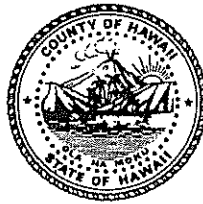


William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

County of Hawai'i

PLANNING DEPARTMENT

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July 27, 2009

Mr. Charles Scholz
#26 Yi Jia Yuan Villas
Ren Min Road
Zhang Jia Gang, Jiang Su Province
PR China 215600

Dear Mr. Scholz:

SUBJECT: VARIANCE-VAR 08-039

Applicant: CHARLES VICTOR SCHOLZ
Owner: CHARLES VICTOR SCHOLZ
Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required,
Section 23-84, Water Supply, (1)(2)
Tax Map Key: 2-9-004:013, Lot 44 (SUB 07-000690)

After reviewing the subject variance application, the Planning Director certifies the approval of Variance-VAR 08-039 subject to variance conditions. The variance permits proposed 3-lot subdivision (SUB 07-000690) of Lot 44 or referenced TMK property to be created without providing a water supply system meeting 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 variance from proposed minimum subdivision water system requirements can be **approved** based on the following findings:

BACKGROUND

1. **Location.** The referenced TMK property, Lot 44 containing approximately 31.95 acres, being Grant 6006 to Manuel Rapoz Cadinha, is situated at Kaiwiki 3rd. Homesteads, Kaiwiki, South Hilo, Hawaii.

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2. **Zoning.** The subject property is zoned Agricultural (A-10a) by the County and designated Agriculture or "A" and Conservation "C" by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** The applicant's surveyor filed proposed subdivision application (SUB 07-000690) and preliminary plat map (PPM), dated October 4, 2007 proposing to subdivide Lot 44 or referenced TMK property into 3-lots. Further action on the subdivision application was deferred pursuant to letter dated December 24, 2007 in the subdivision application file.
4. **Variance Application.** The applicant submitted the variance application and other required submittals on December 23, 2008. The application includes an attachment dated June 10, 2008 which states in part:

"In a letter dated 16 January from Mr. Milton Pavao of the Department of Water Supply, Mr (sic) Pavao state the property is not within the service limits of the existing water system facilities."

"According to the [[http: www.prh.noaa.gov/hnl/hydro/pages/bigis_ytd_12.gif](http://www.prh.noaa.gov/hnl/hydro/pages/bigis_ytd_12.gif)] Pacific Region Headquarters of the National Weather Service (of the National Oceanic and Atmospheric Administration) the average annual rainfall measured at the Hakalau weather station (HKUH1) (by my neighbor Chas Cavedoni) is 100 inches."

5. **Variance Application (VAR 08-039)-Agency Comments and Requirements:**

- a. The State of Hawaii Department of Health (DOH) memorandum is dated February 10, 2009. Refer SOH-DOH memorandum in variance file.
- b. The County of Hawaii-Hawaii Fire Department (HFD) memorandum dated February 19, 2009 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."

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- c. The Department of Water Supply (DWS) memorandum, dated February 25, 2009, states in part:

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

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 6-inch waterline within Chin Chuck Road approximately 3,000 feet from the property. Further, the subject parcel is situated at an elevation such that the Department’s water system cannot provide adequate pressure.

We have no object to the subject application as the applicant has indicated that water be provided via private rainwater catchment systems for each lot.”

6. **Notice to Surrounding Owners.** The applicant’s forwarded copy of notice sent to surrounding property owner(s) within 300 feet of subject TMK property, and EMS mailing receipt dated February 20, 2009. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on February 11, 2009.

Posted Sign. The applicant’s representative submitted an affidavit dated February 18, 2009 regarding sign posted on or at subject TMK property and picture or photograph of posted sign to the Planning Department.

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 variance background information and agency comments, 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 January 16, 2008 in applicant’s subdivision file (SUB 07-000690)

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states in part the following:

"Please be informed that the subject property is not within the service limits of the Department's existing 6-inch waterline along Chin Chuck Road, approximately 3,000 feet from the subject property.

Further, the property is at an elevation where water can (sic) [cannot] be delivered by the Department's existing water system facility."

The first alternative requires the applicant or subdivider expand or connect to nearest County water supply system located approximately 3000 feet away from proposed subdivision.

The second alternative would be to design, drill and develop private wells and install the necessary water system improvements for proposed subdivision 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 nearest County water supply system or providing an approved alternative private water system meeting DWS standards for proposed 3-lot subdivision (SUB 07-000690) would be putting excessive demands upon the applicant or subdivider when an alternative water system or "catchment water systems" is allowed or permitted, provided Rule 22-Water Variance, is met.

INTENT AND PURPOSE-WATER VARIANCE

The intent and purpose of requiring a water system for and within the proposed subdivision is to assure that adequate water is 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 water system proposed by the applicant or request for variance to utilize "catchment water systems" for 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

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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.”

In consideration of the above and rainfall information and data provided by the applicant, the subject TMK property receives in excess of 60 inches of annual rainfall yearly to support proposed individual or private rainwater catchment systems for potable and emergency uses within proposed subdivision. According to information provided by the applicant or rainfall data available or maintained by the Hawaii State Climate Office (HSCO) the proposed subdivision is near an active rain gage station “KAHUNA FALLS 138.2”. According to historic rainfall data maintained by the HSCO or neighbor, the mean annual rainfall for “138.2” for years 1993-2000 was 224.41 inches. The analysis of the applicant’s background information and other available rainfall information or data for the area indicates the subject TMK property or proposed subdivision and surrounding areas receive in excess of 200 + inches of rainfall annually (Note: The applicant lives near active rain gauge station “138.2” maintained by a neighbor-Cavedoni). The proposed 3-lot subdivision receives in excess of 60 inches minimum annual rainfall and meets Rule 22-Water Variance.

The applicant’s variance application was acknowledged by the Planning Department letter dated February 4, 2009. Additional time to review the subdivision application’s PPM and variance application by the agencies was necessary. The applicant granted the Planning Director an extension of time to render decision on Variance Application-VAR 08-039 to on or before July 31, 2009.

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 application and request to permit 3-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 owner, 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 07-000690. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting proposed lots or 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 applicant or subdivider agrees and accepts the fact that a County dedicable public water system is not now able to service the proposed subdivision SUB 07-000690. 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. No further subdivision of lots created by SUB 07-000690 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
 - c. Any lots created by SUB 07-000690 may not be made subject to a condominium property regime.
 - d. Any dwelling constructed on a 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 any lot created by SUB 07-000690/ that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 07-000690, the owner(s) of the lot(s) created by SUB 07-000690 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

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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. The applicant or subdivider should consider building size and building height within building envelopes within proposed subdivision and/or examine the impact of buildings including permitted privately owned water tanks to "lookouts" or view planes situated at or around Akaka Falls State Park.
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 Variance-VAR 08-039 to be null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

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xc: Manager-DWS
SUB 07-000690