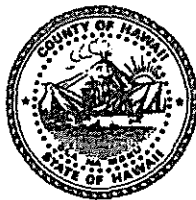


VARIANCE - VAR 07-071

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. Robert Norton  
P. O. Box 764  
Pahoa, HI 96778

Dear Mr. Norton:

**SUBJECT: VARIANCE-VAR 07-071**  
**Applicant: ROBERT W. NORTON**  
**Owner: ROBERT W. NORTON**  
**Request: Variance from Chapter 23, Subdivisions,**  
**Article 6, Division 2, Improvements Required,**  
**Section 23-84, Water Supply, (1)(2)**  
**Tax Map Key: 1-5-001:008, (SUB 06-000357)**

After reviewing the subject variance application, the Planning Director certifies the approval of Variance-VAR 07-071 subject to variance conditions. The variance permits proposed 5-lot subdivision (SUB 06-000357) of subject TMK property without providing a water supply system 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 be **approved** based on the following findings:

**BACKGROUND**

1. **Location.** The subject TMK property, containing approximately 45.6 acres, being Lot 13-B of Kaohe Homesteads, Grant 8163 to W. C. Kamakaokalani, and situated at Kaohe, Puna, 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/owner submitted a subdivision application (SUB 06-000357) and revised preliminary plat map (PPM), dated April 13, 2007, proposing to subdivide subject TMK property into 5-lots. Further action on the subdivision application (SUB 06-000357) was deferred pursuant to letter dated June 19, 2007 in subdivision file.
4. **Variance Application.** The applicant submitted the variance application on October 29, 2007 and further submittals to complete the application on December 10, 2007.
5. **Agency Comments and Requirements-VAR 07-071:**
  - a. The State Department of Health (DOH) memorandum is dated December 26, 2007. Refer to DOH memorandum in variance file.
  - b. The Hawaii County Fire Department memorandum dated December 30, 2007 states in part:

"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 January 2, 2008, states in part:

"We have reviewed the subject application and our comments to you in our letter dated May 30, 2007, still stand."
6. **Notice to Surrounding Owners.** The applicant submitted copy of notice dated December 27, 2007 sent to surrounding property owner(s) within 300 feet of subject TMK property and list of names with affixed mailing receipt dated December 27, 2007. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on

December 26, 2007.

**Posted Sign.** The applicant submitted an affidavit regarding the posting of sign on subject TMK property dated January 14, 2008 and photographs 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 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 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 May 30, 2007 in subdivision file (SUB 06-000357) regarding the revised preliminary plat map states in part the following:

“Please be informed that the subject property is not within the limits of the Department’s existing water system facilities.

The nearest Department-of Water Supply water system facility is at the end of an existing 6-inch waterline along Kaohe Street, approximately 4 miles from the property.

The first alternative requires the applicant or subdivider to improved and extend the nearest DWS system located “approximately 4 miles from the property”.

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 proposed 5-lot subdivision (SUB 06-000357) 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 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 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 subdivision. The map extract submitted by the applicant compared with the isohyet map study from Planning Department’s GIS data base denotes subject TMK or proposed subdivision is situated between the 118.11 inch isohyet line and 157.48 inch isohyet line; and, pursuant to other rainfall information maintained by the Hawaii State

Climate Office (HSCO), the proposed 5-lot subdivision is near active rain gauge "PAHOA 65". The mean annual rainfall (1970-2002) for "65" was 129.63 inches. The analysis of the applicant's submittals, Planning Department's isohyet map study, and historical or annual rainfall data maintained by HSCO for an active rain gauge near subject TMK property indicate the proposed subdivision will receive at least 60+ inches of rainfall annually. The proposed subdivision meets Rule No. 22-Water Variance.

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 5-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.
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 06-000357. 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 5-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 06-000357. 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 06-000357 not serviced by a County water system. No further subdivision of the lots created by

SUB 06-000357 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.

- c. Any lots created by SUB 06-000357 may not be made subject to a condominium property regime.
- d. Any 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.
- 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

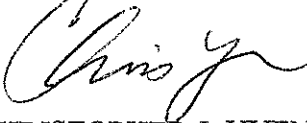
incorporated as an exhibit and made part of each agreement of sale, deed, lease, or similar documents affecting the title or ownership of the existing property or approved subdivided lots.

- g. In the event that the County notifies the owner(s) of the lot(s) created by SUB 06-000357 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 06-000357, the owner(s) of the lot(s) created by SUB 06-000357 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 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.

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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 null and void.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

WRY/DSA:cs  
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xc: Manager-DWS  
SUB 06-000357