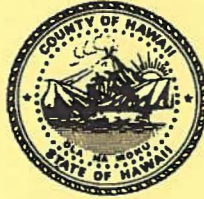


William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3363

County of Hawai'i
PLANNING DEPARTMENT

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

July 16, 2012

Candice Applegate
P.O. Box 430
Honoka'a, HI 96727

Dear Mr. Applegate:

SUBJECT: VARIANCE DECISION VAR-12-000054
Applicant: CANDICE APPLGATE
Owners: OKA, MAILE, et al./GERALD JOHNSON, JR., et al./
JOHN REYNOLDS TRUST & CANDICE APPLGATE TRUST
Request: Variance from Chapter 23, Subdivisions,
Improvements Required
TMK: 4-4-003:032 & 033 (SUB 11-001122)

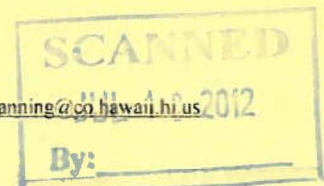
Upon review of your variance application, the Planning Director certifies the **approval** of Variance VAR-12-000054 subject to variance conditions. The variance grants relief for SUB-11-001122 from constructing additional minimum County dedicable water supply system improvements for Lot 11-A-3 as required by Hawai'i County Code (HCC), Chapter 23 (Subdivisions).

The variance is from the proposed subdivision's minimum requirements pursuant to HCC, Chapter 23 (Subdivisions), Article 6, Division 2, Improvements Required, Section 23-84, Water Supply, (1)(2).

BACKGROUND

1. **Location.** The subject properties, comprising approximately 22.189 acres, concerns the consolidation and resubdivision of Lot A and Lot 11-A-1-A, Being Portions of Grants 7790 and 11,260. The properties are situated at Kalōpā, Hāmākua, Hawai'i.
2. **Land Use Designations.** The subject properties are zoned Agricultural – five (5) acres minimum building site area (A-5a) by the County and designated Agricultural (A) by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** Subdivision application SUB-11-001122 was submitted to consolidate the two (2) properties and resubdivide them into 3 lots. Further action on the subdivision application has been deferred pursuant to letter dated January 25, 2012 in the subdivision file.

JUL 18 2012



4. **Variance Application.** The variance request from water supply improvements was acknowledged by Planning Department letter dated April 12, 2012. This variance application includes background history and circumstances and information regarding the pending subdivision application.
5. **Variance Application (VAR-12-000054)-Agency Comments and Requirements.**
 - a. The State of Hawai'i-Department of Health (DOH): see attached memorandum dated April 20, 2012.
 - b. The County of Hawai'i Fire Department (HFD): HFD did not comment on the application as of this date.
 - c. The Department of Water Supply (DWS): see attached memorandum dated May 24, 2012. Also refer to DWS memorandum dated January 9, 2012 (attached) in response to the subdivision (SUB-11-001122) PPM indicating that there are two existing water services (one to each existing lot) but that no new service is presently available for the third, additional lot, Lot 11-A-3.
6. **Notice to Surrounding Owners/Posted Sign.** The applicant submitted an affidavit dated June 28, 2012 regarding notice of variance application mailed to a list of surrounding property owners. An affidavit dated October 1, 2011 states that a sign was posted upon subject TMK properties. A photograph of the posted sign was also submitted.
7. **Comments from Surrounding Property Owners or Public.** No other agency comments were solicited and none were received. No written objections to the application were received from the surrounding property owners or the public.

INTENT AND PURPOSE OF THE SUBDIVISION CODE

Water Supply. The Subdivision Code requires that all new subdivisions have a dedicable water system meeting with the minimum requirements of the DWS.

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

ALTERNATIVES/SPECIAL AND UNUSUAL CIRCUMSTANCES

Water Variance. To provide service, there is an existing 6" waterline that provides service to two (2) meters. No new service is available for a third lot. The first alternative would be to design, drill and develop private wells and install the necessary dedicable water system improvements in accordance with DWS standards.

The cost to construct additional dedicable water supply improvements in accordance with DWS standards,
Candice Applegate

or an alternative private water system meeting DWS standards for Lot 11-A-3 of the pending 3-lot subdivision, would be putting excessive demands upon the applicant when a more reasonable alternative can be allowed pursuant to Planning Department Rule No. 22, Water Variance.

