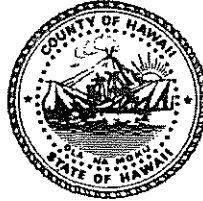


William P. Kenoi
Mayor



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 27, 2010

Ms. Chandra Fulton
Chandra's Building Permit Service
25 Mohouli Street
Hilo, HI 96720

Dear Ms. Fulton:

SUBJECT: VARIANCE-VAR 10-016

Representative: CHANDRA FULTON
Applicant: CHANDRA'S BUILDING PERMIT SERVICE
Owner: STEVE GREY
**Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required,
Section 23-84, Water Supply, (1)(2)**
Tax Map Key: 1-7-004:008, (SUB 06-000399)

After reviewing your variance application, the Planning Director certifies the **approval** of Variance-VAR 10-016 subject to variance conditions. The variance permits proposed 6-lot subdivision (SUB 06-000399) to be created without providing a water system meeting the minimum requirements of the Department of Water Supply (DWS). The variance is from Hawai'i County Code, Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply, (1)(2).

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

BACKGROUND

1. **Location.** The subject property, containing approximately 11.378 acres, is situated at Ola'a Homestead Reservation Lots, Kea'au, Puna, Hawai'i.

2. **Zoning.** The subject property is zoned Agricultural – 1 Acre (A-1a) by the County and designated Agriculture “A” by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** The applicant or subdivider submitted a subdivision application (SUB 06-000399) and preliminary plat map (PPM), dated March 26, 2006, proposing to subdivide subject property into six (6) lots.
4. **Variance Application.** The variance application and request for variance from water supply to permit the proposed subdivision, was acknowledged by Planning Department letter dated July 26, 2010. This variance application includes background history and circumstances and information regarding the pending subdivision application.
5. **Variance Application-VAR 10-016-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 Department of Water Supply (DWS) memorandum is dated August 26, 2010. Refer to Department of Water Supply memorandum in variance file.
 - c. The Hawai'i Fire Department (HFD) memorandum is dated July 30, 2010. Refer to Hawai'i Fire Department memorandum in variance file.
6. **Notice to Surrounding Owners.** The applicant filed a copy of the notice and attached mailing receipts sent to surrounding property owner(s) within 300 feet of the subject property on July 28, 2010. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on July 31, 2010.
Posted Sign. The applicant submitted an affidavit, dated April 26, 2010, regarding sign posted on the subject 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.

ALTERNATIVES/SPECIAL AND UNUSUAL CIRCUMSTANCES

Water Supply. The first alternative requires the applicant or owners to construct extensive improvements and additions, including source, storage, transmission, booster pumps, and distribution facilities in accordance with DWS standards or memorandum dated September 13, 2006. Refer DWS memorandum in subdivision file (SUB-06-000399).

The 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, or "construct necessary water system improvements" in accordance with the DWS memorandum, or alternative private water system meeting DWS standards for the pending 6-lot subdivision, would be putting excessive demands upon the applicant or owners when a more reasonable alternative (e.g. private individual rainwater catchment system for potable and emergency requirements) can be permitted pursuant to Rule 22, Water Variance.

INTENT AND PURPOSE-WATER VARIANCE

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 6-lots subdivision, can meet the intent and purpose of the Subdivision Code and is 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 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, indicates that there is adequate rainfall to support individual, or separate, private rainwater catchment systems for potable and emergency uses for the proposed subdivision. The analysis of the applicant's submittals and GIS rainfall data maintained by Planning Department indicates the proposed subdivision will receive approximately 160 inches to 200 inches of rainfall annually. The proposed subdivision meets Rule No. 22-Water Variance.

Given the circumstances cited by the applicant's representative, the request for variance from water supply, 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

The variance request to allow the proposed 6-lots subdivision of the subject property, without providing a water system meeting Department of Water Supply standards required is **approved** pursuant to Rule 22, Water Variance and subject to 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, 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 06-000399. This written agreement, which shall contain the following deed language, being covenants, conditions, and restrictions affecting the proposed 6-lot subdivision, shall be duly recorded with 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 06-000399. 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 06-000399 will be permitted unless county water system requirements, and other requirements of Chapter 23, Subdivisions, are met.
- c. No condominium property regime (CPR) shall be permitted on any lots created by SUB 06-000399.
- 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 that 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 that includes an additional minimum 3,000-gallon water storage capacity for firefighting 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 firefighting 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 06-000399 that the County Water System has been upgraded, or an improvement district initiated to enable service to those lots, they 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 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. The subdivision application's final plat map for the proposed 6-lots subdivision shall meet all the requirements of the Hawai'i 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 10-016 null and void.

Ms. Chandra Fulton
Chandra's Building Permit Service
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August 27, 2010

Sincerely,



BJ LEITHEAD TODD
Planning Director

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xc: Manager-DWS
DPW—Engineering Division
SUB 06-000399