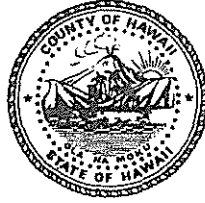


William P. Kenoi
Mayor



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

August 12, 2009

Ms. Paulette A. Gose
P. O. Box 6477
Kamuela, HI 96743

Dear Ms. Gose:

SUBJECT: VARIANCE-VAR 09-011
Applicant: PAULETTE A. GOSE
Owners: MAURICE BORQUEZ, ET AL.
Request: Variance from Chapter 23, Subdivisions,
Improvements Required
Tax Map Key: 4-3-011:019, (SUB 91-000202)

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 09-011 subject to variance conditions. The variance permits proposed subdivision (SUB 91-000202) of the subject TMK property into 3-lots 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 the variance from the minimum subdivision water system requirements be **approved** based on the following findings:

BACKGROUND

1. **Location.** The referenced TMK property containing 16.2392 acres, being portion of Lot 40 of Pohakea Homesteads (Grant 6750 to August F. Gonsalves), is situated at Pohakea, Hamakua, Hawaii.
2. **Zoning.** The subject property is zoned Agricultural (A-5a) by the County and designated Agriculture "A" by the State Land Use Commission (LUC).

AUG 17 2009

3. **Subdivision Request/PPM.** The applicant or owners submitted a subdivision application (SUB 91-202 or SUB 91-000202) including revised preliminary plat map (PPM) dated August 13, 2008 proposing to subdivide subject TMK property into 3-lots. Further action on the subdivision application was deferred pursuant to letter dated February 6, 2009 in the subdivision file.

4. **Variance Application.** The applicant submitted the variance application and submittals on March 20, 2009. The application submitted background information or "Purpose or Nature of Request" dated March 12, 2009 which states in part the following:

"The purpose of this request is provide (sic) information to establish that an effective catchment water system in the subject location is realistic and in effect at the residence located at the subject property, 43-1570 Pohakealani Road, Paauilo.

According to Atlas of Hawaii, Third Edition, the rainfall is estimated between 80 to 120 inches per year. In addition, the Hawaii County Planning Departments GIS DVD for the first quarter of 2009, shows the rainfall for the subject property location as averaging between 80 to 120 inches of rainfall annually.

Presently, there is a residence on the subject site which was permitted in 2006. Since installing the catchment water system, the 15,000 gallon tank has been full and, more than not, overflowing."

5. **Variance Application (VAR 09-011)-Agency Comments and Requirements :**

a. The Hawaii Fire Department (HFD) memorandum dated April 9, 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."

b. The State of Hawaii-Department of Health (DOH) memorandum is dated April 9, 2009. Refer to DOH memorandum in variance application file.

c. The Department of Water Supply (DWS) memorandum, dated April 20, 2009, states in part:

“We have reviewed the subject application and our comments from our December 4, 2008, memorandum to your office, regarding the subject application, still stand.

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

6. **Notice to Surrounding Owners.** The applicant submitted copy of notice dated April 13, 2009 sent or mailed to surrounding property owner(s) within 300 feet of subject TMK property and USPS mailing receipts dated April 13, 2009 affixed to list of surrounding property owners. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on April 11, 2009.

Posted Sign. The applicant submitted an affidavit dated April 23, 2009 regarding a sign posted on subject TMK property and 2-pictures or photographs of a sign posted upon the property on or about April 20, 2009.

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 comments or memorandum dated December 4, 2008 regarding the revised preliminary plat map in subdivision file (SUB 91-000202 states in part the following:

“We have reviewed the revised preliminary plat map for the proposed subdivision.

Please refer to our December 26, 1991, memorandum to you for our comments and requirements.

Ms. Paulette A. Gose
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We reiterate that the Department's existing water system facilities cannot support the proposed subdivision at this time."

The DWS memorandum dated December 26, 1991 in the subdivision file (91-202) states in part the following:

"Please be informed that the Department's existing water system 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. Currently, sufficient funding is not available and no time schedule is set."

The first alternative requires the applicant or subdivider to make "extensive improvements and additions" to the County of Hawaii-DWS water system in accordance with the DWS memorandum(s) 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 91-000202) would be putting excessive demands upon the applicant or owners when a reasonable alternative is available. Planning Department Rule 22-Water Variance was adopted or became effective after the subdivision application was filed circa 1991.

