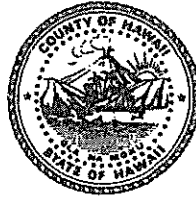


Harry Kim  
Mayor



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

May 16, 2008

Mrs. Melody A. Wohlfeil  
58 Riverside Drive  
Roswell, NM 88201

Dear Mrs. Wohlfeil:

**VARIANCE-VAR 07-052**

**Applicant: MELODY A. WOHLFEIL**

**Owner: HERMAN D. WOHLFEIL, ET AL.**

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

**Tax Map Key: 2-9-002:085, (SUB 05-000230)**

After reviewing the subject variance application, the Planning Director certifies the approval of Variance-VAR 07-052 subject to variance conditions. The variance allows proposed 7-lot subdivision (SUB 05-000230) of subject TMK property without providing a water supply system to 6-proposed building lots meeting minimum requirements of the County-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 referenced TMK property, Lot 7 containing approximately 5.572 acres, being portion of Royal Patent 7541, Land Commission Award 11, 216, Apana 42 to Kekauonohi, is situated at Hakalau, South Hilo, Hawaii.

2. **Zoning.** The subject property is zoned Single-Family Residential (RS-7.5) by the County and designated Urban "U" by the State Land Use Commission (LUC). The property is within the Special Management Area (SMA). The property does not have frontage along the coastline.

The subject TMK property is makai of the Old Mamalahoa Highway and proposed subdivision of the subject TMK property is subject to requirements stated in letter dated February 7, 2008 and Special Management Area Minor Permit (SSM) No. 07-000068 and SMM conditions dated February 7, 2008.

3. **Subdivision Request/PPM.** The applicant/owners submitted subdivision application (SUB 05-000230) and filed revised preliminary plat map (PPM), dated July 2, 2007 proposing to subdivide subject TMK property into 7-lots. Further action on the subdivision application and PPM is being deferred according to letters in the subdivision file.
4. **Variance Application.** The applicant submitted a variance application on July 11, 2007. The applicant agreed to defer processing of the variance request and application pending review and action on the Special Management Area Use Permit Assessment Application. The variance application and review of the variance submittals are subject to SMM No. 07-000068 and SMM conditions dated February 7, 2008 and agency comments.

5. **Agency Comments and/or Requirements-VAR 07-052:**

- a. The State Department of Health (DOH) memorandum is dated March 27, 2008. Refer to DOH memorandum in variance file.
- b. The Hawaii County Fire Department memorandum dated March 28, 2008 states:  
  
"In that the catchment system 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 14, 2008, states in part:

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

Please be informed that the applicant has informed the Department that the existing service to the subject parcel (Account No. 500-00013) will be assigned to proposed Lot G in this subdivision. Therefore, we have no objections to granting final subdivision approval. The applicant shall be notified, through copy of this letter, that the existing meter shall not be shared with any of the other proposed lots.”

6. **Notice to Surrounding Owners.** The applicant’s submitted copy of notice sent to surrounding property owner and U. S. Postal Service Certified Mail Receipt(s) dated March 26, 2008. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on March 28, 2008.
7. **Posted Sign.** The applicant submitted an affidavit regarding the posting of sign on subject TMK property dated March 31, 2008 and picture-photograph of the required sign.
8. **Comments from Surrounding Property Owners or Public.** No other agency comments were received and the following letters supporting proposed subdivision and/or comments regarding project and/or letters objecting to the request for variance or subdivision/variance application were received:
  - 8a. Objection (email) regarding letter dated July 20, 2007 opposing “catchment waiver” from Jim and Jo Ann Cairns.
  - 8b. Letter dated December 18, 2007 received from Phil and Korey Halsch supporting proposed subdivision.
  - 8c. Objection letter dated April 2, 2008 from Arman Wiggins.
  - 8d. Objection letter dated April 5, 2008 from Shari Treski and Daniel Morii.

Mrs. Melody A. Wohlfeil

Page 4

May 16, 2008

- 8e. Email/letter dated April 7, 2008 from GB Hajim opposing variance application. Email from GB Hajim dated April 12, 2008 asking the Planning Department to “disregard previous testimony”.
- 8f. Comments dated “16 April, 2008” from Ana Antilla (Analoa Flower Farm).

Note: The (email) dated July 20, 2007 and letter dated December 18, 2007 were submitted prior to issuance of SMM No. 07-000068 and SMM conditions dated February 7, 2008. The processing and review of the variance application is subject to the SMM permit and SMM conditions dated February 7, 2008.

Therefore, after considering the circumstances and variance background information, rainfall information provided by the applicant, agency comments, and comments from surrounding property owner(s), 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 following 3-DWS memorandums or comments/requirements in subdivision file (SUB 05-000230) were considered:

The DWS-memorandum, dated January 12, 2006, states in part:

“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 DWS-memorandum, dated March 8, 2006, states in part:

“For your information, there is an existing service to the property (Account No. 500-00013).

We request that the applicant provide, in writing, which lot this account will service.”

Mrs. Melody A. Wohlfeil  
Page 5  
May 16, 2008

The DWS-memorandum, dated August 3, 2007, states in part:

“Please refer to our January 12, 2006, and March 8, 2006, memorandums to you, for our comments and requirements.”

Pursuant to the DWS memorandums, the subject TMK property is assigned 1-DWS water meter and additional service from the DWS system cannot support proposed subdivision.

