

William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

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County of Hawai'i
PLANNING DEPARTMENT

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
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August 16, 2012

Rhoady Lee
Architecture and Design
P.O. Box 2080
Kamuela, HI 96743

Dear Mr. Lee:

SUBJECT: VARIANCE DECISION VAR-12-000073
Applicant: RHOADY LEE
Owner: RHOADY LEE REVOCABLE TRUST & ALAN GARTENHAUS REVOCABLE TRUST
Request: Variance from Chapter 23, Subdivisions Improvements Required
Tax Map Key: 5-2-001:022 (SUB11-001126)

Upon review of your variance application, the Planning Director certifies the **approval** of Variance VAR-12-000073 subject to variance conditions. The variance grants relief for SUB-11-001126 from constructing minimum county dedicable water supply system improvements required by Hawai'i County Code (HCC), Chapter 23 (Subdivision).

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

BACKGROUND

1. **Location.** The referenced TMK property, Lot 71 as shown on Map 25, Land Court Application 1332, containing approximately 43.89 acres, is situated at Niuli'i, North Kohala, Hawai'i.
2. **Land Use Designations.** The subject property is zoned Agricultural – twenty (20) acres minimum building site area (A-20a) by the County and designated Agricultural (A) by the State Land Use Commission (LUC) and is also situated in the Special Management Area (SMA).
3. **Subdivision Request/PPM.** Subdivision application SUB-10-000974 was submitted to subdivide the

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By:

subject TMK property into 2 lots. Further action on the subdivision application has been deferred pursuant to letter dated October 27, 2010 in the subdivision file.

4. **Variance Application.** The variance request from water supply improvements was acknowledged by Planning Department letter dated June 18, 2012. This variance application includes background history and circumstances and information regarding the pending subdivision application.
5. **Variance Application (VAR-12-000070)-Agency Comments and Requirements.**
 - a. The State of Hawai'i-Department of Health (DOH): see attached memorandum dated June 20, 2012.
 - b. The County of Hawai'i Fire Department (HFD): see attached memorandum dated July 10, 2012.
 - c. The Department of Water Supply (DWS): see attached memorandum dated July 19, 2012. We are also attaching the DWS memorandum dated February 27, 2012 in response to the subdivision's PPM.
6. **Notice to Surrounding Owners/Posted Sign.** The applicant submitted an affidavit regarding notice of variance application mailed to a list of surrounding property owners and posting of a sign. According to the affidavit dated June 25, 2012 and other submittals in the variance application file, notice of variance was mailed on or about June 25, 2012 and a sign was posted upon subject TMK property on or about May 29, 2012. Photographs of the posted sign were 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.

DWS standards require that the water meter is to front the lot which it services.

ALTERNATIVES/SPECIAL AND UNUSUAL CIRCUMSTANCES

Water Variance. The first alternative would be to install the necessary dedicable water system improvements

in accordance with DWS standards to locate the water meters to front the lot served.

The cost to construct additional dedicable water supply improvements in accordance with DWS standards (extend more than 1,000 feet of water main and relocate the meters to front the lot served) for the lots of the pending 2-lot subdivision, would be putting excessive demands upon the applicant when a more reasonable alternative can be allowed pursuant to a water variance.

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 requested is to permit the proposed 2-lot subdivision of the subject TMK property without providing a dedicable water system meeting DWS standards of having the meters front the served lots 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. 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.
3. 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. This written agreement shall contain deed language, being covenants, conditions, and restrictions affecting the lots created by the proposed subdivision which are not serviced by a County dedicable public water system and are serviced by the privately-owned alternative roadway. 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 existing property or approved subdivided lots.

4. The subdivider and all grantees, successors, and assigns acknowledge that the parcels were 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 owners of substantial property rights or to a degree which obviously interferes with the best use or manner of development of the properties, and hence, no grounds exist or will exist for a variance from the Subdivision Code to permit further subdivision of the properties, and that changes in the owners' personal or financial situation after acquiring the properties also will not constitute grounds for a variance from the Subdivision Code to permit further subdivision of the properties.
5. **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 the lots within proposed subdivision SUB-11-001126.
 - b. The owners, grantees, successors, and assigns agree and accept the fact that the County will not bear the responsibility of extending the public water to the proposed lots. No further subdivision of the lots created 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 any lot created.
 - d. Each permitted dwelling shall be provided with and maintain a 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 be approved by the HFD. It is also advised, as a precautionary measure for other uninhabited agricultural structures that consideration is given to the provision of a similar water storage system for fire fighting and emergency purposes.
 - e. In the event that the County notifies the owner(s) of the lot(s) created that the County water system has been upgraded or an improvement district initiated to enable service to these lots, the owner(s) of lot(s) 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.
7. The pending subdivision application's (SUB-11-001126) final plat map shall meet 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-11-001126.
8. The subdivider, owner(s), their assigns or successors shall pay any outstanding real property taxes and