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 utilize privately owned individual rain water catchment systems for proposed 3-lot subdivision can meet the intent and purpose of the Subdivision Code according 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 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 information regarding the site or subdivision submitted by the applicant indicates the subject TMK property and surrounding areas receive adequate rainfall to support individual or separate private rainwater catchment systems for potable and emergency uses. The information submitted by the applicant compared with the isohyet map study from Planning Department’s GIS data base denotes subject TMK or proposed subdivision is situated between the (-----) inch isohyet line and (-----) inch isohyet line. The analysis of the applicant’s submittals compared with rainfall maps and other historical or annual rainfall data maintained by Planning Department indicate the proposed subdivision will receive at least 60+ inches of rainfall annually. The proposed 3-lot subdivision meets Rule No. 22-Water Variance.

The variance application submitted by the applicant was acknowledged by letter dated April 3, 2009 and additional time to review earlier DWS memorandums and building permits issued to subject TMK property was necessary. The applicant granted the Planning Director additional time to incorporate submittals and render decision on the applicant’s variance application to August 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.

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 pursuant to Rule 22 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 91-000202. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting 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 91-000202. 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 91-000202 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
 - c. Any lots created by SUB 91-000202 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 and be located in an area accessible to fire apparatus. 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 91-000202 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 91-000202, the owner(s) of the lot(s) created by SUB 91-000202 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.

Ms. Paulette A. Gose
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August 12, 2009

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 09-011 null and void.

Sincerely,

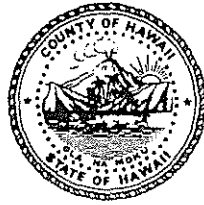


BJ LEITHEAD TODD
Planning Director

WRY:mad
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xc: Manager-DWS
SUB 91-000202

William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

County of Hawai'i

PLANNING DEPARTMENT

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October 16, 2009

Ms. Paulette A. Gose
P. O. Box 6477
Kamuela, HI 96743

Dear Ms. Gose:

SUBJECT: VARIANCE-VAR 09-011
Applicant: PAULETTE A. GOSE
Owners: MAURICE BORQUEZ, ET AL.
Request: Variance from Chapter 23, Subdivisions,
Improvements Required
Tax Map Key: 4-3-011:019, (SUB 91-000202)

The Planning Director approved your Variance Application certified approval of Variance-VAR 09-011 subject to variance conditions dated August 12, 2009. The variance permits proposed subdivision (SUB 91-000202) of the subject TMK property into 3-lots 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).

Pursuant to your discussion with staff, please replace Page 5 of the variance letter sent or mailed to you on or about August 17, 2009 with the enclosed or corrected "Page 5" dated "August 12, 2009".

We apologize for any confusion and inconvenience caused by the omissions in the text of the original page.

OCT 20 2009

Ms. Paulette A. Gose
Page 2
October 16, 2009

Should you have any question regarding the enclosure or Variance-VAR 09-011 dated August 12, 2009, please feel to contact this office.

Sincerely,



BJ LEITHEAD TODD
Planning Director

WRY:mad
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Enclosure (Page 5)

xc: Manager-DWS (w/ Enc.)
SUB 91-000202 (w/Enc.)

Ms. Paulette A. Gose
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August 12, 2009

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 potable and emergency needs must receive a minimum 60 inches of annual rainfall for each lot served by catchment. Rule 22, states in part:

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The analysis of variance information or rainfall data submitted by the applicant indicates the subject TMK property and surrounding areas receive adequate rainfall to support individual or separate private rainwater catchment systems for potable and emergency uses. The information submitted by the applicant compared with the isohyet map study utilizing the Planning Department’s GIS data base denotes the subject TMK or proposed subdivision straddles areas receiving 60 inches up to 120 inches of annual rainfall. The analysis of the GIS rainfall map study indicates the proposed subdivision will receive at least 60+ inches of rainfall annually. The proposed 3-lot subdivision meets Rule No. 22-Water Variance.

The variance application submitted by the applicant was acknowledged by letter dated April 3, 2009 and additional time to review earlier DWS memorandums and building permits issued to subject TMK property was necessary. The applicant granted the Planning Director additional time to incorporate submittals and render decision on the applicant’s variance application to August 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.

VARIANCE DECISION-CONDITIONS

The variance request to allow proposed 3-lot subdivision of the subject TMK property without