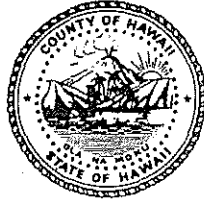


William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
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County of Hawai'i

PLANNING DEPARTMENT

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Phone (808) 961-8288 • Fax (808) 961-8742

November 4, 2009

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

Gentlemen:

SUBJECT: VARIANCE-VAR 09-026
Applicant: ALL AINA SERVICES
Owner: ABSOLUTE BUILDERS
Request: Variance from Chapter 23, Subdivisions,
Improvements Required,
Tax Map Key: 4-5-004:025, (SUB 07-000700)

After reviewing the subject variance application, the Planning Director certifies the approval of Variance-VAR 09-026 subject to variance conditions. The variance permits proposed subdivision (SUB 07-000700) of the above referenced TMK property without providing water supply system to 4-proposed building lots meeting minimum requirements of the County-DWS. The variance is from Hāwāii 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 9 containing approximately 58,501 square feet portion of Grant 7191 to Maria De Silva, is situated at Kaa, Hamakua, Hawaii.
2. **Zoning.** The subject property is zoned Single-Family Residential (RS-10) by the County and designated Urban“U” by the State Land Use Commission (LUC).

3. **Subdivision Request/PPM.** The applicant or subdivider submitted a subdivision application (SUB 07-000700) and preliminary plat map proposing to subdivide subject TMK property into 5-lots and roadway lot ("LOT A"). Further action on the subdivision application is being deferred.
4. **Variance Application.** The applicant submitted the variance application and submittals on June 23, 2009. The application includes the following background information:

"This request meets the criteria as set forth in Rule 22. Honokaa Town gets an average rainfall of 70+ inches of a (sic) rain a year according to the National Weather Services (sic) and the closest rain gauge located in Honokaa Town (HNK H1). Also the proposed parcels are located with in (sic) less then (sic) a mile of the nearest County of Hawaii, Fire Department, which further minimizes fire emergency concerns.

The subject parcel is located in the residential zoning of RS-10 with most of the parcels in the area & neighborhood averaging a dwelling a lot. The original dwelling on the subject parcel was removed with approval of Demolition Permit #B2004-022H. There are no other reasonable alternatives to this request. The proposed subdivision will not change the character of the neighborhood or be detrimental to the public welfare or cause sustainable or adverse impact to the area or surrounding parcels."

5. **Variance Application (VAR 09-026)-Agency Comments and Requirements :**

- a. The State of Hawaii-Department of Health (DOH) memorandum is dated July 22, 2009. Refer to DOH memorandum in the variance application file.
- b. The County of Hawaii-Hawaii Fire Department (HFD) memorandum is dated July 27, 2009. Refer to HFD memorandum in the variance application file.
- c. The Department of Water Supply (DWS) memorandum, dated August 3, 2009, states in part:

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

The comments from our February 21, 2008 letter to you, regarding the subject subdivision still stand. We have no objection to the applicant's proposed use of a private rainwater catchment system to serve the additional lots.

Prior to final subdivision approval being granted, we request that the applicant designate which proposed lot within the subdivision will be served by the existing service for our records. Further, the applicant shall be informed that the existing meter shall not be shared with other proposed lot (sic) and the water system piping between the lots shall not be interconnected in any way."

6. **Notice to Surrounding Owners.** The applicant's submitted transmittal letter and copy of notice sent to a list of surrounding property owner(s) within 300 feet of the subject TMK property. According to USPS form(s) and affixed USPS mailing receipts the notice was mailed on July 30, 2009. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on July 26, 2009.

Posted Sign. The applicant submitted an affidavit dated June 8, 2009 regarding sign posted on subject TMK property and photograph or picture of the posted sign.

7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received. The following objection letter was from a surrounding property owner(s) was received:

- 7a. Objection letter dated August 3, 2009 from Clarence Mill for Elaine-L. Mills which states in part:

"The very bottom line is that if the applicant does not comply with the minimum requirements of the County of Hawaii, Department of Water Supply the request should be denied."

Therefore, after considering the applicant's variance application and request for variance pursuant to Rule 22, agency comments to the application, and objection letter to the variance application, 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 February 21, 2009 in subdivision file (SUB 07-000700) 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.”

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 subject TMK property is current assigned 1-DWS water meter. In sum, the DWS memorandum dated February 21, 2009 requires the applicant or subdivider to make necessary improvements to the current County or DWS water supply system to provide meters to the 4 proposed additional lots.

The second alternative would be to design, drill and develop private wells and install the necessary water system improvements in accordance with DWS standards to provide a water system for 4-additional building lots.

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 subdivision (SUB 07-000700) 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 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 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 TMK property provided by the applicant indicate that there is adequate rainfall to support individual or separate private rainwater catchment systems for potable and emergency uses for the building lots created by proposed subdivision. The analysis of the applicant’s submittals and GIS rainfall data maintained by Planning Department and indicate the proposed subdivision will receive at least 60+ inches of rainfall annually. The proposed subdivision meets Rule No. 22-Water Variance.

The variance application submitted by the applicant’s representative was acknowledged by letter dated July 17, 2009 and additional time to consider agency comments from comments from a surrounding property owner was necessary. The applicant granted the Planning Director additional time to render decision on the variance application to November 5, 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 application to permit proposed subdivision of the subject TMK property without providing a water system meeting DWS standards to 4-proposed building 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. Pursuant to Department of Water Supply (DWS) memorandum dated August 3, 2009, the applicant or subdivider shall contact the DWS and designate in writing which proposed building lot will be assigned the existing DWS water service. Further, the subdivider or lot owner(s) of the designated lot assigned the water service shall not "interconnect" or share the water service with any lots created by the subdivision without a water service or 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 of SUB 07-000700. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions for the pending subdivision application or proposed lots not serviced by a 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 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 07-000700. 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 07-000700 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
 - c. Any lots created by SUB 07-000700 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 07-000700 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 07-000700, the owner(s) of the lot(s) created by SUB 07-000700 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.

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-VAR09-026 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

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xc: Manager-DWS
SUB 07-000700
Clarence Mills