An alternative from meeting the minimum requirements of the DWS is to allow privately-owned individual rainwater catchment systems for up to six-lots within subdivisions. Rule No. 22 identifies, in part, that the variance "...applies to requests for subdivisions that propose to rely on rain catchment for their water supply, on agriculturally zoned properties..." Also, "Rule 22-4 Minimum rainfall. ... all lots to be served by catchment shall have an average annual rainfall of not less than 60" ..."

The proposed subdivision is located in an area that receives approximately 60 inches to 120 inches of rainfall annually.

Given that the subject area receives sufficient annual rainfall, a water variance for one (1) of the three (3) lots would be consistent with the general purpose of the zoning district and the intents and purposes of the Zoning Code, Subdivision Code and the Hawai'i County General Plan.

Therefore, given the circumstances cited by the applicant, the request for a variance from the water supply requirements of the Subdivision Code, 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.

DETERMINATION-VARIANCE CONDITIONS

The variance request to permit Lot 11-A-3 of the proposed 3-lot subdivision of the subject properties without the requirement to provide a dedicable water system meeting DWS standards to one (1) lot, Lot 11-A-3, of pending SUB-11-001122 of parcels 4-4-003:032 & 033, is hereby **approved**, subject to the following variance conditions:

1. The applicant, owners, their assigns, or successors shall be responsible for complying with all stated conditions of approval.
2. The owners, their assigns, or successors shall file a written agreement 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-11-001122. This written agreement shall contain deed language, being covenants, conditions, and restrictions affecting the one (1) lot, Lot 11-A-3, created by the proposed subdivision which is not serviced by a County dedicable public water system. The agreement 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.

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 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 of the approved subdivided lot, Lot 11-A-3, not served by a County water system.

3. The subdivider and all grantees, successors, and assigns acknowledge that Lot 11-A-3 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(s) 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 owners' 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.
4. **WATER VARIANCE.**
 - a. The owners, grantees, successors, and assigns agree and accept the fact that a County dedicable public water system will not be extended to Lot 11-A-3 within proposed subdivision SUB-11-001122.
 - b. The owners, grantees, successors, and assigns agree and accept the fact that the County will not bear the responsibility of supplying public water to the proposed Lot 11-A-3. No further subdivision of Lot 11-A-3 will be permitted unless County dedicable public water system requirements and other requirements of HCC Chapter 23, Subdivisions, are met.
 - c. No condominium property regime will be allowed on Lot 11-A-3 which is not served by the County water system.
 - d. Any dwelling constructed on Lot 11-A-3 shall be provided with and maintain a private rainwater catchment system which includes a minimum 6000-gallon water storage capacity for domestic consumption or potable uses. This private water storage system shall adhere to the University of Hawai'i's College of Tropical Agriculture and Human Resources' "Guidelines on Rainwater Catchment Systems for Hawai'i" as well as the DOH requirements related to water testing and water purifying devices.
 - e. Each permitted dwelling shall be provided with 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 HFD. The HFD 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.

Candice Applegate
Page 5
July 16, 2012

- f. In the event that the County notifies the owner(s) of Lot 11-A-3 that the County water system has been upgraded or an improvement district initiated to enable service to the lot, the owner(s) of the lot shall participate in such improvement district or shall pay their pro-rata share of the upgrade and installation of laterals, as determined by the DWS.
5. The pending subdivision application's (SUB-11-001122) final plat map shall comply with all the requirements of the Hawai'i County Zoning Code and the Subdivision Code not covered by this variance. No other variances from Chapter 23, Subdivisions, shall be granted to permit subdivision application SUB-11-001122.
6. 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.
7. 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.

Should any of the foregoing stated conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,



BJ LETIHEAD TODD
Planning Director

JRH:nci

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Enclosures: Agency Comments

xc: DWS-Engineering Branch
HFD-Engineering Branch
Paul D. & Cindy L. Andrade w/enclosures
SUB-11-001122



DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAII
 345 KEKUAO'A STREET, SUITE 20 • HILO, HAWAII 96720
 TELEPHONE (808) 961-8080 • FAX (808) 961-8657

May 24, 2012

TO: Ms. BJ Leithead Todd, Director
 Planning Department

FROM: Quirino Antonio, Jr., Manager-Chief Engineer

SUBJECT: VARIANCE APPLICATION (VAR 12-00054)
 SUBDIVISION APPLICATION NO. 11-001122
 APPLICANT - CANDICE APPLIGATE
 TAX MAP KEY 4-4-003:032 AND 033

RECEIVED
 PLANNING DEPARTMENT
 MAY 25 11 2 06

We have reviewed the subject application and our comments and conditions stated in our January 9, 2012 letter to your department regarding the subject subdivision application still stand. Prior to final subdivision approval being granted, the applicant must inform our department, in writing, which lots will be assigned the existing services to the subject parcels.

