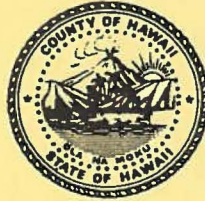


William P. Kenoi
Mayor



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

January 18, 2011

Mr. Martin Blackwell
RR2 Box 3965
Pahoa, HI 96778

Dear Mr. Blackwell:

SUBJECT: Application VARIANCE (VAR) 09-059
Applicant: MARTIN BLACKWELL
Owner: MARTIN BLACKWELL.
Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required,
Section 23-84, Water and Road Improvements
Tax Map Key: 1-4-011:065 (SUB 09-000891)

After reviewing your Variance Application, the Planning Director certifies the **approval of VAR 09-059** from minimum **water supply and road improvements**, subject to variance conditions. The variance is from Hawai'i County Code, Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply, (1)(2), Section 23-86, Requirements for dedicable streets, Section 23-93, Street lights, Section 23-94, Street name and traffic signs, and Section 23-95, Right-of-way improvement.

The Planning Director has concluded that VAR 09-059 be approved based on the following background information and findings.

BACKGROUND

1. **Location.** The subject property, comprising approximately 23,320 square feet, concerns the subdivision of Lot 65 of the Kapoho Beach Lots Subdivision. The property is addressed as 14-5007 Kapoho Beach Road and is situated at Kapoho-Halekamahina, Puna, Hawai'i.

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2. **Zoning.** The subject property is zoned Single Family Residential – 10,000 sq. ft. (RS-10) by the County and designated Urban “U” by the State Land Use Commission (LUC). Although the subject property does not abut the shoreline, it is located within the Special Management Area (SMA). According to the acknowledgment letter dated July 8, 2009 in the subdivision application file, Special Management Area Minor Permit No. 09-000095 (SMM-09-000095) was issued to allow for the subdivision.
3. **Subdivision Request/PPM.** The applicant or subdivider submitted a subdivision application (SUB 09-000891) and preliminary plat map (PPM), dated May 15, 2009, proposing to subdivide subject property into two (2) lots.
4. **Variance Application.** The variance application was acknowledged by Planning Department letter dated July 15, 2010. This variance application includes background history and circumstances and information regarding the pending subdivision application.
5. **Agency Comments and Requirements:**
 - a. The State of Hawai‘i Department of Health (DOH) memorandum is dated July 30, 2010. Refer to DOH memorandum in variance file.
 - b. The Hawaii Fire Department (HFD) memorandum is dated July 30, 2010. Refer to HFD memorandum in variance file.
 - c. The Department of Water Supply (DWS) memorandum is dated August 24, 2010. Refer to Department of Water Supply memorandum in variance file.
 - d. The Department of Public Works (DPW) memorandum is dated November 22, 2010. Refer to Department of Public Works memorandum in variance file.
6. **Public Notice.** The applicant’s surveyor filed a transmittal letter dated July 24, 2010 and attached mailing receipts and copy of notice sent to surrounding property owner(s) within 300 feet of the subject property. Notice of this application was published in the Hawai‘i Tribune Herald and West Hawai‘i Today on July 31, 2010. The applicant submitted an affidavit, dated October 9, 2009, regarding sign posted on the property and photograph of the posted sign.

7. **Comments from Surrounding Property Owners or Public.**

- a. E-Mail received from Richard Rimer on Thursday, August 26, 2010 opposing the variance application.
- b. Second e-mail received from Mr. Richard Rimer on Thursday, September 9, 2010 opposing the variance application.
- c. Petition submitted dated August 1, 2010 opposes the Variance application, signed by various owners of the Kapoho Beach lots Subdivision.
- d. Letter from Murray Lapidés was received on August 16 & 24, 2010 opposing the variance application
- e. Letter from Patrick C. Kelly was received on August 16, 2010 opposing the variance application.
- f. Letter from Priscilla Drum, of the Kapoho Water Company and dated August 16, 2009, with information on obtaining water service. Refer to memorandum in variance file.
- g. Letter from Harry Samelson, of the Kapoho Beach Community Association and dated March 13, 2010, with information on association fees and maintenance. Refer to memorandum in variance file.

ALTERNATIVES/SPECIAL AND UNUSUAL CIRCUMSTANCES

Water Supply. The first alternative requires the applicant to extend and/or improve the nearest DWS water system and provide the necessary dedicable water system improvements in accordance with DWS standards as referenced per memorandum dated August 24, 2009.

A second alternative would be to design, drill and develop private wells and install the necessary water system improvements in accordance with DWS standards.

The cost to construct additional water supply improvements in accordance with the DWS memorandum, or alternative private water system meeting DWS standards for the pending 2-lot subdivision, would be putting excessive demands upon the applicant when a more reasonable alternative can be permitted.

As identified in the August 16, 2009 letter from the Kapoho Water Company, the new lot would be eligible for a water meter once the necessary fees and requirements of the company have been complied with.

Lot Access/Roadways. The subdivider has been requested to construct access and roadways pursuant to an earlier DPW memorandum dated July 17, 2009, or roadway requirements pursuant to Chapter 23, Subdivisions. The subject property currently has access to a public roadway (Kalapana-Kapoho Road) via a privately-owned roadway (Kapoho Beach Road).

In lieu of improving or constructing roadways required by the DPW, the developer contends that the existing paved private roadway (Kapoho Beach Road) is sufficient access to subject property. The additional lot to be created by the proposed subdivision will create minimal additional impact. The owners are requesting a variance not to construct roadway improvements, including 32-ft wide dedicable pavement with concrete curbs, gutters, and sidewalk within a 50-ft. wide right of way conforming to Std. Det-32 and R-34 and street lights, as required by the Department of Public Works memorandum.

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.

