited above in subject variance file).

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 the proposed 3-lot subdivision (SUB 06-000447) 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,

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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 variance to proceed to final subdivision" to allow and utilize privately owned individual rain water catchment systems for proposed 3-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 applicant's information and current and historical rainfall information maintained by government agencies indicate the subject TMK property and surrounding areas receive more than 60 inches of annual rainfall to support individual or separate private rainwater catchment systems for potable and emergency uses for the proposed subdivision. The isohyet map study map or extract from Planning Department's GIS data base denotes the subject TMK or proposed subdivision is situated between the 80 inch isohyet line(s); and, pursuant to other rainfall data or gage information dated 1996, the proposed 3-lot subdivision is near rain gage "216.3". The mean annual rainfall (1986) for "216.3" was approximately 100 inches. The analysis of the applicant's submittals compared with the isohyet map study map and other published historical or annual rainfall data reports indicate the proposed 3-lot subdivision will receive at least 60+ inches of rainfall annually. The proposed subdivision meets Rule No. 22-Water Variance.

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The applicant's variance application was acknowledged by letter dated October 22, 2007 and additional time was requested by the applicant's agent to send notice to surrounding property owners. The agent requested an extension of time to send notice of variance to surrounding property owners and granted extension of time to the Planning Director to render decision on the variance application to February 22, 2008.

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 proposed 3-lot subdivision of the subject TMK property to be created without providing a water system to 2-proposed lots 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, 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 06-000447. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting affected (2) lots created by proposed 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 applicants/owners or subdividers agree and accepts the fact that a County dedicable public water system is not now able to service the proposed subdivision SUB 06-000447. 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.

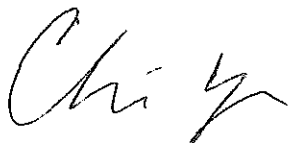
- b. No further subdivision of lots created by SUB 06-000447 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
- c. Any lots created by SUB 06-000447 may not be made subject to a condominium property regime.
- d. Any dwelling constructed on lot(s) 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 lots created by SUB 06-000447 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 06-000447, the owner(s) of the lot(s) created by SUB 06-000447 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 subdividers 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 owners 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 construction and land use. The status of any active building permits issued to subject TMK property shall meet with the requirements of the Zoning Code and County building ordinances and state statutes for new building construction.

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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 Permit null and void.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

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xc: Manager-DWS
SUB 06-000447