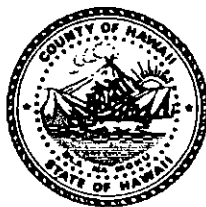


William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563

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 1, 2013

Mr. Tim Lui-Kwan
Carlsmith Ball LLP
121 Waiānuenu Avenue
Hilo, HI 96720

Dear Mr. Lui-Kwan:

SUBJECT: **Application:** **VARIANCE DECISION - VAR-13-000137**
 Applicant: **JOHN FLAGG, SUCCESSOR TRUSTEE OF THE CLAIRE E. FLAGG TRUST DATED MAY 20, 1993, AS AMENDED**
 Owners: **THE CLAIRE E. FLAGG TRUST**
 Request: **Variance from Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-84, Water Supply**
 Tax Map Key: **1-8-007:057 (SUB-07-000655)**

Upon review of your variance application, the Planning Director certifies the **approval** of Variance VAR-13-000137 subject to variance conditions. The variance grants relief for SUB-07-000655 from constructing minimum County dedicable water supply system improvements 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 referenced TMK property, Lot 282-A, being also a portion of Grant 4323, containing approximately 18.999 acres, is situated in 'Ōla'a Reservation Lots, 'Ōla'a, Puna, Hawai'i.
2. **County Zoning.** Agricultural – five acres (A-5a).
3. **State Land Use.** Agricultural (A).
4. **General Plan.** Land Use Pattern Allocation Guide (LUPAG) map designates the property as Extensive Agricultural (ea).

5. **Subdivision Code Requirements.** The subdivision code requires that subdivisions be served by a water system meeting the minimum requirements of the County Department of Water Supply (DWS) and be provided with water mains and fire hydrants installed to and within the subdivision in accordance with the rules and regulations of the DWS.
6. **Subdivision Request/PPM.** Subdivision application SUB-07-000655 was submitted to subdivide the subject property into 3 lots consistent with the A-5a zoning. Further action on the subdivision application was deferred pursuant to letter dated September 30, 2008 in the subdivision file.
7. **Variance Application.** The variance request from water supply improvements was acknowledged by Planning Department letter dated May 13, 2013. This variance application requests the use of individual rainwater catchment systems in lieu of extending and/or upgrading the DWS water system or constructing a private water system conforming to DWS standards.
8. **Agency Comments and Requirements.**
 - a. State of Hawai'i-Department of Health (DOH): see attached memorandum dated May 15, 2013.
 - b. County of Hawai'i Fire Department (HFD): see attached memorandum dated May 24, 2013.
 - c. Department of Water Supply (DWS): see attached memorandum dated January 8, 2008 (attached) in response to the subdivision application indicating the property is not within the service limits of existing water system facilities. They also require the cancellation of a previous water waiver that was recorded with the Bureau of Conveyances prior to final subdivision approval. Further memorandum dated May 24, 2013 in response to this application reiterates that the property is well beyond the DWS service limits (also attached).
 - d. No other agency comments were solicited and none were received.
9. **Notice to Surrounding Owners/Posted Sign.** The applicant submitted evidence, dated May 15, 2013, regarding the posting of a public notification sign on the subject property pursuant to Section 23-17(c) of the HCC. Pictures of the posted sign were also submitted. Further, verification was submitted that a notice of the application was sent on May 17, 2013 to the surrounding property owners as required by Section 23-17(a).
10. **Comments from Surrounding Property Owners or Public.** Written objection to this application was received from Marie Knight (Stanley), a surrounding property owner. The objection was primarily against the subdivision in general (see attached).

ANALYSIS OF GROUNDS FOR VARIANCE

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.***

The Variance application meets criterion (a) for the following reasons(s):

The subdivision request is for three (3) lots in keeping with the existing A-5a zoning. Although a dedicable water system is a requirement of the code, the subject property is not within the service limits of, and at an elevation where water cannot be delivered by the existing DWS system facilities. It would be unreasonable to expect the owners to wait for the required service upgrades. Therefore, it is reasonable that, in lieu of constructing water system improvements to either extend/upgrade the DWS facilities or provide a private water system to DWS standards for the pending 3-lot subdivision, a more reasonable alternative can be allowed pursuant to Planning Department Rule No. 22, Water Variance.

The above special and unusual circumstances would deprive the applicant from developing this property and interferes with the best use of this property.

Therefore, for this agricultural subdivision, the best use and manner of the development allows for individual rain water catchment systems in keeping with the rural agricultural character of the surrounding area.

