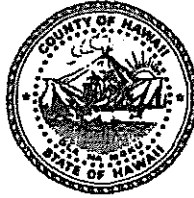


Harry Kim
Mayor



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
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February 15, 2008

Mr. Kurt MacCarley
Windy City
4470 Sunset Boulevard, Suite No. 794
Los Angeles, CA 90027

Dear Mr. MacCarley:

SUBJECT: VARIANCE-VAR 07-073

Applicant: KURT MacCARLEY
Owner: KURT MacCARLEY
**Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required,
Section 23-84, Water Supply, (1)(2)**
Tax Map Key: 1-9-005:005, (SUB 07-000604)

After reviewing the subject variance application, the Planning Director certifies the approval of Variance-VAR 07-073 subject to variance conditions. The variance permits proposed 6-lot subdivision (SUB 07-000604-5-building lots; 1-road lot) to be created without providing a water system 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 variance from the minimum subdivision water system requirements be **approved** based on the following findings:

BACKGROUND

1. **Location.** The subject TMK property, containing approximately 4.9406 acres, being Lot 3, Block A, Olaa Summer Lots grant 5639 to Bathsheba M. Allen, is situated at Olaa, Puna, Hawaii.

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2. **Zoning.** The subject property is zoned Single-Family Residential (RS-20) by the County and designated Urban "U" by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** The applicant-owner submitted subdivision application (SUB 07-000604) and revised preliminary plat map (PPM), dated September 7, 2007, proposing to subdivide subject TMK property into 5-building lots and 1-road lot.

Variance Application. The applicant submitted the variance application October 31, 2007 and additional information on December 10, 2007.

4. **Agency Comments and Requirements-VAR 07-073:**

- a. The State Department of Health (DOH) memorandum is dated January 8, 2008. (Refer to memorandum in variance file).
- b. The Hawaii County Fire Department memorandum dated January 18, 2008 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 29, 2008, states in part:

"We have reviewed the subject application and have no objections as there is no public water system in the area."

5. **Notice to Surrounding Owners.** The applicant submitted copy of notice sent to surrounding property owner(s) within 300 feet of subject TMK property and mailing receipts dated January 14, 2008. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on January 10, 2008.

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6. **Posted Sign.** The applicant submitted an affidavit dated January 29, 2008 and photograph of a sign posted below an existing posted sign on subject TMK property.
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 circumstances and variance background information, rainfall information provided by the applicant, agency comments, and other comments from a surrounding property owner, 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 DWS memorandum dated September 25, 2007 in subdivision file (SUB 07-000604) states in part the following:

“We have reviewed the revised preliminary plat map. There is no public water system in the area.”

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 extending or constructing a public water system or constructing an alternative private water system meeting DWS standards for proposed 6-lot subdivision (SUB 07-000604) would be putting excessive demands upon the applicant when a more reasonable alternative is available.

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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 6-lot subdivision 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-20) 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 exceed six (6) lots and is geographically located in an area which receives more than 60 inches of annual rainfall.

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In consideration of above and in view of information submitted by the applicant, rainfall maps at the Planning Department, and other rainfall data maintained by other government agencies, the subject TMK property receives approximately 120 inches of annual rainfall to support individual or privately owned individual rain water catchment systems for potable and emergency uses for the proposed subdivision. According to information and data available from the National Oceanic & Atmospheric Administration (NOAA) the proposed 6-lot subdivision is near rain gage station "54" situated at Hawaii Volcano National Park HQ or approximately 1.2 + miles (west) of the subject TMK property. According to NOAA data, the annual rainfall for "54" during 2004 was 111.81 inches. The analysis of the applicant's submittals compared with NOAA rainfall data for "54" and Hawaii State Climate Office (HSCO) the mean annual rainfall data or records for "54" for years 1949-2000 indicate the subject TMK property or proposed subdivision and surrounding areas receive more than 100 + inches of rainfall annually.

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 1- road lot and 5-building lots consisting of 40,000 + square feet, whereas the full potential density for this property currently zoned RS-20 zoning is ten (10) 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).

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-VARIANCE CONDITIONS

The variance to allow proposed 6-lot subdivision of the subject TMK property without providing a water system meeting DWS standards 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.

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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 07-000604. 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 6-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 07-000604. 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 07-000604 not serviced by a County water system. No further subdivision of the lots created by SUB 07-000604 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
 - c. Any lots created by SUB 07-000604 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

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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 CUB 07-000604 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 07-000604, the owner(s) of the lot(s) created by SUB 07-000604 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

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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.

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/CJY:cs
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xc: Manager-DWS
SUB 07-000604