In sum, the first alternative requires the applicant or owners to make “extensive improvements and additions” to the county DWS water system in order to provide service from the DWS water system to proposed subdivision or 6-additional lots or building lots (e.g. proposed “LOT 7-A”, “LOT 7-B”, “LOT 7-C”, “LOT 7-D”, “LOT 7-E”, and “LOT 7-F”).

The second alternative would be to design, drill and develop private wells and install the necessary water system improvements in accordance with DWS standards for the proposed subdivision and/or proposed building lots.

In view of the above, there are no other reasonable alternatives in resolving the difficulty of the applicant, at this time. The imposition of extending or constructing a public water system or constructing an alternative private water system meeting DWS standards for proposed 7-lot subdivision (SUB 05-000230) would be putting excessive demands upon the applicant or owners when a more reasonable alternative is available.

**INTENT AND PURPOSE-WATER VARIANCE**

The intent and purpose of requiring a water system for and within a proposed subdivision is to assure that adequate water within the 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 “water variance” to allow and utilize privately owned individual rain water catchment systems for the proposed subdivision or lots without a water meter can meet the intent and purpose of the Subdivision Code; and, meets criteria or standards 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 on agriculturally-zoned property. 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.

“22-5 Maximum Number of Lots

Except as provided in Rule 22-6, no more than six lots shall be allowed in a catchment subdivision.”

In this case, the proposed subdivision is zoned Single-Family Residential (RS-7.5) and Section 23-84 of the Subdivision Code requires a water supply system. Rule 22 doesn't actually apply to subdivisions zoned RS requesting a variance from water supply system. However, the proposed subdivision does not create more than six (6) lots without water supply system and the subject TMK property is geographically located in an area which receives more than 60 inches of annual rainfall.

In consideration of above and rainfall maps at the Planning Department, and other rainfall data, the subject TMK property or proposed subdivision is near the 160 inch isohyet line and receives approximately 160 inches of annual rainfall to support proposed individual or privately owned individual rain water catchment systems for potable and emergency uses for the proposed subdivision. According to rainfall gauge information available at the Hawaii State Climate Office (HSCO) the proposed subdivision is closest to rain gauge station “142” which was located situated “makai” or approximately 500 feet away in 1994 from the subject TMK property or proposed subdivision. The analysis of the applicant's submittals and historic rain gauge information and mean rainfall data available at HSCO for “142” for years 1949-1994 is 132.75 inches. Therefore, the subject TMK property or proposed subdivision and surrounding areas receive in excess of 130 + inches of rainfall annually.

Mrs. Melody A. Wohlfeil

Page 7

May 16, 2008

Given the proposed subdivision's density and proposed lot sizes denoted on the subdivision application's PPM, the applicant's request for variance is reasonable. The proposed subdivision will create 7-building lots ranging from in area of 0.352 acre (15,000 + square feet) to maximum 1.903 acres (82,894 + square feet), whereas the full potential density for this property currently zoned RS-7.5 zoning is 32-lots. The provisions for water storage, water distribution, and construction of private rain water catchment system(s) for proposed building lots created by the proposed subdivision will be addressed by the applicant or future owner(s) and subject to SMM and variance conditions.

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 for proposed subdivision (SUB 05-000230) is **approved** subject to 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 14, 2008, Account No. 5000-00013 assigned to proposed lot "7-G" shall not be shared with any of the proposed lots created by proposed subdivision (SUB 05-000230). The County water meter servicing the "HOUSE" or assigned to proposed "LOT 7-G" created by proposed subdivision (SUB 05-000230) shall not be shared with any existing or abutting lots sharing common property lines with proposed subdivision (SUB 05-00023).
3. The 7-lots created by SUB 05-000230 are subject to SMM No. 07-000068 and SMM conditions dated February 7, 2008. The 7-lots created by SUB 05-000230 shall be limited to only one (1) single-family dwelling unit unless county water system requirements and other requirements of Chapter 23, Subdivisions, including access and State-DOH requirements are met.

4. 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 05-000230. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting 6-lots not serviced by a County water system or pending 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 05-000230. 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. 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 05-000230 not serviced by a County water system. No further subdivision of the lots created by SUB 05-000230 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
  - c. Any lots created by SUB 05-000230 may not be made subject to a condominium property regime.
  - d. The first 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.



Mrs. Melody A. Wohlfeil

Page 9

May 16, 2008

- e. The first 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 the lot(s) created by SUB 05-000230 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 05-000230, the owner(s) of the lot(s) created by SUB 05-000230 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

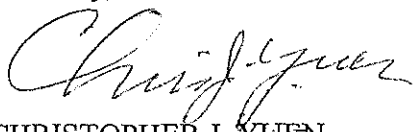
Mrs. Melody A. Wohlfeil  
Page 10  
May 16, 2008

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.

5. The subdivision application's final plat map shall meet all the requirements of Special Management Area Minor Permit No. 07-000068 and SMM conditions dated February 7, 2008, Chapter 25, Zoning, and Chapter 23, Subdivisions not covered by this variance.
6. No permit shall be granted to allow an ohana dwelling or building permit issued to allow construction of an "ohana" dwelling upon subject TMK property or upon lots created by SUB 05-000230, subject to provisions of the Zoning Code or State Law which may change from time to time.
7. 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.

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

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Mrs. Melody A. Wohlfeil

Page 11

May 16, 2008

xc:     Manager-DWS  
          SUB 05-000230  
          SMM No. 07-000068  
          Mr. Jim and Ms. Jo Ann Cairns  
          Mr. Phil and Ms. Korey Halsch  
          Mr. Arman Wiggins  
          Ms. Shari Treski and Mr. Daniel Morii  
          GB Hajim  
          Ms. Ana Antilla