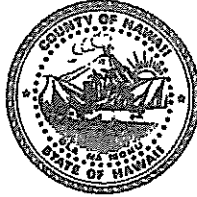


Harry Kim
Mayor



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

August 8, 2008

Ms. Evon Avis
5610 NW Locke Cemetery Road
Corvallis, OR 97330

Dear Ms. Avis:

VARIANCE-VAR 08-038

Applicant: EVON AVIS

Owner: MICHAEL DEAL

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

Tax Map Key: 1-8-011:033, (SUB 07-000671)

After reviewing the subject variance application, the Planning Director certifies the approval of Variance-VAR 08-038 subject to variance conditions. The variance permits proposed 4-lot subdivision (SUB 07-000671) to be created without a water system 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, containing 20.000 acres, portion of Olaa Reservation Lots and Olaa New Tract Lots, is situated at Puna, Hawaii.
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 07-000671) and preliminary plat map (PPM), dated October 1, 2007 proposing to subdivide subject TMK property into 4-lots. Further action on the proposed subdivision application was deferred pursuant to letter dated May 2, 2008 in subdivision file.
4. **Variance Application.** The applicant submitted the variance request and subject variance application on July 11, 2008 and additional information on July 21, 2008.
5. **Agency Comments and Requirements (VAR 08-038):**
 - a. The State of Hawaii-Department of Health (DOH) memorandum is dated July 8, 2008. Refer to State of Hawaii-DOH memorandum in variance file.
 - b. The County of Hawaii-Hawaii Fire Department (HFD) memorandum dated July 15, 2008 states:

“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 July 23, 2008 states in part:

“We have reviewed the subject application and have the following comments.

Our comments from our December 12, 2007, memorandum to you regarding the subject subdivision application still stand. We will also note that the applicant has not indicated a proposed alternative water system for the subject subdivision. For your information, we have no objection to the use of private rainwater systems for each lot.”
6. **Notice to Surrounding Owners.** The applicant submitted a copy of notice mailed to surrounding property owner(s) within 300 feet of subject TMK property, and USPS-Certificate of Mailing receipts dated June 15, 2008. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on July 11, 2008.

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Posted Sign. The applicant faxed revised affidavit dated August 8, 2008 (hard copy to follow for the variance file) regarding posting of sign regarding proposed subdivision of subject TMK property and water variance. A photograph of posted sign upon the subject TMK property attached to affidavit (not notarized) dated July 16, 2008 was received by the Planning Department on or about July 24, 2008.

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, additional rainfall information provided by the applicant, and agency comments, 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 owner 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 December 12, 2008 in subdivision file (SUB 07-000671) states in part the following:

“We have reviewed the subject application for the proposed subdivision.

Please be informed that the subject parcel is not within the Department’s existing service limits. The nearest point of connection is from an existing 4-inch waterline within Volcano Highway, approximately 3.5 miles away.”

The first alternative requires the applicant to construct a dedicable DWS water supply system or connect to the nearest “4-inch waterline within Volcano Highway, approximately 3.5 miles away” according to the DWS memorandum dated December 12, 2008.

The second alternative would be to design, drill and develop private wells and/or construct a private water supply system meeting DWS standards for proposed 4-lot subdivision.

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In view of the above, there are no other reasonable alternatives in resolving the difficulty of the applicant. The imposition of providing or extending the nearest DWS water system or providing an approved alternative private water system meeting DWS standards for proposed 4-lot subdivision (SUB 07-000671) 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 4-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 rainfall gauge information submitted by the applicant compared with Planning Department-GIS information indicates the property receives more than 60 inches of rainfall annually; and, 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 proposed subdivision. The proposed 4-lot subdivision appears to be nearest active rain gage station "KURTISTOWN 91.4" ("91.4") which received 177.51 inches of rain during 2002 according to (National Oceanic and Atmospheric Administration (NOAA) data. Other historical rainfall information obtained from the Hawaii State Climate Office (HSCO) indicates rain gage station "MOUNTAIN VIEW 91" near the proposed subdivision recorded a mean rainfall average of 185.61 inches between the years 1949 and 1985. The analysis of the applicant's submittals compared with recent rainfall data and historical rainfall data for the surrounding areas indicate the subject TMK property or proposed subdivision receives approximately 160 inches +/- of rainfall yearly. The proposed subdivision meets Rule No. 22-Water Variance.

Based on the above and findings, the applicant's request for variance 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 4-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.
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 07-000671. 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 4-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 07-000671. 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 proposed subdivision or lots created by SUB 07-000671 not serviced by a County water system. No further subdivision of the lots created by SUB 07-000671 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
- c. Any lots created by SUB 07-000671 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 07-000671 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 07-000671, the owner(s) of lot(s) created by SUB 07-000671 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:cs
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xc: Manager-DWS
SUB 07-000671