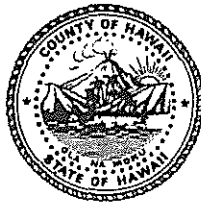


William P. Kenoi
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County of Hawai'i

PLANNING DEPARTMENT

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March 31, 2010

Ms. Judith Clara Mura
P.O. Box 554
Pahoa, HI 96778

Dear Ms. Mura:

VARIANCE-VAR 09-044

Applicant: JUDITH CLARA MURA

Owner: JUDITH CLARA MURA

**Request: Variance from Chapter 23, Subdivisions,
Improvements Required (Water Supply)**

Tax Map Key: 1-3-047:016, (SUB 09-000851)

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 00-044 subject to variance conditions. The applicant or owner is requesting variance to permit proposed 2-lot subdivision (SUB 09-000851) of above referenced TMK property without providing water supply system to 1-lot 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 10.713 acres, being Lot 43 as shown on Map 9, Land Court Application 1800, is situated at Pohoiki, Puna, Hawaii.
2. **Zoning.** The subject property is zoned Agricultural (A-1a) by the County and designated Agriculture "A" by the State Land Use Commission (LUC).

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3. **Subdivision Request/PPM.** The applicant or subdivider filed subdivision application (SUB 09-000851) and preliminary plat map (PPM) proposing to subdivide subject TMK property into 2-lots. Further action on the subdivision application is being deferred pursuant to letters in the subdivision file.
4. **Variance Application.** The subdivider or owner filed a variance application and submittals on August 25, 2009. The application's request states in part the following:

“variance for a (2) lot subdivision of Lot 43, Kehialaka, Puna in order to build a home for my 14-year old daughter & I (sic),” and includes an extract showing the proposed subdivision or region receives in excess of 60 inches of rainfall annually.

5. **Variance Application (VAR 09-044)-Agency Comments and Requirements:**

- a. The State of Hawaii Department of Health (DOH) memorandum is dated November 9, 2009. Refer to the SOH-DOH memorandum in variance application file.
- b. The Department of Water Supply (DWS) memorandum, dated March 10, 2010, states in part:

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

Our comments from our March 24, 2009 letter to you, regarding the subject subdivision, still stand. Although the application does not indicate how the applicant proposes to provide water to the additional lot, we have no objections to the use of a private rainwater catchment system to serve the additional lot.

Prior to final subdivision approval being granted, the applicant must designate, in writing, which lot within the proposed subdivision will be assigned the existing service to the subject parcel (Account No. 070-00781). Further, the applicant shall be informed that the existing meter shall not be shared with the other proposed lot and the water system piping between the lots shall not be interconnected in any way.”

6. **Notice to Surrounding Owners.** The applicant's submitted a copy of notice and attached map mailed to a list of surrounding property owner(s) within 300 feet of subject TMK property including mailing receipt dated November 14, 2009. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on November 9, 2009.

Posted Sign. The applicant submitted an affidavit dated November 18, 2009 regarding sign posted upon subject TMK property and photograph of the 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 March 24, 2009 in the subdivision application file (SUB 09-000851) states in part the following:

"Please be informed that the subject parcel and 17 additional lots were created through Subdivision Application No. 2000-0136 (sic).

Subject to the limited water availability of seven (7) units of water in this area, only seven (7) services were available for the proposes (sic) subdivision and were installed to service Tax Map Key 011, 012, 014, 015, 016, 017, and 018. The remainder 11 lots do not have public water and must rely on other sources. Further, the Planning Department approved the bonding documents and granted final subdivision approval on November 22, 2005, and water was granted to the seven (7) lots on March 14, 2006.

Therefore, water is not available for the proposed subdivision at this time. Extensive improvements and additions, including source, storage, transmission, booster pumps, and

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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 March 24, 2009 requires the applicant or subdivider to make necessary improvements to the current County or DWS water supply system to provide a water meter to the proposed additional lot.

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 the proposed additional building lot.

In view of the above, there are no other reasonable alternatives in resolving the difficulty of the applicant. The imposition of improving the current DWS water system or providing an approved alternative private water system meeting DWS standards for proposed 2-lot subdivision (SUB 09-000851) 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 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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“22-4 Minimum rainfall.

Except as provided in Rule 22-6, all lots to 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 provided by the applicant including annual rainfall information within the subject TMK property or surrounding region indicates that there is adequate rainfall to support individual or separate private rainwater catchment systems for potable and emergency uses for the additional building lot 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-owner was acknowledged by letter dated November 3, 2009 and additional time was required by the applicant to review and address outstanding real property taxes due the County Real Property Tax Office and DWS requirements. The applicant submitted Real Property Tax Clearance dated February 18, 2010 and granted the Planning Director additional time to incorporate review of the tax clearance and other submittals and render decision on the applicant’s variance application.

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 for 1-lot 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 March 10, 2010, 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 owner, 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 09-000851. This written agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting proposed 2-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 09-000851. 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 09-000851 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
 - c. Any lots created by SUB 09-000851 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 09-000851 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 09-000851, the owner(s) of the lot(s) created by SUB 09-000851 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.

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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 the subject Variance Permit null and void.

Sincerely,



BJ LEITHEAD TODD

Planning Director

WRY:kwr

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xc: Manager-DWS
SUB 09-000851