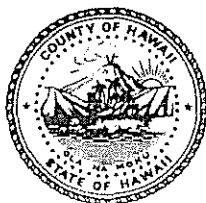


William P. Kenoi
Mayor



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

March 25, 2009

Mr. Christian Sieber
P.O. Box 1450
Keaau, HI 96749

Dear Mr. Sieber:

SUBJECT: VARIANCE-VAR 08-070

Applicant: CHRISTIAN SIEBER
Owner: CHRISTIAN SIEBER
Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required,
Section 23-84, Water Supply, (1)(2)
Tax Map Key: 1-7-013:121, (SUB 08-000599) ✓

After reviewing the subject variance application, the Planning Director certifies the approval of Variance-VAR 08-070 subject to variance conditions. The variance permits proposed 3-lot subdivision (SUB 08-000599) 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 applicant's request or owner's variance application from minimum subdivision water system requirements for proposed 3-lot subdivision be **approved** based on the following findings:

BACKGROUND

1. **Location.** The referenced TMK property, Lot A-1 containing approximately 4.047 acres, being portion of Grant 4263 to Charles Furneaux, Olaa Reservation Lots, is situated at Olaa, Puna, Hawaii.

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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 or subdivider submitted subdivision application (SUB 07-000599) and preliminary plat map (PPM) dated May 29, 2007 proposing to subdivide subject TMK property into 3-lots. Further action on the subdivision application is being deferred pursuant to letter dated January 17, 2008 in subdivision application file.
4. **Variance Application.** The applicant submitted the variance application and submittals on November 26, 2008. The application includes rainfall information for a weather station in Kurtistown (MTVH 1) including following statements under "Nature of the Request" dated November 23, 2008:

"As shown by the foregoing information, Kurtistown is a suitable area for a rainwater catchment supply. Therefore, the applicant's substantial property interest in occupancy and use of the land, that would otherwise not be available due to the lack of water service from the Department of Water Supply, can be reconciled with the special circumstances applicable to the subject property in terms of available rain that can be harvested for water needs. No other reasonable alternatives aside from the use of rainwater catchment supply would resolve the difficulty."

5. **Variance Application (VAR 08-070)-Agency Comments and Requirements:**

- a. The State of Hawaii-Department of Health (DOH) memorandum is dated February 10, 2009. Refer to 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."

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

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"We have reviewed the subject application and our comments from our September 10, 2007, memorandum to you, still stand. Pursuant to that memorandum, the applicant must inform the Department, in writing, as to which proposed lot will be assigned to the existing service, (Account No. 060-17960).

Subject to the above, we have no objections to the subject application as the applicant has indicated that water will be provided to the other lots within the subdivision via private rainwater catchment systems for each lot."

6. **Notice to Surrounding Owners.** The applicant's submitted copy of notice sent to surrounding property owner(s) within 300 feet of subject TMK property sent by USPO, and USPO certified mailing receipts dated February 9, 2009. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on February 11, 2009.

Posted Sign. The applicant submitted an affidavit dated February 11, 2009 regarding sign posted near or upon subject TMK property and photograph of posted sign.

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.

ALTERNATIVES

The DWS memorandum dated September 10, 2007 in subdivision file (SUB 07-000599) states in part the following:

"Please be informed that water is limited to one 5/8-inch meter and an average 400 gallons per day, which is subject to change without notice. Further, the Department's existing water system

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facilities cannot support the proposed subdivision at this time. Extensive improvements and additions, including source, storage, transmission, booster pumps, and distribution facilities, must be constructed.

Should a variance application be effected and approved, we request the applicant inform this office in writing which lot the existing service (Account No. 060-17960) will be assigned."

The first alternative requires the applicant or subdivider to make "extensive improvements and additions" to the existing county DWS water system in accordance with the DWS memorandum dated September 10, 2007 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 07-000599) or 2 proposed lots 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 required for the proposed subdivision or applicant's request to utilize "rainwater catchment supply" or allow and utilize privately owned individual rain water catchment systems for proposed 2-lots created from proposed subdivision (SUB 07-000599) 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

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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 TMK property utilizing maps at the Planning Department and weather station information cited by the applicant indicates 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 3-lot subdivision. The isohyet map study from Planning Department’s GIS data base denotes subject TMK or proposed subdivision is situated near the 157.48 inch isohyet line; and, pursuant to historical rainfall information maintained by the Hawaii State Climate Office (HSCO), the proposed 2-lot subdivision is near rain gauge “MOUNTAIN VIEW 91”. The mean annual rainfall (1949-1985) for “91” was 185.61 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 indicate the proposed subdivision will receive at least 60+ inches of rainfall annually. The proposed subdivision meets Rule No. 22-Water Variance.

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 3-lot subdivision of the subject TMK property without providing a water system meeting DWS standards for 2-proposed lots 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. The applicant or subdivider shall confer with the DWS and designate in writing which proposed lot shall be assigned DWS water service (Account No. 060-17960) prior to submittal of approved written agreement and issuance of final subdivision approval to SUB 07-000599.

The DWS service (Account No. 060-17960) assigned to proposed lot created by SUB 07-000599 shall not be shared with proposed designated lots not serviced by DWS system created by SUB 07-000601 or any other abutting TMK property.

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 to SUB 07-000599. This written Agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting 2-proposed lots not serviced by a County water system or pending 3-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 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 07-000599. 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 07-000599 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
 - c. Any lots created by SUB 07-000599 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 07-000599 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 07-000599, the owner(s) of the lot(s) created by SUB 07-000599 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

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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 the subject Variance Permit null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

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xc: Manager-DWS
SUB 07-000599