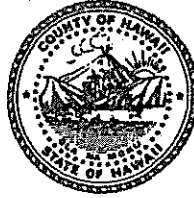


Harry Kim
Mayor



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

February 7, 2008

Mr. Scott E. Aken, Project Manager
ENGINEERING PARTNERS, INC.
P.O. Box 4159
Hilo, HI 96720

Dear Mr. Aken:

VARIANCE-VAR 07-059

Agent: ENGINEERING PARTNERS, INC.
Applicant: DENNIS SANTIAGO
Owner: DENNIS SANTIAGO
Request: Variance from Chapter 23, Subdivisions,
Improvements Required
Tax Map Key: 1-8-005:126, (SUB 07-000550)

After reviewing your variance application, the Planning Director certifies approval of Variance-VAR 07-059 subject to conditions. The variance permits proposed 2-lot subdivision (SUB 07-000550) to be created without providing a water system to 1-lot 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 subject TMK property, containing 50.00 acres, being Lot 118 of Oloa Reservation Lots, portion of Grant 4128, is situated at Oloa, Puna, Hawaii.
2. **Zoning.** The subject property is zoned Agricultural (A-20a) by the County

Mr. Scott E. Aken, Project Manager
ENGINEERING PARTNERS, INC.

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February 7, 2008

and designated Agriculture "A" by the State Land Use Commission (LUC).

3. **Subdivision Request/PPM.** The applicant's agent submitted subdivision application (SUB 07-000550) and preliminary plat map (PPM), dated March 23, 2007 proposing to subdivide subject TMK property into 2-lots. Further action on the subdivision application was deferred pursuant to letter dated May 11, 2007 in SUB 07-000550.
4. **Variance Application.** The applicant's agent submitted the variance application and submittals on July 27, 2007 and October 22, 2007. The application includes a letter dated October 22, 2007 which states in part:

"In response to COH Dept. of Water Supply letter dated June 05, 2007, I am submitting the attached Variance request under rule 22 of the COH Planning Department.

The Dept. of Water Supply conditions of approval for this application requires the installation of many improvements necessary to provide water services which may include, but not be limited to, a new source, storage tank, booster pumps, transmission, and distribution facilities at an enormous cost to our clients. This variance requests relief from the obligation to install the extensive water system improvements to service the second lot of the proposed two lot subdivision.

Our proposal, in lieu of the cost of building an extensive water distribution system, is to use the 5/8" service lateral for the existing house/lot. And provide water to the second lot by utilizing a water catchment system. This relief from the Dept. of Water Supply's obligation to provide water would be acknowledged in the title documents to any future owners of the second lot,

The Department of Public Works has acknowledged there are no improvements required to Pszyk Road."

5. **Agency Comments and Requirements (VAR 07-059):**
 - a. The State of Hawaii Department of Health (DOH) memorandum is.

Mr. Scott E. Aken, Project Manager
ENGINEERING PARTNERS, INC.

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February 7, 2008

dated November 5, 2007. Refer to DOH memorandum in subject variance file.

- b. The Hawaii Fire Department (HFD) memorandum dated November 6, 2007 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 November 23, 2007, states in part:

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

Our comments from our June 5, 2007, 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. 060-20945). Should the subject subdivision application be approved, the applicant shall notify the Department in writing which lot within the proposed 2-lot subdivision will be served with the existing service. Further, the applicant shall be notified that both lots shall not share the existing meter.”

6. **Notice to Surrounding Owners.** The applicant’s agent submitted copy of notice sent to surrounding property owner(s) within 300 feet of subject TMK property and affidavit dated December 13, 2007. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on November 7, 2007.

Posted Sign. The applicant-owner submitted an affidavit dated December 20, 2007 and photograph of the sign posted on subject TMK property to the Planning Department on December 27, 2007.

7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received and no objections were received from

Mr. Scott E. Aken, Project Manager
ENGINEERING PARTNERS, INC.

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February 7, 2008

surrounding property owners or public.

