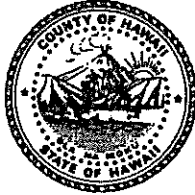


Harry Kim
Mayor



Christopher J. Yuen
Director
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County of Hawaii
PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-4224
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September 11, 2008

Mr. and Mrs. James C. Bradley
46-1107 Kinimaka Road
Honokaa, HI 96727

Dear Mr. and Mrs. Bradley:

VARIANCE-VAR 08-036

Applicants: JAMES C. BRADLEY, ET AL.

Owners: JAMES C. BRADLEY, ET AL.

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

Tax Map Key: 4-6-007:071, (SUB 06-000358)

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 08-038 subject to variance conditions. The variance is from tentative approval letter and specific tentative approval subdivision condition(s) dated January 25, 2008 and allows proposed 3-lot subdivision (SUB 06-000358) of the referenced TMK property without providing a water supply system to 2-proposed lots meeting with the approval 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 referenced TMK property, Lot 46 containing approximately 16.3 acres, being Grant 4785 to Mary Ann Hall, is situated at Ahualoa, Hamakua, 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 applicants-owners submitted a subdivision application (SUB 06-000358) and preliminary plat map to the Planning Department proposing to subdivide subject TMK property into 3-lots. Tentative Approval (TA) of the preliminary plat map (PPM) dated May 8, 2006 was granted by the Planning Department on January 25, 2008 subject to TA conditions.
4. **Variance Application.** The applicants-owners submitted a variance application on June 3, 2008 and filing fee on June 11, 2008.

The variance application includes attachment dated May 16, 2008 which states in part:

"We are requesting a water variance to facilitate the completion of our proposed three lot subdivision. We have one existing water service account (No. 630-95800) which will be assigned to lot 46-B along with the necessary easement across lot 46-C. The Department of Water Supply has stated that they are unable to supply any additional service in the foreseeable future. The USGS rainfall map shows that our average yearly rainfall is in excess of the required 60".

5. **Variance Application (VAR 08-036)-Agency Comments and Requirements:**

- a. The State of Hawaii-Department of Health (DOH) memorandum is dated July 1, 2008. Refer to DOH memorandum in variance file.
- b. The Department of Water Supply (DWS) memorandum, dated July 7, 2008, states in part:

"Our comments from our August 28, 2006, letter to you regarding the subject subdivision application still stand. Please be informed that the applicant has informed the Department that the existing service to the subject parcel (Account No. 630-95800) will be assigned to proposed Lot 46-B in this subdivision approval. The applicant shall be notified, through a copy of this letter, that the existing meter shall not be shared with any of the other proposed lots."

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- c. The County of Hawaii-Hawaii Fire Department (HFD) memorandum dated July 15, 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."

6. **Notice to Surrounding Owners.** The applicant's filed an affidavit and other submittals regarding notice(s) sent to surrounding property owner(s) of subject TMK property. According to the submittals and attached certificate of mailing, notices were mailed on May 30, 2008 and July 7, 2008, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on July 3, 2008.

Posted Sign. The applicant's submitted affidavit regarding a sign posted upon subject TMK property dated July 2, 2008 and photograph or picture 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 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 August 28, 2008 in subdivision file (SUB 06-000358) states in part the following:

"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.

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The applicant is requested to submit, in writing, which lot the existing service (Account No. 630-95800) will be assigned to, subject to a variance application being formerly executed."

The tentative approval (TA) letter dated January 25, 2008 and TA conditions state in part:

- "1) Water System
 - a) 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.
 - d) There is existing water service being provided to the subject property, and we understand that the water line is coming from Puaono Road. The subdividers must submit a letter to the Department of Water Supply confirming

The first alternative requires the applicants-owners to provide a water supply system to satisfy the TA condition(s) cited above. 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 3-lot subdivision (SUB 06-000358) or 2-additional lots would be putting excessive demands upon the applicants-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.

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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 subdivision pr 2-additional lots created by proposed 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 80 inch isohyet line(s); and, pursuant to other rainfall information maintained by the Hawaii State Climate Office (HSCO), the proposed lot subdivision is close to rain gauge "HONOKAA TOWN 215". The mean annual rainfall (1949-2000) for "215" was 79.49 inches. The analysis of the applicant's submittal, Planning Department's isohyet map study, and historical or annual rainfall data maintained by HSCO for a rain gauge near subject TMK property indicates the proposed subdivision will receive at least 60+ inches of rainfall annually. The proposed subdivision meets Rule No. 22-Water Variance.

The variance application was acknowledged by letter dated June 24, 2008 and additional time to incorporate agency comments into the variance file was necessary. The applicant agreed to an extension of time and granted the Planning Director an extension of time to render a decision on the subject variance to September 19, 2008.

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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 from to allow proposed 3-lot subdivision of the subject TMK property without providing a water system meeting DWS standards pursuant to tentative approval letter dated January 25, 2008 (Condition No. 1) 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. 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 06-000358. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting pending subdivision or proposed 2-lots not serviced by a County water system 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 06-000358. 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 06-000358 not serviced by a County water system. No further subdivision of the lots created by SUB 06-000358 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.

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- c. Any lots created by SUB 06-000358 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 06-000358 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 06-000358, the owner(s) of the lot(s) created by SUB 06-000358 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.

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- 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.

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:cs

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xc: Manager-DWS
SUB 06-000358