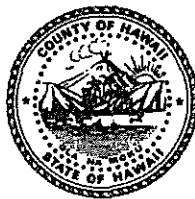


Harry Kim
Mayor



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

December 24, 2007

Mr. Jim Gomez
76-6846 Keaupuni Street
Kailua-Kona, HI 96740

Dear Mr. Gomez:

VARIANCE APPLICATION-VAR 07-066 (DENIAL)

Applicant: JIM GOMEZ

Owner: STEPHEN HUDDLESTON, ET AL.

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

Tax Map Key: 9-4-004:011, (SUB 06-000441)

After reviewing your variance application, the Planning Director denies your variance application to allow proposed 2-lot subdivision (SUB 06-000441) without providing a water supply system to a proposed lot meeting the 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 required by Chapter 23, Subdivisions, be **denied** based the following findings and Rule 22-Water Variance:

BACKGROUND

1. **Location.** The subject TMK property, containing approximately 42.633 acres, being a portion of R. P. 6886, L. C. Aw. 8452, Apana 17 to A. Keahokalole, is situated at Kawela, Kau, Hawaii.

2. **Zoning.** The subject property is zoned Agricultural (A-20a) by the County and designated Agriculture "A" by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** The owners/applicant submitted subdivision application (SUB 07-066) and preliminary plat map (PPM) proposing to subdivide the subject TMK property into (2) lots dated August 24, 2006. Tentative Approval (TA) was granted to the PPM on August 10, 2007 subject to conditions which include and require subdividers to provide a water system or water supply in accordance with the following condition:

"1) Water System

- a) In accordance with Section 23-62 (b) of the Subdivision Code, provide a water system meeting with the approval of the Department of Water Supply.
 - b) Submit water system construction plans for approval by affected agencies.
 - c) Pay installation and facilities charges as required by the Department of Water Supply."
4. **Variance Application.** The applicant the submitted original variance application on October 2, 2007 and other required submittals on November 9, 2007.

The applicant's background report dated October 30, 2007 states in part the following:

"I am writing this letter in response to the Variance Application-VAR 07-066.

You have requested a detailed written explanation citing reliable rainfall for the subject TMK property. I am aware that this TMK property falls below the 60 inches of rainfall annually, but am submitting this request for the following two reasons.

1. The Department of Water Supply has communicated that they are no longer extending the current water line to accommodate additional meters on the Southside of Kamaoa Road. I have attached the letter from DWS showing this. We had previously spoken with DWS about extending the line to front our TMK property and paying the expenses to get an additional water meter, but that is no longer an option.

2. We are aware of other properties in the vicinity who have applied for similar variances in the past year or so who have been granted the water variance after going through the appeal process. We would ask that the Planning Department consider these as well.”
5. **Agency Comments and Requirements-VAR 07-066:**
 - a. The County of Hawaii-Hawaii Fire Department (HFD) memorandum is dated December 12, 2007. Refer to HFD memorandum in variance file.
 - b. The State Department of Health (DOH) memorandum is dated December 17, 2007. Refer to DOH memorandum in variance file.
6. **Notice to Surrounding Property Owners/Sign.** To date, no copy of notice sent to surrounding property owners or other submittals showing a notice regarding nature of the variance request or variance application was sent or mailed to a list of surrounding property owner(s) attached to the variance application. The public notice was published in the Hawaii Tribune Herald and West Hawaii Today on December 7, 2007.

Posted Sign. The applicant forwarded copy of general affidavit dated August 27, 2007. The original affidavit and photographs of the posted sign were not been submitted by the applicant for the variance file.
7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received. No written objections from the surrounding property owners or public were received.

INTENT AND PURPOSE-WATER VARIANCE

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. Tentative Approval (TA) was granted to subdivision application's (SUB 06-000441) preliminary plat map (PPM) on August 10, 2007 to permit proposed 2-lot subdivision of the subject TMK property subject to tentative approval (TA) conditions which include and require the owners or subdividers to provide a water system or water supply in accordance with the following condition:

“1) Water System

- a) In accordance with Section 23-62 (b) of the Subdivision Code, provide a water system meeting with the approval of the Department of Water Supply.
- b) Submit water system construction plans for approval by affected agencies.
- c) Pay installation and facilities charges as required by the Department of Water Supply.”

The applicant requests variance from the tentative subdivision condition to construct a water system in accordance Chapter 23, Subdivisions to permit “private residential catchment systems” by the individual lot owner(s), 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 (limited to 6 lots) 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.”

Rule 22 allows the rainfall to be proved by either the “RAINFALL MAP-ISLAND OF HAWAII” rainfall maps at the Planning Department or by rain gauge data. A copy of rainfall study map dated October 4, 2007 was sent to the applicant with Planning Department letter dated October 23, 2007, showing the proposed “2-lot subdivision is located below the 60 inch isohyet line and nearest the 40 inch isohyet line”. Further, the elevation of the property begins at above 1400 + feet and ends about or below 1600 feet. Pursuant to the rainfall map sent to the applicant, the subject TMK property is nearest the 40 inch isohyet line; and, therefore the proposed subdivision will probably receive about 40 inches of rainfall annually. Therefore, since the proposed 2-lot subdivision does not receive a minimum 60” annual rainfall, the request for variance from the tentative subdivision condition requiring a water supply system meeting minimum requirements pursuant to Chapter 23, Subdivisions, is not allowed or eligible pursuant to Rule 22-Water Variance which requires the proposed subdivision to receive minimum 60” annual rainfall.

Mr. Jim Gomez
Page 5
December 24, 2007

VARIANCE DECISION

In view of the above, the proposed variance would not fulfill the intent of the Subdivision Code and does not meet with all the requirements or Rule 22-Water Variance. Therefore, the applicant's variance application to allow proposed 2-lot subdivision without providing a water supply pursuant to Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply, (1)(2), or request to allow the proposed subdivision to be served by private catchment systems is **denied**.

In accordance with a recent charter amendment and Ordinance No. 99-111, you may appeal the director's decision and request the following:

Any person aggrieved by the decision of the director in the administration or application of this chapter, may, within thirty days after the director's decision, appeal the decision to the board of appeals.

Pursuant to Board of Appeal (BOA) Rule, PART 8. APPEALS, 8-15 General Standards for Appeals (Non-Zoning):

"A decision appealed from may be reversed or modified or remanded only if the Board finds that the decision is:

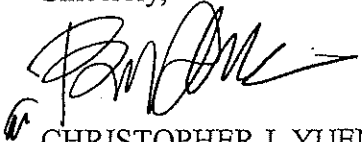
- (1) In violation of the Code or other applicable law; or
- (2) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (3) Arbitrary, or capricious, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion."

In view of the above, enclosed is form-**GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR**.

Mr. Jim Gomez
Page 6
December 24, 2007

Should you have any questions on the variance decision or the appeal procedure, please feel free to contact our Hilo office at telephone (808) 961-8288.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

WRY/DSA:cd
P:\WP60\WRY\FORMLETT\VAR07-066SUBWATERRULENO. 22-DENIAL.HUDELESTON-GOMEZ.doc

Enclosure

xc: Manager-DWS
SUB 06-000441