Certain properties seeking a variance from general water-related improvements may qualify for relief under Planning Department Rule 22 – Water Variance. Rule 22 was drafted, in part, due to the State Department of Health having 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. Rule 22 provides criteria to be used so that consistent decisions are made on water variance requests.

Rule 22 allows privately-owned individual rain water catchment systems, where sufficient rainfall exists, and generally pertains to subdivisions proposing six or fewer lots on agriculturally-zoned land. Although adequate rainfall is present on the subject property and many existing residences in the vicinity use rain catchment, the zoning is Single Family Residence – 10,000 sq. ft. (RS-10), therefore Rule 22 is not applicable to the subject site. However given that a private water association provides service to the community, the request for variance to obtain service from the Kapoho Water Company for the proposed second lot is reasonable.

Given the circumstances cited in the application and the availability of additional water via Kapoho Water Company to the proposed subdivision, a water variance would be consistent with the general purpose of the zoning district and the intents and purposes of the Zoning Code, Subdivision Code and the Hawaii County General Plan. Furthermore, it is felt that this variance will not be materially detrimental to the public's welfare and will not cause substantial adverse impact to the area's character and to adjoining properties.

Roadway Variance. The intent and purpose of access requirements to a proposed subdivision is to ensure legal and physical access to the proposed lots that is clearly defined and accessible from a public road by domestic and farm vehicles, police, fire, and other service vehicles under various weather conditions without constant maintenance.

The existing subdivision that was established on July 21, 1952 created 128 residential lots and a roadway network. Said subdivision established the surrounding land patterns and the existing private roads, which are presently paved, the improvements in good repair, and ongoing maintenance being the responsibility of the association and property owners. Also, the subject property consists of 23,320 square feet and is zoned Single Family Residence – 10,000 square feet (RS-10). Therefore, given the subject property's zoning density the applicant/owner would be allowed another single family dwelling on the parcel without subdividing the property and without doing any roadway and water improvements.

Therefore, given the information cited by the applicant and evaluation of the request to improve the privately-owned roadway, required by the Department of Public Works memorandum, dated April 9, 2009, the Planning Director has concluded that the current roadway (Kapoho Beach Road) is sufficient access to accommodate the additional lot created by the subdivision.

Given the circumstances cited in the application, the request for variance from roadway improvements, at this time, 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, it is felt that this variance will not be materially 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

VAR 09-059, concerning the applicant's request to allow the proposed two-lot subdivision of the subject property without 1) providing a water system meeting Department of Water Supply standards and 2) constructing dedicable road improvements required by the Department of Public Works, is hereby approved subject to following variance conditions:

General Conditions

1. The applicant, subdivider, owners, their assigns, or successors shall be responsible for complying with all stated conditions of approval. The term "applicant" in the following conditions is further understood to collectively mean the applicant, subdivider, owners, their assigns, or successors.
2. The applicant acknowledges that the parcel was created by a variance from the normal subdivision requirements of Hawai'i 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. No further subdivision of any lots created by SUB 09-000891 are permitted unless county water system requirements pursuant to Chapter 23, Subdivisions, are met.
4. No condominium property regime (CPR) shall be permitted on any lots created by SUB 09-000891.
5. No permit to allow an ohana dwelling or building permit issued to allow construction of an "ohana" dwelling shall be granted to the subject TMK property or upon lots created by proposed subdivision, subject to provisions of the Zoning Code or State Law, which may change from time to time.
6. The subdivision application's (SUB 09-000891) final plat map shall meet with all the conditions of this variance and/or the Hawai'i County Zoning Code and Subdivision Code not covered by this variance. No other variances from Chapter 23, Subdivisions, shall be granted to permit subdivision application SUB 09-000891.
7. The applicant 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.

Water Variance Conditions

1. The applicant shall apply for water meter(s) from the Kapoho Water Company (KWC) for the lot not serviced by the County. The applicant shall comply with all terms and conditions for water service required by KWC, and including the installation of the water meter, prior to county granting final subdivision approval to SUB 09-000891.
2. The applicant shall file a written agreement or approved written document with the Planning Department prior to final subdivision approval of SUB 09-000891. This written agreement, which shall contain the following deed language, being covenants, conditions, and restrictions affecting the proposed lot 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 09-000891. 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. The applicant or subdivider agrees and accepts the fact that the County will not, at this time, bear the responsibility to supply public water to the proposed or affected additional lot created by SUB 09-000891 not serviced by a County water system.
 - c. 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.
 - d. In the event that the County notifies the owner(s) of any lot created by SUB 09-000891 that the County Water System has been upgraded, or an improvement district initiated to enable service to those lots, they shall

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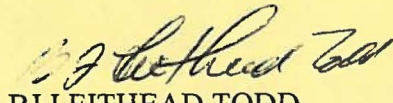
participate in such improvement district or shall pay their pro-rata share of the upgrade and installation of laterals, as determined by the Department of Water Supply.

Road Variance Conditions

1. The applicant understands that the both lots arising out of SUB 09-000891 will use and maintain the privately-owned road and any utility easement on their own without any expectation of governmental assistance to maintain the existing access/roadway improvements, including grassed shoulders, within and upon the rights-of-way identified on the subdivision's preliminary plat map, or any other necessary access and utility easement(s) within the proposed subdivision.
2. The applicant for the lots created by proposed SUB 09-000891 agrees to participate in any current Homeowner or maintenance agreement or pay their fair share to maintain the current access driveways and section of privately-owned roadway within the Kapoho Beach Lots Subdivision, including grassed shoulders, fronting the proposed subdivision.

Should any of the foregoing stated conditions not be complied with, the Planning Director may proceed to declare VAR 09-059 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

GES:LHN:mad

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xc: Manager – DWS
DPW – Engineering Division
SUB 09-000891
TMK File
Opponents