Therefore, after considering the variance application and variance background information submitted, agency comments, and other information, 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 Mr. Scott E. Aken, Project Manager 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 June 5, 2007 in subdivision file (SUB 07-000550) states in part the following:

“Please be informed an existing 5/8-inch meter services the subject parcel. However, the Department’s existing water system facilities cannot support the proposed subdivision at this time. Extensive improvements and additions, which may include, but not be limited to, source, storage, booster pumps, transmission, and distribution facilities, would be required. Currently, sufficient funding is not available from the Department for such improvements and no time schedule is set.

Should the subject subdivision application be approved, the applicant shall notify the Department in writing which lot within the proposed 2-lot subdivision will be served with the existing service.”

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-DWS water system or providing an approved alternative private water system meeting DWS standards for proposed 2-lot subdivision (SUB 07-000550) would be putting excessive demands upon the applicant when a more reasonable alternative is available.

Mr. Scott E. Aken, Project Manager
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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 "water variance" 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."

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 lot not serviced by the DWS water supply system. According to map-Plate 6-WATER-RESOURCES INVESTIGATIONS REPORT 95-4212, the subject TMK property or proposed subdivision is above the "160" inch isohyet line; and historical .

Mr. Scott E. Aken, Project Manager
ENGINEERING PARTNERS, INC.

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rainfall information obtained from the State Climate Office (HSCO) and GIS mapping information show the proposed 2-lot subdivision is near former rain gauge "MOUNTAIN VIEW 91". The mean annual rainfall (1949-1985) for "91" was 185.61 inches. The analysis of the applicant's submittals together with rainfall maps and other published rainfall data for the area indicate the subject TMK property or proposed subdivision will receive more than 60+ inches of rainfall annually.

The analysis of the applicant's submittals together with other rainfall maps and published rainfall data for the subject TMK property and surrounding areas indicate the proposed lot or lot designated to utilize private rainwater catchment systems for potable water and emergency uses will receive in excess of 60 + inches of rainfall annually. The proposed subdivision meets Rule No. 22-Water Variance.

The subject variance application was acknowledged by letter dated October 29, 2007 and additional time to submit proof of notice sent to surrounding property and sign affidavit and photograph of sign posted upon the subject TMK property was necessary. The applicant requested additional time to submit the affidavit regarding a sign and photograph of sign posted on the subject TMK property. The applicant granted the Planning Director an extension of time to render decision on the variance application to February 15, 2008.

Based on the foregoing findings, the variance requested 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 application to allow 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.

Mr. Scott E. Aken, Project Manager
ENGINEERING PARTNERS, INC.

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February 7, 2008

2. Pursuant to the DWS memorandum dated November 23, 2007, the applicant or subdivider shall contact the DWS in writing and assign existing DWS- 5/8-inch meter (Account No. 060-20945) to proposed lot being created by proposed subdivision (SUB 07-000550). The applicant or DWS shall identify and confirm the proposed lot number and notify the Planning Department-Subdivision Section-SUB 07-000550, 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 07-000550. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting the lot not serviced by a County water system created by 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 07-000550. 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 proposed subdivision or affected additional lot created by SUB 07-000550 not serviced by a County water system. No further subdivision of the lots created by SUB 07-000550 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
 - c. Any lots created by SUB 07-000550 may not be made subject to a condominium property regime.

Mr. Scott E. Aken, Project Manager
ENGINEERING PARTNERS, INC.

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February 7, 2008

- d. Any dwelling constructed on 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.
- g. In the event that the County notifies the owner(s) of the lot created by SUB 07-000550 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 07-000550, the owner(s) of the lot(s) created by SUB 07-000550 shall participate in such improvement

Mr. Scott E. Aken, Project Manager
ENGINEERING PARTNERS, INC.

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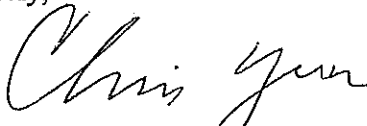
February 7, 2008

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.

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

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

WRY:cs

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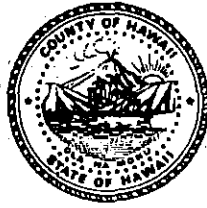
Mr. Scott E. Aken, Project Manager
ENGINEERING PARTNERS, INC.

