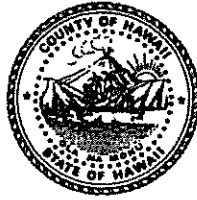


Harry Kim
Mayor



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 10, 2008

Mr. Paul M. de Silva
3020 Ainaola Drive
Hilo, HI 96720

Dear Mr. de Silva:

VARIANCE-VAR 08-043

Applicant: PAUL M. de SILVA
Owners: PAUL M. de SILVA, ET AL.
Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required,
Section 23-84, Water Supply, (1)(2)

Tax Map Key: 2-4-007:089, (SUB 08-000473)

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 08-043 subject to variance conditions. The variance permits proposed 3-lot subdivision (SUB 07-000743) of the subject TMK property without providing 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 the variance from the minimum subdivision water system requirements be **approved** based on the following findings:

BACKGROUND

1. **Location.** The referenced TMK property, Lot 1616-E containing approximately 12.488 acres, Waiakea Homesteads, Second Series, is situated at Waiakea, South Hilo, Hawaii.

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2. **Zoning.** The subject property is zoned Agricultural (A-3a) by the County and designated Agriculture "A" by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** The applicant-owners submitted subdivision application proposing to subdivide subject TMK property into 3-lots. Further action on the subdivision application (SUB 08-000743) is being deferred pursuant to letter dated May 15, 2008 in the subdivision file.
4. **Variance Application.** The applicant submitted variance application and submittals to the Planning Department on June 23, 2008.

The applicant's background information states in part:

"The proposed subdivision will consist of three lots with minimum lot areas of three acres. The subdivision (sic) is situated along Ainaola Drive approximately 7,000 feet from the nearest County water system. To provide water service for the proposed lots, a water source would have to be developed, a water storage reservoir constructed and transmission waterlines installed. Complying with the Subdivision Code would create a hardship."

5. **Variance Application (VAR 08-043)-Agency Comments and Requirements:**

- a. The County of Hawaii-Hawaii Fire Department 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."
- b. 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 (sic)

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Our comments from our June 16, 2008 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 used of private rainwater catchment systems for each lot."

- c. The State of Hawaii-Department of Health (SOH-DOH) memorandum is dated July 8, 2008. Refer to SOH-DOH memorandum in variance file.
6. **Notice to Surrounding Owners.** The applicant filed transmittal letter dated June 9, 2008 and attachments to the Planning Department on July 14, 2008. According to affidavit dated July 9, 2008 notice of variance was served or mailed to a list of surrounding property owner(s). Notice of the variance application was published in the Hawaii Tribune Herald and West Hawaii Today on July 11, 2008

Posted Sign. The applicant submitted an affidavit regarding posting of sign upon subject TMK property dated July 9, 2008 and picture or photograph of the posted sign to the Planning Department on July 14, 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, 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 June 16, 2008 in subdivision file (SUB 08-000743) states in part the following:

"Please be informed that the subject property is not within the service limits of the Department's existing water system facilities.

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Further, the property is situated at an elevation where water cannot be delivered at adequate volume and pressure under peak-flow and fire-flow conditions.

Therefore, the Department's existing water system facilities cannot support the proposed subdivision at this time. Extensive improvements and additions, which may include, but not limited to source, storage, booster pumps, transmission, and distribution facilities, would be required. The applicant is to submit how they will meet the above requirements in accordance with the Department's Rules and Regulations and the Water System Standards."

The first alternative requires the applicant to make "extensive improvements and additions" to existing or nearest 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 improving the existing public water system or providing an approved alternative private water system meeting DWS standards for proposed 3-lot subdivision (SUB 08-000743) 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 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

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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 a isohyet map study utilizing Planning Department's GIS data base denotes the subject TMK or proposed subdivision is situated between the 160 inch isohyet line and 200 inch isohyet line; and, pursuant to other rainfall information maintained by the Hawaii State Climate Office (HSCO), the proposed 3-lot subdivision is near rain gauge “WAIAKEA SCD 88.2”. The mean annual rainfall (1970-2002) for “88.2” was 203.18 inches. The analysis of the applicant's submittals, 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 July 2, 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.

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 request to allow a proposed 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 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 08-000743. 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 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 08-000743. 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 08-000743 not serviced by a County water system. No further subdivision of the lots created by SUB 08-000743 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
 - c. Any lots created by SUB 08-000743 may not be made subject to a condominium property regime.

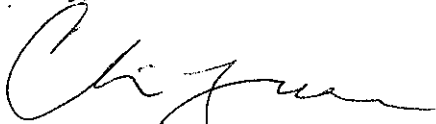
- d. Any dwelling constructed on a proposed lot not serviced by a County water system shall be provided with and maintain a private potable rain catchment system which includes a minimum 6000-gallon water storage capacity for domestic consumption or potable uses. This private water catchment system shall 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 08-000743 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 08-000743, the owner(s) of the lot(s) created by SUB 08-000743 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 08-000743