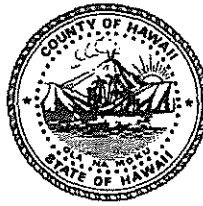


William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

County of Hawai'i

PLANNING DEPARTMENT

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

May 5, 2009

Mr. Wayne Kabasawa
P.O. Box 211
Mountain View, HI 96771

Dear Mr. Kabasawa:

SUBJECT: VARIANCE-VAR 08-054
Applicant: WAYNE KABASAWA
Owner: WAYNE KABASAWA
Request: Variance from Chapter 23, Subdivisions,
Improvements Required
Tax Map Key: 1-8-005:127, (SUB 08-000777)

After reviewing your variance application, the Planning Director certifies approval of Variance-VAR 08-054 subject to variance conditions. The variance allows proposed 2-lot subdivision (SUB 08-000777) to be created without providing a water system meeting the minimum requirements of the Department of Water Supply (DWS). The variance is from Hawaii County Code, Chapter 23, Subdivisions, 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 subject TMK property, containing 50.00 acres, being Lot 119 of Olaa Reservation Lots, portion of Grant 4128, is situated at Olaa, Puna, Hawaii.
2. **Zoning.** The subject property is zoned Agricultural (A-20a) by the County and designated Agriculture "A" by the State Land Use Commission (LUC).

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3. **Subdivision Request/PPM.** The applicant's agent, Engineering Partners, Inc., submitted subdivision application (SUB 08-000777) and "undated preliminary plat map" (PPM) proposing to subdivide subject TMK property into 2-lots. Further action on the subdivision application was deferred pursuant to letter dated August 18, 2008 in SUB 08-000777.

4. **Variance Application.** The applicant's agent submitted the variance application and submittals August 18, 2008. The application includes a letter dated August 19, 2008 which states in part:

"The current property is approximately 50 acres and is zoned Ag 20. I would like to divide the property with one parcel being approximately 30 acres and the other 20 acres. I currently have a dwelling on the property and we do not have county water service.

We are presently on catchment and our rainfall in this area is more that (sic) adequate for our use. We would like the other property to also be able to use a catchment system for water."

5. **Agency Comments and Requirements (VAR 08-054):**

- a. The State of Hawaii Department of Health (DOH) memorandum is dated September 10, 2008. Refer to DOH memorandum in subject variance file.

- b. The Hawaii Fire Department (HFD) memorandum dated September 10, 2008 states:

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

- c. The Department of Water Supply (DWS) memorandum, dated April 27, 2009, states in part:

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

Although the Department cannot support the proposed the 2-lot subdivision, water service for the subject parcel is limited to one (1) unit of

water, or one 5/8-inch meter, which is limited to an average of 400 gallons per day, and suitable for only one single-family dwelling.

Water can be made available from an existing 6-inch water line at the intersection of North Pszyk Road and Volcano Road, approximately 3,000 feet from the subject property.

Therefore, should the subject subdivision application be approved, the applicant must notify the Department, in writing, which lot within the proposed 2-lot subdivision will be assigned the service."

6. **"Notice to Surrounding Owners.** The applicant submitted a list of property owners or "CERTIFICATION OF MAILING" with affixed USPS mailing receipt dated September 16, 2008. According to the submittal, it appears that "letters" were mailed by the USPS to a list of owners on September 16, 2008. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on September 13, 2008.

Posted Sign. A photograph of the posted sign upon subject TMK property was submitted by the owners to the Planning Department on September 8, 2008. The applicant submitted a notarized letter dated January 7, 2009 regarding sign posted upon subject TMK property "on or about September 8, 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 variance application and variance background information submitted, agency comments, and other information, 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 September 25, 2008 in subdivision file (SUB 08-000777) states in part the following:

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"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 12-inch waterline within Volcano Highway. Further, the subject parcel is situated at an elevation such that the Department's water system cannot provide adequate pressure.

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 be limited to source, storage, booster pumps, transmission, and distribution facilities, would be required. Currently, sufficient funding is not available from the Department for such improvements and no time schedule is set."

The first alternative requires the applicant to make "extensive improvements and additions" to the existing 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-DWS water system or providing an approved alternative private water system meeting DWS standards for proposed 2-lot subdivision (SUB 08-000777) 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 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 to a water system proposed by the applicant or "water variance" to allow and utilize privately owned individual rain water catchment systems for proposed 2-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

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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 lot not serviced by the DWS water supply system. According to map-Plate 6-WATER-RESOURCES INVESTIGATIONS REPORT 95-4212, the subject TMK property or proposed subdivision is above the “160” inch isohyet line; and, historical rainfall information obtained from the State Climate Office (HSCO) and GIS mapping information show the proposed 2-lot subdivision is near former rain gauge “MOUNTAIN VIEW 91”. The mean annual rainfall (1949-1985) for “91” was 185.61 inches. The analysis of the applicant’s submittals together with rainfall maps and other published rainfall data for the area indicate the subject TMK property or proposed subdivision will receive more than 60+ inches of rainfall annually.

The analysis of the applicant’s submittals together with other rainfall maps and published rainfall data for the subject TMK property and surrounding areas indicate the proposed lot or lot designated to utilize private rainwater catchment systems for potable water and emergency uses will receive in excess of 60 + inches of rainfall annually. The proposed subdivision meets Rule No. 22-Water Variance.

The variance application-VAR 08-054 was acknowledged by letter dated August 28, 2008 and additional time to incorporate DWS comments and requirements into the variance application’s background report was necessary. The applicant granted an extension of time to Planning Director to render decision on variance application-VAR 08-054 to on or before May 15, 2009.

Based on the foregoing findings, the variance requested 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 materially 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 application to allow proposed 2-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. Pursuant to DWS memorandum dated April 27, 2009, the applicant/owner or subdivider shall contact the DWS in writing and assign "water service" to 1-proposed lot being created by proposed subdivision (SUB 08-000777). The applicant or DWS shall identify and confirm "which lot" or lot number and notify the Planning Department-Subdivision Section-SUB 07-000777, in writing, prior to issuance of final subdivision approval.
3. **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 08-000777. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting designated lot or lot created by pending 2-lot subdivision application not assigned service from the 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 proposed subdivision SUB 08-000777. 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 affected additional lot created by SUB 08-000777 not serviced by a County water system. No further subdivision of the lots created by SUB 08-000777 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.

- c. Any lots created by SUB 08-000777 may not be made subject to a condominium property regime.
- d. Any permitted new dwelling constructed after the date of this variance on proposed lot(s) 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 created by SUB 08-000777 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB

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08-000777, the owner(s) of the lot(s) created by SUB 08-000777 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.
- 4. 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.
- 5. 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 subject Variance null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

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xc: Manager-DWS
SUB 08-000777