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February 7, 2008

xc: Manager-DWS
SUB 07-000550

William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563

County of Hawai'i
PLANNING DEPARTMENT

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

January 18, 2012

Mr. Dennis M. Santiago
Ms. Judy R. Santiago
P.O. Box 1146
Kurtistown, HI 96760

Dear Mr. & Ms. Santiago:

**SUBJECT: DECLARATION OF VARIANCE
VARIANCE - VAR 07-00059
Document No(s). 2011-147250
TMK: (3) 1-8-005:126, (SUB 07-000550)**

Enclosed is Document No. 2011-147250 (Original) for your files. A copy of this document will be maintained in our files at the Hilo office.

If you should have any questions, please contact this office at (808) 961-8288.

Sincerely,

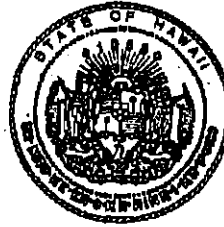

BJ LEITHEAD-TODD
Planning Director

SHG/shg

p:\admin\permits\division\variance\2007\var 07-059 santiago\recorded\variance\declaration18005126.doc

Enclosure: Agreement (Original)

xc: SUB 07-000550 (Ltr. only)



R-812 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
SEP 13, 2011 08:02 AM
Doc No(s) 2011-147250



/s/ NICKI ANN THOMPSON
REGISTRAR

20 1/1 21

REGULAR SYSTEM: _____

KL
LAND COURT SYSTEM: _____

AFTER RECORDATION, RETURN BY MAIL TO:

County of Hawai'i Planning Department
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720

TITLE OF DOCUMENT:

**DECLARATION FOR VARIANCE
VAR-07-000059**

PARTIES TO DOCUMENT:

**AGENCY: PLANNING DIRECTOR
PLANNING DEPARTMENT,
COUNTY OF HAWAI'I**

**DECLARANTS: DENNIS M. SANTIAGO and
JUDY R. SANTIAGO
P.O. Box 1146
Kurtistown, Hawai'i 96760**

PROPERTY DESCRIPTION:

Lot 118, consisting of approximately 50.00 acres,
'Ōla'a Reservation Lots, Being also a Portion of
Grant 4128, situated at 'Ōla'a, Puna, Hawai'i

TMK No. (3) 1-8-005:126

DECLARATION FOR VARIANCE – VAR-07-000059

This Declaration is made this 11 day of July, 2011,

Whereas, **DENNIS M. SANTIAGO and JUDY R. SANTIAGO**, whose primary mailing address is P.O. Box 1146, Kurtistown, Hawai'i 96760, are the owners of real property bearing Tax Map Key (3) 1-8-005:126, more particularly described herein; and

Whereas, the owner(s) desire to subdivide the above-described property or tax map key (3) 1-8-005:126 parcel of land into two (2) lots; and

Whereas, the Planning Director for the County of Hawai'i has, by letter dated February 7, 2008, agreed to grant variance from the water system improvement requirements applicable to a proposed two (2) lot subdivision (SUB-07-000550) of the above-referenced property; and

Whereas, the grant of Variance – VAR-07-000059 by the Planning Director is subject to the following Variance conditions:

1. WATER VARIANCE:

- 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-07-000550. 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 proposed subdivision or affected additional lot created by SUB-07-000550 not serviced by a County water system. No further subdivision of the lots created by SUB-07-000550 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
- c. Any lots created by SUB-07-000550 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 Hawai'i County Fire Department and be located in an area accessible to fire apparatus. The Hawai'i 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 created by SUB-07-

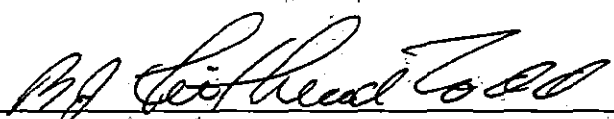
000550 that the County Water System has been upgraded, or an improvement district initiated to enable service to the lots created by SUB-07-000550, the owner(s) of the lot(s) created by SUB-07-000550 shall participate in such improvement district or shall pay their pro-rata share of the upgrade and installation 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 Hawai'i 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.

