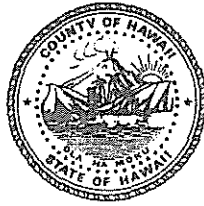


William P. Kenoi
Mayor



BJ Leithead Todd
Planning Director

County of Hawaii

PLANNING DEPARTMENT

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

April 1, 2009

Ms. Lori Mikkelsen
All Aina Services
P.O. Box 291
Laupahoehoe, HI 96764

Dear Ms. Mikkelsen:

SUBJECT: VARIANCE-VAR 08-063
Agent: ALL AINA SERVICES
Applicant: ALL AINA SERVICES
Owners: THOMAS NELSON, ET AL.
Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required,
Section 23-84, Water Supply, (1)(2)
Tax Map Key: 1-6-004:037, (SUB 08-000761)

After reviewing the subject variance application, the Planning Director certifies the approval of Variance-VAR 08-063 subject to conditions. The variance permits proposed 2-lot subdivision (SUB 08-000761) 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 referenced TMK property containing 20.000 acres, being Lot 1305-C, Map 96, Land Court Application 1053, is situated at Keaau, Puna, Hawaii. The referenced TMK property's address is 16-364 Ainaloa Boulevard.

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2. **Zoning.** The subject property is zoned Agricultural (A-1a) by the County and designated Agriculture "A" by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** The owner's surveyor filed a subdivision application (SUB 08-000761) and preliminary plat map (PPM), dated February 9, 2008, at the Planning Department on May 9, 2008 proposing to subdivide subject TMK property into 2-lots. Further action on the subdivision application's PPM was deferred according to letter dated June 24, 2008 in the subdivision file.
4. **Variance Application.** The applicant or owner's agent filed variance application and submittals on October 23, 2008. The variance application includes background information, dated October 23, 2008, which states in part the following:

"The subject property of 20.001 acres is located with the County's Ag-1a designation. Under this designation, the minimum building site area is one acre. The applicants are proposing a two-lot subdivision, of 18.473 acres and 1.525 acres. The purpose of requiring a water system in this case is to provide an adequate water system for domestic consumption. According to the records of Hawaii State Climate Office at the University of Hawaii, the rain gauge station in Orchidland Estates recorded 140 mean inches of rain annually between 1963-1967 (sic). In this situation, the substitute water catchment system is adequate for this use."

5. **Variance Application (VAR 08-063)-Agency Comments and Requirements:**

- a. The County of Hawaii-Hawaii Fire Department (HFD) memorandum dated November 26, 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 State of Hawaii-Department of Health (DOH) memorandum is dated November 26, 2008. Refer to the DOH memorandum in the variance file.
- c. The Department of Water Supply (DWS) memorandum, dated December 15, 2008, 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 12-inch waterline within Keaau-Pahoa Highway, approximately 6,300 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 will be provided via private rainwater catchment systems for each lot."

6. **Notice to Surrounding Owners.** The applicant's agent filed copy of notice mailed to surrounding property owner(s) within 300 feet of subject TMK property, and certificate of mailing and affixed USPO receipts dated November 25, 2008. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on November 28, 2008.

Posted Sign. The applicant's agent submitted affidavit regarding sign posting dated October 22, 2008 and photograph of posted sign(s) or "sign as it has been placed" ; and, revised affidavit dated March 31, 2009 regarding sign posted upon subject TMK property.

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 application and variance background information including rainfall 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.

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ALTERNATIVES

The DWS memorandum dated July 23, 2008 in subdivision file (SUB 08-000761) states in part the following:

“Please be informed that the

The first alternative requires the owners or subdividers to extend or construct improvements to the nearest DWS water system facility located within “Keaau-Pahoa Highway, approximately 1.5 miles from the property” 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 nearest existing DWS public water system or providing an approved alternative private water system meeting DWS standards for proposed 2-lot subdivision application (SUB 08-000761) 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 request for “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 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

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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 rainfall information provided by the applicant compared with rainfall maps and data maintained in the Planning Department indicates the subject TMK property receives more approximately 160 inches of rainfall annually to support private rainwater catchment systems for potable and emergency uses for the proposed 2- lot subdivision. According to map- Plate 6- WATER-RESOURCES INVESTIGATIONS REPORT 95-4212, the proposed subdivision appears to be nearest a 160 inch isohyet line; and, pursuant to other rainfall information available at the State Climate Office (HSCO), the proposed subdivision is situated within in an area which receives between 120 inches and 160 inches of rainfall annually. The analysis of the applicant's submittals together with rainfall maps and other published rainfall data for the general area indicates the subject TMK property or proposed subdivision will receive in excess of 60 inches of rainfall annually. The proposed subdivision meets Rule No. 22-Water Variance.

The applicant or agent's variance application was acknowledged by letter dated November 18, 2008 and additional time was required to submit and incorporate revised sign affidavit and other submittals into the variance application's file. The applicant's agent granted the Planning Director an extension of time to render decision on the agent's variance application to April 3, 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.

VARIANCE DECISION-CONDITIONS

The variance request 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. WATER VARIANCE: The owner(s), 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 08-000761. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting subdivision application SUB 08-000761 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 08-000761. 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 08-000761 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
 - c. Any lots created by SUB 08-000761 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 rain catchment water 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.

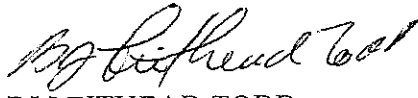
- e. Each permitted dwelling shall be provided with and maintain a private water supply system which includes an additional minimum 3,000 gallon water storage capacity for fire fighting and emergency purposes. The location and capacity of the emergency water supply system, including the necessary compatible 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 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 08-000761 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 08-000761, the owner(s) of the lot(s) created by SUB 08-000761 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.

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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 subject Variance-VAR 08-063 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

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xc: Manager-DWS
SUB 08-000761