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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 this Variance Permit null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

JRH:nci

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Enclosures: Agency Comments

xc: DWS-Engineering Branch
HFD
SUB-11-001126

William P. Kenok
Mayor

7/17 04:23 PM 3:23



County of Hawai'i
HAWAII FIRE DEPARTMENT
25 Aupuni Street • Room 2501 • Hilo, Hawaii 96720
(808) 933-2900 • Fax (808) 933-2928

Darren J. Rosario
Fire Chief
Renwick J. Victorino
Deputy Fire Chief

NEIL ASERCROMBIE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 918
HILO, HAWAII 96721-0918


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

7/17 04:23 PM 9:51

July 10, 2012

TO : BJ LEITHEAD TODD, PLANNING DIRECTOR
FROM : DARREN J. ROSARIO, FIRE CHIEF
SUBJECT: VARIANCE APPLICATION (VAR 12-000073)
APPLICANTS: RHOADY LEE
LAND OWNERS: RHOADY LEE AND ALAN GARTENHAUS
PROPOSAL: VARIANCE FROM CHAPTER 23-84 (WATER SUPPLY)
TAX MAP KEY: 5-2-001:022 (SUB 11-001126)

We have no comments to offer at this time in reference to the above-mentioned Variance application.


DARREN J. ROSARIO
Fire Chief

CN:ipc

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Hawaii's County is an Equal Opportunity Provider and Employer.

MEMORANDUM

DATE: June 20, 2012
TO: Bobby Jean Leithead Todd
Planning Director, County of Hawaii
FROM: Newton Inouye
District Environmental Health Program Chief
SUBJECT: VARIANCE APPLICATION - VAR 12-000073
Applicant: RHOADY LEE
Owner: RHOADY LEE AND ALAN GARTENHAUS
Request: Variance from Chapter 23-84, (Water Supply)
Tax Map Key: 5-2-001:022 (SUB 11-001126)

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.

We recommend that you review all of the Standard Comments on our website: <http://hawaii.gov/health/environmental/env-planning/landuse/landuse.html>. Any comments specifically applicable to this project should be adhered to.

The same website also features a Healthy Community Design Smart Growth Checklist (Checklist) created by Built Environment Working Group (BEWG) of the Hawaii State Department of Health. The BEWG recommends that state and county planning departments, developers, planners, engineers and other interested parties apply the healthy built environment principles in the Checklist whenever they plan or review new developments or redevelopment projects. We also ask you to share this list with others to increase community awareness on healthy community design.

WORD VAR 12-000073.mw

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DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAII
 345 KĒKUAŌA STREET, SUITE 20 • HILO, HAWAII 96720
 TELEPHONE (808) 961-8050 • FAX (808) 961-8657

February 27, 2012

TO: Ms. BJ Leithead Todd, Director
 Planning Department

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

SUBJECT: SUBDIVISION APPLICATION NO. 11-001126
 APPLICANT - RHOADY LEE REVOCABLE TRUST & ALAN GARTENHAUS
 REVOCABLE TRUST
 TAX MAP KEY 5-2-001:022

We have reviewed the subject application for the proposed subdivision and have the following comments and conditions.

Please be informed that the subject parcel has two (2) existing services. However, the location of existing meters does not front the subject parcel or proposed lots, which does not comply with our water system standards. For the subdivision to comply with the Department's water system standards, a water line would need to be extended to locate the water meters to front each proposed lot.

Should the subject subdivision application be approved by a variance, the applicant shall notify the Department, in writing, which lot within the proposed subdivision will be served with the existing service.

Should there be any questions, please contact Mr. Ryan Quitoriano of our Water Resources and Planning Branch at 961-8070, extension 256.

Sincerely yours,

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

RQ:dfg

copy - Rhoady Lee Revocable Trust and Alan Gartenhaus Revocable Trust
 Robert Shirai, Island Survey, Inc.

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DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAII
 345 KĒKUAŌA STREET, SUITE 20 • HILO, HAWAII 96720
 TELEPHONE (808) 961-8050 • FAX (808) 961-8657

July 19, 2012

TO: Ms. BJ Leithead Todd, Director
 Planning Department

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

SUBJECT: VARIANCE APPLICATION (VAR 12-000073)
 SUBDIVISION APPLICATION NO. 11-001126
 APPLICANT - RHOADY LEE
 TAX MAP KEY 5-2-001:022

We have reviewed the subject application and our comments and conditions stated in our February 27, 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 parcel.

Should there be any questions, please contact Finn McCall of our Water Resources and Planning Branch at 961-8070, extension 256.

Sincerely yours,

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

FM:dfg

copy - Rhoady Lee

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