IN CONSIDERATION OF THE AFORESAID, the Department hereby approves this Declaration for Variance as being in conformity with County Code, Chapter 23, Subdivisions.

IN WITNESS WHEREOF, the parties have executed this agreement and agree to such provision which shall run with the land.

FIRST PARTY (AGENCY):




BJ LEITHEAD TODD – Planning Director
County of Hawai'i Planning Department

SECOND PARTY (DECLARANTS):



DENNIS M. SANTIAGO
OWNER



JUDY R. SANTIAGO
OWNER

STATE OF HAWAI'I)
) SS
COUNTY OF HAWAI'I)

On this 11th day of February, 2011 before me personally appeared **DENNIS M. SANTIAGO and JUDY R. SANTIAGO** to me known to be the persons described in and who executed the foregoing instrument, and acknowledged that they executed the same as their free act and deed.



Signature *Namani Kaapana*

Print Name Namani Kaapana

Notary Public, State of Hawai'i

My commission expires: 10/9/2013

See attached

State of Hawaii

County of Hawaii



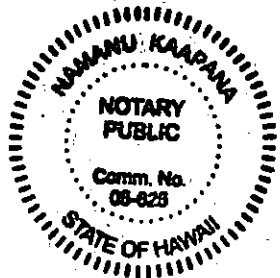
ss:

On this 11th day of February, 2011, before me personally appeared Dennis M. Santiago and Judy P. Santiago

_____ whom I know personally;

who proved to me on the basis of satisfactory evidence;

to be the person described in and who executed the foregoing instrument, and acknowledged that they did the same as their own free act and deed.



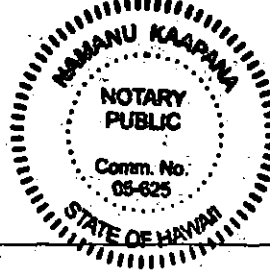
Namanu Kaapana

Notary Public
State of Hawaii

Namanu Kaapana

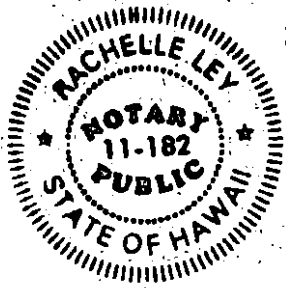
My commission expires: 10/9/2013


Doc. Date: <u>2/11/11</u>	# Pages: <u>8</u>
Notary Name: <u>Namanu Kaapana</u> Third Circuit	
Doc. Description: <u>Declaration for Variance</u>	
<u>VAP-07-000059</u>	
<i>Namanu Kaapana</i>	<u>2/11/11</u>
Notary Signature	Date



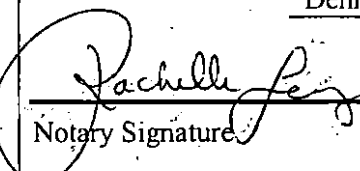
STATE OF HAWAI'I)
) SS.
COUNTY OF HAWAI'I)

On July 11, 2011, before me personally appeared BJ Leithead Todd, to me personally known, who, being by me duly sworn, did say that BJ Leithead Todd is the Planning Director of the County of Hawai'i, and that the Planning Department of the County of Hawai'i has no corporate seal; and that the instrument was signed on behalf of the Planning Department of the County of Hawai'i, a government agency, and said BJ Leithead Todd acknowledged the instrument to be the free act and deed of said Planning Department, County of Hawai'i.




Rachelle Ley
Notary Public, State of Hawai'i

My Commission Expires: June 12, 2015.

Doc. Date: July 11, 2011	# Pages: 8
Notary Name: Rachelle Ley	Third Circuit
Doc. Description: Declaration for Variance Dennis M. and Judy R. Santiago, TMK (3) 1-8-005:126, VAR 07-0000	
 Notary Signature	July 11, 2011 Date

