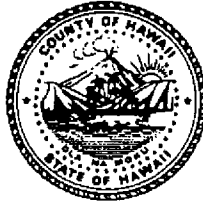


William P. Kenoi  
*Mayor*



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

**CERTIFIED MAIL**  
**7002 2410 0003 0232 8158**

August 26, 2011

Ms. Matsue Kawahara  
67 Santos Lane  
Hilo, Hawaii 96720

Dear Ms. Kawahara:

**SUBJECT: Application: Variance Application – VAR 11-020**  
**Applicant: Matsue Kawahara**  
**Owner: Matsue K. Kawahara Trust, Ronald Kaneshiro and**  
**Yasuichi Kaneshiro**  
**Request: Variance from Chapter 23, Subdivisions,**  
**Improvements Required**  
**TMK: 2-4-009:037 (SUB 10-001007)**

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After reviewing your variance application, the Planning Director certifies the **denial** of Variance 11-020. The variance application seeks approval to permit a three (3) lot subdivision (SUB 10-001007) without providing a water supply system meeting the minimum requirements of the County 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 the variance from the above-referenced subdivision standards be **denied** based on the following findings:

## BACKGROUND

1. **Location.** The subject property measures approximately 1.75 acres and is identified as a portion of Grant 8941 to George Vicars, (Lot 511-B, Waiakea Homesteads 1<sup>st</sup> Series), Waiakea, South Hilo, Hawai'i. The property is addressed as 67 Santos Lane and identified as TMK 2-4-009:037, Lot 4.
2. **Zoning.** The subject property is zoned Single Family-Residence – 15,000 square feet (RS-15) by the County and designated Urban (“U”) by the State Land Use Commission (LUC).
3. **Subdivision Application.** The applicant/owner submitted a subdivision application on July 12, 2010 along with a preliminary plat map (PPM) dated June 30, 2010, to divide the subject property into three (3) lots. The property is improved with three existing houses; two on proposed Lot 4-A and the third on proposed Lot 4-C. The property is currently provided water by a County of Hawaii DWS 2-inch line via two existing services.
4. **Variance Application.** The applicant/owner submitted a variance application and associated materials on April 5, 2011. The variance application seeks approval to allow the subdivision of the property without providing a water supply system meeting the minimum county requirements.

The DWS has identified that two existing services (Account Nos. 150-77280 and 150-77500) are present. Furthermore, DWS has identified that the existing 2-inch waterline fronting the subject parcel is inadequate to provide the required 500 gallons per minute of fire flow. Without approval of the variance, the required improvements would include (but are not limited to) extension of approximately 600 linear feet of 6-inch waterline, installation of service laterals and installation of any necessary fire hydrants.

Although the application material does not explicitly identify how they intend to provide water if the variance is granted, it is believed that rainwater catchment is the desired alternative.

5. **Agency Comments and Requirements.**
  - a. The County of Hawaii Fire Department letter dated May 9, 2011 (refer to letter in VAR file).
  - b. The State of Hawaii Department of Health memorandum dated May 5, 2011 (refer to memo in VAR file).

- c. The County of Hawaii Department of Water Supply (DWS) letters dated September 28, 2010 and June 2, 2011 (refer to letters in VAR file).
6. **Notice to Surrounding Owners/Posted Sign.** The applicant submitted a copy of a public notice, list of surrounding property owner(s), and other submittals. Pursuant to a signed affidavit, dated May 11, 2011, notices were provided to surrounding property owners and posted on the property of interest. Notice was published in the Hawai'i Tribune Herald and West Hawai'i Today on May 8, 2011.
7. **Comments from Surrounding Property Owners or Public.** Written testimony was received from the following parties:
  - a. Letter from Richard Taber, dated May 19, 2011, in opposition to the request.
  - b. Letter from James Szyper, dated May 25, 2011, in opposition to the request.

#### 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.

### ALTERNATIVES/SPECIAL AND UNUSUAL CIRCUMSTANCES

The RS-15 zoned property is located in an urbanized area with public infrastructure, including water, available within close proximity. Alternatives available to provide water to the site include the following:

Alternative 1. The applicant/owners would construct improvements in accordance with DWS standards. The application material identifies financial circumstances to justify the variance request. Specifically based upon the DWS comments, an \$11,000 facilities charge will be required in addition to the cost associated with engineering plans and construction. A conceptual cost provided by AECOM (applicant's consultant) estimates approximately \$100,000 in construction costs.

Alternative 2. The applicant/owners would design, drill and develop private wells and/or install the necessary water system improvements in accordance with DWS standards, which would be functionally equivalent to a public water system. This alternative would also have significant costs associated with meeting necessary requirements.

Alternative 3. The applicant/owners would be granted the ability to use a private individual rainwater catchment system for potable and emergency requirements. As identified above, the application material does not explicitly identify that rainwater catchment is the desired method for providing water service nor has there been any information submitted such as amount of annual precipitation which may support such alternative.

As with other subdivisions, general standards would require infrastructure improvements being made available to all lots. Such infrastructure system/capacity is either available from a utility provider (or has a plan or program for delivering said infrastructure) or the developer is required to provide said improvements. If the costs are considered too significant by the developer in order to make such utilities available themselves, the property is often deemed not "prime" or not yet "ripe" for subdividing.

