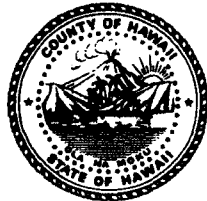


William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

County of Hawai'i

PLANNING DEPARTMENT

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February 8, 2011

Diversified Land Management
Attn.: Jeffery M. Citron
75-5608 Hienaloi #32
Kailua-Kona, HI 96740

SUBJECT Application: VAR 10-044
Applicant: DIVERSIFIED LAND MANAGEMENT
Owner: THOMAS B. HING III, ET AL
Request: VARIANCE FROM CHAPTER 23, SUBDIVISIONS,
IMPROVEMENT REQUIRED – WATER VARIANCE
TMK: 8-3-013:011 (SUB 05-000157)

Dear Mr. Citron,

After reviewing your Variance Application, the Planning Director certifies the **approval** of **VAR 10-044** from minimum subdivision improvements relative to water system requirements, subject to variance conditions. The variance is from Hawai'i County Code and provides exception(s) or relief from the following requirements:

1. Hawaii County Code, Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply, (1)(2) to allow for individual rain catchment in lieu of the minimum required public water system requirements.

The decision to approve VAR 10-044 is based on the following.

Variance Application:

Request: The owner has previously submitted a subdivision application (SUB 05-000157) to divide the approximate 6.5-acre property into two lots. On March 6, 2007 tentative

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subdivision approval was granted with conditions. An extension of the approval period has subsequently been granted until March 6, 2012. The tentative approval included a condition for a water system to be provided meeting DWS standards. Information provided in the variance application includes an estimated construction cost in excess of \$165,000 in order to provide an additional service.

An existing residence, served with water catchment, is currently located on proposed Lot 2. The requested variance is to permit the retention of the existing water tank and to allow the use of additional water catchment for proposed Lot 1, located in closer proximity to the frontage along Mamalahoa Hwy/Old Government Road.

Location/Address: The subject property is identified as TMK 8-3-013: 011, is located in South Kona and is addressed as 83-5398 Mamalahoa Highway.

Zoning/State LU Designation: The property is zoned Agricultural (A-1A) and designated Agricultural by the State.

Public Notice: Notice of the application was accomplished as follows:

- a. December 24, 2010 - Mailed notice - property owners within 300 feet of the site.
- b. December 28, 2010 - Published notice - Hawai'i Tribune Herald and West Hawai'i Today.
- c. November 16, 2010 - Posted sign notice at the property.

Agency Comments:

- a. State Department of Health memorandum dated December 23, 2010 (retained in application file).
- b. County Fire Department memorandum dated January 4, 2011 (retained in application file).
- c. County Department of Water Supply memorandum dated January 18, 2011 (retained in application file).

Public Comments:

- a. No letters in support of, or in opposition to, the request have been received.

REVIEW CRITERIA

Sections 23-14 and 25-2-50 of the County Code provide the Director with the general authority to grant variances. Said sections state the following:

“Variances from the provisions of this chapter may be granted; provided, that a variance shall not allow the introduction of a use not otherwise permitted within the district; and provided further that a variance shall not primarily effectuate relief from applicable density limitations.

Sections 23-15 and 25-2-51 state that no variance will be granted unless it is found that:

- a) There are special or unusual circumstances applying to the subject real property which exist either to a degree which deprives the owner or applicant of substantial property rights that would otherwise be available, or to a degree which obviously interferes with the best use or manner of development of that property; and
- b) There are no other reasonable alternatives that would resolve the difficulty; and
- c) The variance is consistent with the general purpose of the district, the intent and purpose of this chapter, and the general plan, and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area’s character or to adjoining properties.

INTENT AND PURPOSE

The intent and purpose of requiring a water system for and within the proposed subdivision or development is to assure that adequate water is available for human consumption and fire protection.

Certain properties seeking a variance from general water-related infrastructure 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.

DISCUSSION

Upon review of the application material, the department has determined that the proposed two-lot subdivision complies with the Rule 22 criteria for being an agriculturally-zoned property and proposing six or fewer lots. One of the proposed two lots currently utilizes rain catchment, with the requested water variance seeking to allow its continued use as well as individual catchment on the second proposed lot.

Rule 22 also establishes additional criteria for a minimum of 60 inches of annual rainfall. Per the applicant’s information, average rainfall over the past 71 years has measured 47.63 inches, with average rainfall over the past 5 years measuring 52.78 inches. Despite these measurements, it

should be noted that the precipitation data collecting station (Station Honaunau 27) is located at the 940-foot elevation, whereas the subject property is located at the approximate 1200-foot elevation (whereby at the higher elevation increased precipitation normally occurs). Upon further review of County GIS data, it has been determined that the elevation for the subject property receives 60-80 inches of precipitation annually.

DECISION

Based upon the application material and comments received, the department has determined that the requested Water variance meets the applicable review criteria and is considered as qualifying under Rule 22. The Director hereby approves VAR 10-044 subject to following 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 05-000157 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 05-000157.
5. No Planning Department or Building Division permits shall be issued to allow construction of an "ohana" dwelling on the subject 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 05-000157) 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 05-000157.

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. Any dwelling constructed on a proposed 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.
2. 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 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. 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.
3. The applicant shall file a written agreement or approved written document with the Planning Department prior to final subdivision approval of SUB 05-000157. This written agreement, which shall contain the following deed language, being covenants, conditions, and restrictions affecting the 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 readily available to provide service the proposed subdivision SUB 05-000157. 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 lots created by SUB 05-000157 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 05-000157 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.

Should any of the foregoing stated conditions not be complied with, the Planning Director may proceed to declare VAR 10-044 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

GS: LN: nci

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cc: County Department of Water Supply
County Fire Department
State Department of Health
SUB File 05-000157
TMK File 8-3-013:011
VAR File 10-044