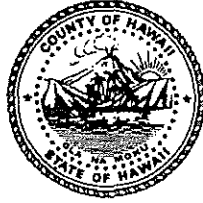


William P. Kenoi
Mayor



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

September 20, 2010

Ms. Nancy K. Lee
P. O. Box 14
Mountain View, HI 96771

Dear Ms. Lee:

SUBJECT: VARIANCE: VAR 10-001

Applicants: SOLOMON LEE TRUST and NANCY K. LEE TRUST

Owners: SOLOMON LEE TRUST and NANCY K. LEE TRUST

**Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required,
Section 23-84, Water Supply, (1)(2)**

Tax Map Key: 1-8-005:112, (SUB 09-000885)

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 10-001 subject to variance conditions. Variance-VAR 10-001 permits proposed 2-lot subdivision (SUB 09-000885) to be created or 1-proposed lot without meeting the minimum requirements of the Department of Water Supply (DWS). The variance is from Hawai'i County Code, Chapter 23, Subdivisions, Division 2, Improvements Required, Section 23-84, Water Supply, (1)(2).

The Planning Director has concluded that variance from the minimum subdivision water system requirements for the proposed 2-lot subdivision be **approved** based on the following findings:

BACKGROUND

1. **Location.** The referenced TMK property or Lot 153 containing 50.000 acres, being portion of Grant 4129 to Capital Coffee and Commercial Co., Ltd, Olaa

SEP 22 2010

Reservation Lots, is situated at Oloo, Puna, Hawaii.

2. **Zoning.** The subject property is zoned Agricultural (A-20a) by the County and designated Agriculture or "A" by the State Land Use Commission (LUC). The subject TMK property is not within the Special Management Area (SMA).
3. **Subdivision Request/PPM.** The applicant or the owner's agent submitted a subdivision application (SUB 09-000885) and preliminary plat map (PPM), dated April 23, 2009 proposing to subdivide subject TMK property into 2-lots. Further action on the subdivision application is being deferred pursuant according to a letter dated July 2, 2009 in the subdivision file.
4. **Variance Application.** The applicant or applicant's agent filed a variance application and submittals on January 28, 2010. The application includes the following background information:

"County water services the existing dwelling from a water meter in North Peck Road. Proposed Lot 53-A will retain the existing water meter and Lot 53-B will utilize the private catchment method."

5. **Variance Application (VAR 10-001)-Agency Comments and Requirements :**

- a. The State of Hawaii-Department of Health (SOH-DOH) memorandum is dated May 11, 2010. Refer to SOH-DOH memorandum in the variance application file.

- b. The County of Hawai'i-Hawai'i Fire Department (COH-HFD) memorandum dated May 13, 2010, 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 protection."

- c. The Department of Water Supply (DWS) memorandum, dated June 2, 2010, states in part the following:

"Our comments from our July 29, 2009, letter to you regarding Subdivision Application No 09-000885 still stand. Please be informed that the

applicant has informed the Department that the existing service to the subject parcel (Account No. 060-23700) will be assigned to proposed Lot No. 53-A in this subdivision and proposed Lot No. 53-B will be served via a private rainwater catchment system. Therefore, we have no objections to the subject variance application and granting final subdivision approval. The applicant shall be notified, through a copy of this letter, that the existing meter shall not be shared with the other proposed lot.”

6. **Notice to Surrounding Owners.** The applicant’s agent-Inaba Engineering, Inc. submitted a transmittal letter and “proof of mailing” on May 13, 2010. It appears that notice of this application was mailed to surrounding property owners by Inaba Engineering, Inc. by the USPS on May 12, 2010. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on May 13, 2010.

Posted Sign. The applicant submitted letter’s dated July 12, 2009 and December 10, 2009 regarding sign(s) posted upon subject TMK property including photographs of posted sign(s) for pending subdivision and variance application(s).

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 July 29, 2009 in subdivision file (SUB 09-000885) 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.”

Ms. Nancy K. Lee
Page 4
September 20, 2010

The first alternative requires the applicant to make “extensive improvements and additions” to the existing or nearest county DWS water system in accordance with the DWS memorandum 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 nearest public or DWS water system or providing an approved alternative private water system meeting DWS standards for the additional lot proposed by the 1-lot subdivision (SUB 09-000885) would be putting excessive demands upon the applicant when an alternative to allow private rainwater catchment systems for an agriculturally-zoned property subdivision is allowed pursuant to Rule 22, Water Variance.

INTENT AND PURPOSE-WATER VARIANCE

The intent and purpose of requiring a water system for and within the proposed subdivision is to assure that potable 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 request for “variance from the minimum water requirements” to allow and utilize privately owned individual rain water catchment systems for a proposed lot created by 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 a variance request from the minimum water requirement pursuant to Chapter 23, Subdivisions. Section 23-84 of Chapter 23 or 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:

Ms. Nancy K. Lee
Page 5
September 20, 2010

“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 annual rainfall information for the region and/or within subject TMK property utilizing rainfall maps at the Planning Department and information provided by the applicant indicate that the TMK property or proposed subdivision receives in excess of 60 inches of rainfall annually to support individual or separate private rainwater catchment systems for potable and emergency uses. The proposed 2-lot subdivision meets Rule No. 22-Water Variance.

The variance application submitted by the applicant’s agent was acknowledged by letter dated May 6, 2010, and additional time to incorporate supplementary background was necessary. The applicant granted the Planning Director additional time to render decision on the variance application.

Based on the foregoing findings, a variance request from water supply pursuant to Rule 22, 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 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 pursuant to Rule 22, Water Variance and/or not providing a water system meeting DWS standards for proposed “LOT 152-A” is **approved** subject to following variance conditions:

1. The applicant, owner(s), 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 conditions and prior to receipt of final subdivision approval of SUB 09-000885. This written

agreement shall contain the following deed language, being covenants, conditions, and restrictions affecting the subdivision application and/or affected lot shall be duly recorded at the Bureau of Conveyances of the State of Hawai'i 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 09-000885. 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 09-000885 will be permitted unless county water system requirements and other requirements of Chapter 23, Subdivisions, are met.
- c. Any lots created by SUB 09-000885 may not be made subject to a condominium property regime.
- d. Any dwelling constructed upon 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 rainwater 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 Hawai'i County Fire Department and be located in an area accessible to fire apparatus. The Hawai'i 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 09-000885 that the County Water System has been upgraded or an improvement district initiated to enable service to the lots created by SUB 09-000885, the owner(s) of the lot created by SUB 09-000885 not serviced by the DWS water system shall participate in such improvement district or shall pay their pro-rata share of the upgrade and installation of laterals, as determined by the County of Hawaii-Department of Water Supply (DWS).
 - 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.

Ms. Nancy K. Lee
Page 8
September 20, 2010

Should any of the foregoing stated conditions not be complied with, the Planning Director may proceed to declare Variance-VAR 10-001 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

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xc: Manager-DWS
SUB 09-000885