In review of the application materials the *Department finds no special or unusual circumstances justifying the variance.* The department would note, however, that a **two** (2) lot subdivision could meet county standards since two of the proposed three lots are serviced with existing DWS meters located in the Santos Lane right-of-way.

### 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.

An alternative to a public system, or a private system that is functionally equivalent of a public system, would be to approve a "water variance," to allow and utilize privately-owned individual rain water catchment systems for the proposed 3-lot subdivision. This alternative could meet the intent and purpose of the Subdivision Code and may be allowed pursuant to Planning Department Rule 22-Water Variance, effective February 25, 2006. However, Rule 22 does not apply in this circumstance since said rule only applies to agriculturally-zoned property and the subject property is zoned residential

Based on the information within this variance analysis, the variance for relief from the minimum requirements of the County Department of Water Supply (DWS) *would not 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.

### VARIANCE DECISION

The variance application, VAR 11-020, concerning the applicant's request to allow the proposed three-lot subdivision of the subject property without providing a water supply system meeting the minimum requirements of the County Department of Water Supply (DWS), is hereby **denied**.

In accordance with Ordinance No. 99-112, you may appeal the director's decision as follows:

- (a) Any person aggrieved by the decision of the director in the administration or application of this chapter, may, within thirty days after the date of the director's written decision, appeal the decision to the board of appeals.
- (b) A person is aggrieved by a decision of the director if:

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- (1) The person has an interest in the subject matter of the decision that is so directly and immediately affected, that the person's interest is clearly distinguishable from that of the general public: and
  - (2) The person is or will be adversely affected by the decision.
- (c) An appeal shall be in writing, in the form prescribed by the board of appeals and shall specify the person's interest in the subject matter of the appeal and the grounds of the appeal. A filing fee of \$250 shall accompany any such appeal. The person appealing a decision of the director shall provide a copy of the appeal to the director and to the owners of the affected property and shall provide the board of appeals with the proof of service.
- (d) The appellant, the owners of the affected property, and the director shall be parties to an appeal. Other persons may be admitted as parties to an appeal. Other persons may be admitted as parties to an appeal, as permitted by the board of appeals.

The board of appeals may affirm the decision of the director, or it may reverse or modify the decision, or it may remand the decision with appropriate instructions if based upon the preponderance of evidence the board finds that:

- (1) The director erred in its decision; or
- (2) The decision violated this chapter or other applicable law; or
- (3) The decision was arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.

In view of the above and for your reference, we have enclosed the GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR form.

Sincerely,



BJ LEITHEAD TODD  
Planning Director

GES:LHN:nci  
P:\Admin Permits Division\Variance\2011 Files\VAR 11-020 Matsue Kawahara\Decision.doc

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Enclosure: BOA Application

cc: George S. Yoshimura/AECOM  
James P. Szyper  
Richard Taber  
Hawaii County – Department of Water Supply  
Hawaii County – Fire Department  
State of Hawaii – Department of Health  
SUB 10-001007

COUNTY OF HAWAII  
BOARD OF APPEALS

GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR

(Type or legibly print the requested information)

APPELLANT: \_\_\_\_\_

APPELLANT'S SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

TELEPHONE: (Bus.) \_\_\_\_\_ (Home) \_\_\_\_\_

APPELLANT'S INTEREST IN THE PROPERTY: \_\_\_\_\_

APPELLANT'S NATURE OF APPEAL AND REQUEST: \_\_\_\_\_

LAND OWNER: \_\_\_\_\_

TAX MAP KEY: (land in question) \_\_\_\_\_ AREA OF PROPERTY: \_\_\_\_\_

STATE LAND USE DESIGNATION: \_\_\_\_\_ COUNTY ZONING: \_\_\_\_\_

STREET ADDRESS OF PROPERTY: \_\_\_\_\_

APPELLANT'S REPRESENTATIVE: \_\_\_\_\_

REPRESENTATIVE'S SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

REPRESENTATIVE'S ADDRESS: \_\_\_\_\_

TITLE: \_\_\_\_\_ TELEPHONE: (Bus.) \_\_\_\_\_

THIS PETITION MUST BE ACCOMPANIED BY A FILING FEE OF TWO HUNDRED FIFTY DOLLARS (\$250) PAYABLE TO THE COUNTY DIRECTOR OF FINANCE AND:

1. The Original and ten (10) copies of this completed petition with the following:
  - a. A description of the property involved in the appeal in sufficient detail for the public to precisely locate the property.
  - b. A statement explaining the nature of the appeal and the relief requested.
  - c. A statement explaining:
    - (i) How the decision appealed from violates the law; or
    - (ii) How the decision appealed from is clearly erroneous; or
    - (iii) How the decision appealed from was arbitrary or capricious, or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.
  - d. A clear and concise statement of any other relevant facts.
2. Proof of Service by the Appellant on the Planning Director for an appeal from the Planning Director's decision relating to the Zoning Code.
3. A list of the names, address and tax map keys of all owners of property within boundaries established by Section 8-11(d) of the Board of Appeals Rules of Practice and Procedure.