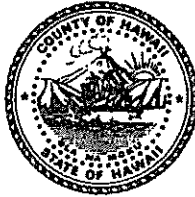


Harry Kim
Mayor



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

July 18, 2008

Mr. Ken Foy
c/o Ms. Rebecca Underwood
P. O. Box 2048
Kihei, HI 96753

Dear Mr. Foy:

VARIANCE-VAR 08-019

Applicant: KEN FOY

Owner: REBECCA UNDERWOOD

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

Tax Map Key: 9-5-001:005, (SUB 06-000437)

After reviewing the subject variance application, the Planning Director certifies the approval of Variance-VAR 08-019 subject to variance conditions. The variance permits proposed 5-lot subdivision (SUB 06-000437) to be created without providing a water supply system to 2-proposed building lots meeting 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 referenced TMK property, Lot No. 40 containing approximately 69,522 square feet, being a portion of Grant No. 5411 to Sarah H. Kauhane, is Waiohinu Town Lots, Waiohinu, Kau, Hawaii.

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2. **Zoning.** The subject property is zoned Single-Family Residential (RS-15) by the County and designated Urban "U" by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** The owner's agent submitted a subdivision application which includes a revised preliminary plat map (PPM), signed and dated May 16, 2007, proposing to subdivide subject TMK property into 4-proposed building lots and 1-road lot. Further action on subdivision application (SUB 06-000437) was deferred by the Planning Department letters according to letters dated December 28, 2006 and June 21, 2007 in the subdivision file.
4. **Variance Application.** The applicant's agent submitted subject variance application on March 20, 2008.
5. **Agency Comments and Requirements (VAR 08-019):**
 - a. The State Department of Health (DOH) memorandum is dated April 17, 2008. Refer to SOH-DOH memorandum in variance file.
 - b. The Department of Water Supply (DWS) memorandum, dated May 1, 2008, states in part:

"Please be informed that the subject parcel currently has a 1-inch service lateral installed capable of accommodating one 5/8-inch meter, which is suitable to serve only one lot within the proposed subdivision. The applicant has also paid to have a second 5/8-inch meter installed by the Department, which can be utilized to serve another lot within the proposed subdivision. We have no objection to the use of private rainwater catchment systems to serve the remaining two (2) additional lots in the proposed subdivision.

Should the subject variance and subdivision applications be approved, the applicant shall notify the Department in writing which two (2) lots within the proposed 4-lot subdivision will be served with the existing service lateral (Account No. 960-64300) and the new second service to be installed (account number currently not available). Each 5/8-inch meter shall be

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restricted to a maximum daily usage of 600 gallons. Further, the applicant shall be notified that the two services available shall not be shared with the two (2) lots to be served by private rainwater catchment systems.”

- c. The Hawaii County Fire Department memorandum dated May 2, 2008 states:

“We have no comments to offer at this time in reference to the above-mentioned Variance application request.”

6. **Notice to Surrounding Owners.** The applicant’s agent sent a revised notice of variance to surrounding property owners and submitted certified US mail receipts dated May 13, 2008 and photograph of posted sign with transmittal letter dated May 11, 2008. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on April 25, 2008.

Posted Sign. The owner submitted an affidavit dated July 3, 2008 regarding posting a sign and copy of photograph of the posted sign upon subject TMK.

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 applicant’s background information, rainfall information provided by the applicant, agency comments, the Planning Director has determined that there are special or unusual circumstances applying to the TMK property or proposed subdivision which deprives the applicant or owner of property rights that obviously interferes with the best use or manner of development of the subject property.

ALTERNATIVES

The following DWS memorandums or comments/requirements in the subdivision file (SUB 06-000437) and variance file (VAR 08-019) were considered:

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The DWS-memorandum in the subdivision file, dated January 9, 2007, 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.”

The DWS-memorandum in the variance file, dated May 1, 2008, states in part:

“Please be informed that the subject parcel currently has a 1-inch service installed capable of accommodating one 5/8-inch meter, which is suitable to serve only one lot within the proposed subdivision. The applicant has also paid to have a second 5/8-inch meter installed by the Department, which can be utilized to serve another lot within the proposed subdivision. We have no objection to the use of private rainwater catchment systems to serve the remaining two (2) additional lots in the proposed subdivision.

Should the subject variance and subdivisions be approved, the applicant shall notify the Department in writing which two (2) lots within the proposed 4-lot subdivision will be served with the existing service lateral (Account No. 960-64300) and the new second service to be installed (account number currently not available). Each 5/8-inch meter shall be restricted to a maximum daily usage of 600-gallons. Further, the applicant shall be notified that the two services available shall not be shared with the two (2) lots to be served by private rainwater catchment systems.”

Pursuant to the DWS memorandums, the subject TMK property or proposed subdivision is assigned 2-DWS water meters and additional service from the DWS system “cannot support proposed subdivision”. In sum, the first alternative requires the applicant or owner 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 2-proposed building lots (e.g. proposed “LOT 40-C” and “LOT 40-D”).

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.

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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 06-000437) 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."

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In this case, the proposed subdivision is zoned Single-Family Residential (RS-15) 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 approval of the proposed subdivision would result in the creation of two (2) lots without water supply system provided that the subject TMK property or proposed subdivision 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 60 inch isohyet line and receives between approximately 60 inches to 80 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 "KIOLAKAA A&F 6" which was located situated approximately 1.6 + miles away in 1998 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 "KIOLAKAA A&F 6" for years 1949-1998 is 66.83 inches. Therefore, the subject TMK property or proposed subdivision and surrounding areas receive in excess of 60 + 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 4-building lots (15,000 + square feet). 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 variance conditions.

The applicant's variance application was acknowledged by letter dated April 11, 2008. Additional time was requested by the applicant and owner to send notice to surrounding property owners and submit an affidavit and photograph of the posted sign. The owner granted the Planning Director an extension of time to render decision on the variance application to July 25, 2008.

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.

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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 06-000437) 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 May 1, 2008, the existing service lateral (Account No. 960-64300) and the new second service to be installed (account number currently not available) shall not be shared with proposed 2-building lots created by proposed subdivision (SUB 06-000437) utilizing rainwater catchment. In addition, the DWS water meters assigned to 2-proposed created by proposed subdivision (SUB 06-000437) shall not be shared with any abutting lots sharing common property lines with proposed subdivision (SUB 06-000437).
3. The lots created by SUB 06-000437 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 06-000437. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting 2-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 06-000437. 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.

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- 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 06-000437 not serviced by a County water system. No further subdivision of the lots created by SUB 06-000437 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
- c. Any lots created by SUB 06-000437 may not be made subject to a condominium property regime.
- d. The 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. The 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.

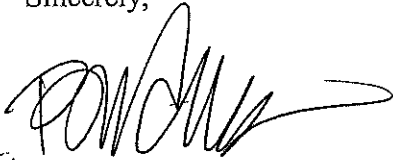
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- g. In the event that the County notifies the owner(s) of the lot(s) created by SUB 06-000437 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 06-000437, the owner(s) of the lot(s) created by SUB 06-000437 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.
- 5. The subdivision application's final plat map shall meet all the requirements of 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 lots created by SUB 06-000437 not assigned a DWS water meter, 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.

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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,

A handwritten signature in black ink, appearing to read "C. Yuen", with a long horizontal flourish extending to the right.

✓ CHRISTOPHER J. YUEN
Planning Director

WRY:cs
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xc: Manager-DWS
SUB 06-000437