Although there was no information with the subject application indicating how each lot will be provided with water, we have no objection to the use of private rainwater catchment systems.

Should there be any questions, please contact Mr. Finn McCall of our Water Resources and Planning Branch at 961-8070, extension 255.

Sincerely yours,

Quirino Antonio, Jr., P.E.
 Manager-Chief Engineer

FM:dfg

copy - Gerald O. and Irene J. Johnson c/o Ms. Candice Applegate

078817

NEIL ABERCROMBIE
 GOVERNOR
 PLANNING DEPARTMENT
 2012 MAY 25 11 02 48



STATE OF HAWAII
 DEPARTMENT OF HEALTH
 P.O. BOX 916
 HILO, HAWAII 96721-0916

LORETTA J. FUDDY, A.C.S.W., M.P.H.
 Director of Health

MEMORANDUM

DATE: April 20, 2012

TO: Bobby Jean Leithead Todd
 Planning Director, County of Hawaii

FROM: Newton Inouye
 District Environmental Health Program Chief

SUBJECT: Variance Application-VAR 12-00054
 Applicant: Candice Applegate
 Owner: Gerald O. Johnson, Jr. and
 Irene J. Johnson
 Request: Variance from Chapter 23, Subdivisions,
 Article 6, Division 2, Improvements Required
 4-4-003:32 & 033 (SUB 11-001122)

The Department of Health's Safe Drinking Water Branch authority on drinking water quality is based on the definition of a "public water system." A "public water system" means a system which provides water for human consumption through pipe or other constructed conveyance if such system has fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. All public water systems are regulated by the Department of Health and shall be in compliance with the Hawaii Administrative Rules, Title 11, Chapter 20. Recommend the subdivision lots be connected to an existing public water system.

Concerns on water quality for lead, copper, algae and microbiological and chemical contaminations in private water systems have identified the need for self monitoring. The Department of Health does not support the use of these private rain catchment systems for drinking purposes since the quality may not meet potable water standards.

WORD-VAR-12-00052.ai

078154



DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAII

345 KEKUNAŌA STREET, SUITE 20 • HILO, HAWAII 96720
TELEPHONE (808) 961-8050 • FAX (808) 961-8657

January 9, 2012

TO: Ms. BJ Leithead Todd, Planning Director
Planning Department

FROM: Quirino Antonio, Jr., Manager-Chief Engineer

SUBJECT: PRELIMINARY PLAT MAP
SUBDIVISION APPLICATION NO. 11-001122
APPLICANT - MAILE OKA ET AL., GERALD JOHNSON ET AL.,
JOHN REYNOLDS TRUST AND CANDACE APPLGATE TRUST
TAX MAP KEY 4-4-003:032 AND 033

2012 JAN 10 PM 2:20
PLANNING DEPARTMENT

We have reviewed the subject application and have the following comments and conditions.

There is an existing 6-inch waterline within Middle Road fronting the subject parcels. Parcel 32 is served by an existing 5/8-inch meter (Account No. 690-36200) and Parcel 33 is also served by an existing 5/8-inch meter (Account No. 690-36100).

Please be informed that the Department's existing water system facilities cannot support the proposed subdivision at this time. Extensive water system improvements would be required, which may include, but not be limited to, additional source, storage, booster pumps, and transmission facilities. Currently, funding is not available and no time schedule is set for such improvements by the Department.

Prior to final subdivision approval being granted, the applicant must designate, in writing, which lots within the proposed subdivision will be served by the existing services to the subject parcels.

Should there be any questions, please contact Mr. Finn McCall of our Water Resources and Planning Branch at 961-8070, extension 255.

Sincerely yours,

Quirino Antonio, Jr., P.E.
Manager-Chief Engineer

FM.dfg

copy - Mr. Gerald Johnson, Irene Johnson, John Reynolds Trust, and Candice Applegate Trust
Pattison Land Surveying, Inc.

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... Water, Our Most Precious Resource ... Ka Wai A Kāne ...
The Department of Water Supply is an Equal Opportunity provider and employer