- (b) ***There are no other reasonable alternatives that would resolve the difficulty.***

The Variance application meets criterion (b) for the following reasons(s):

Constructing water system improvements to either extend/upgrade the DWS facilities or provide a private water system to DWS standards for the pending 3-lot subdivision would be placing excessive demands upon the applicant because of the distance of more than 2.5 miles to the existing DWS water system facilities. At an elevation of approximately 2,300 feet above sea level, the drilling of wells and construction of other water system improvements would also be unreasonable for a three (3) lot subdivision.

- (c) ***The variance will be consistent with the general purpose of the district, the intent and purpose of this chapter, and the County 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.***

The Variance application meets criterion (c) for the following reasons(s):

Given that there is adequate rainfall (approximately 160 inches to 200 inches of rainfall annually) to support individual water catchment and this is an agricultural subdivision, the granting of this variance would be consistent with the general purpose of the agricultural district and the proposed subdivision is consistent with the current A-5a zoning. Water catchment is consistent with the intent of the policies of the general plan in that it will further agricultural activity. Water catchment will not be materially detrimental to the public welfare as it serves only private parties. Granting of the variance will not cause substantial, adverse impact to the area's character or to adjoining properties. The collection of rainwater could help to reduce runoff and may be a benefit to the surrounding area.

Given that the subject area receives sufficient annual rainfall, a water variance would be consistent with the general purpose of the zoning district and the intents and purposes of the Zoning Code, Subdivision Code, Rule 22 and the Hawai'i County General Plan.

DETERMINATION-VARIANCE CONDITIONS

The variance to permit the proposed 3-lot subdivision of the subject TMK property without providing dedicable water system improvements meeting DWS standards 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, as outlined in this variance, affecting the lots created by the proposed subdivision which are 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 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 longer any special or unusual circumstances applying to the property, and hence, no grounds exist or will exist for another variance from the Subdivision Code to permit further subdivision of the properties.
5. The owners, grantees, successors, and assigns agree and accept the fact that a County dedicable public water system will not be extended to serve the lots within proposed subdivision SUB-07-000655.
6. 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 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.
7. No condominium property regime shall be allowed on any lot created, nor shall an Ohana Dwelling Unit be permitted or allowed.
8. Any dwelling constructed on any created lot shall be provided with and maintain a private rainwater catchment system which includes a minimum 6,000-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.
9. Each permitted dwelling shall also be provided with a minimum 3,000 gallon water storage capacity dedicated for fire fighting and emergency purposes. The location and capacity of the emergency water supply system, including the necessary compatible fire apparatus connector system, shall be as required by the HFD. The HFD also advises, as a precautionary measure for other uninhabited structures, that consideration be given to the provision of a similar water storage system for fire fighting and emergency purposes.
10. 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.
11. The pending subdivision application's (SUB-07-000655) final plat map shall meet all the requirements of the Hawai'i County Zoning Code and the Subdivision Code that are not covered by this variance.
12. The subdivider, owner(s), their assigns or successors shall pay any outstanding real property taxes and

Mr. Tim Lui-Kwan
Carlsmith Ball LLP
Page 6
July 1, 2013

comply with all other applicable State statutes and County ordinances pertaining to building improvements and land use.

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

Sincerely,



DUANE KANUHA
Planning Director

JRH:nci
P:\Admin Permits Division\Variance\2013\VAR-13-000137\Flagg Water\APVL.doc

Encls: Agency Comments, etc.

xc: DWS-Engineering Branch
SUB-07-000655

Marie Knight (Stanley)
1615 Frolic Street
Oshawa, Ontario, Canada
L1K 0L4

xc w/encls: G. Bailado, GIS Section (via email)
L. Brown, PCDDP (via email)

PLANNING DEPARTMENT
William P. Kennel
Mayor
702 MAY 16 PM 2:42



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

County of Hawai'i
HAWAII FIRE DEPARTMENT
25 Aupuni Street • Room 2081 • Hilo, Hawaii 96720
(808) 933-2900 • Fax (808) 933-3920

May 23, 2013

TO: BJ LEITHEAD TODD, PLANNING DIRECTOR

FROM: DARREN J. ROSARJO, FIRE CHIEF

SUBJECT: VARIANCE APPLICATION (VAR 13-000137)
APPLICANT: JOHN FLAGG, SUCCESSOR TRUSTEE OF THE CLAIRE E. FLAGG TRUST DATED MAY 20, 1993, AS AMENDED
OWNER: THE CLAIRE E. FLAGG TRUST
REQUEST: VARIANCE FROM CHAPTER 23, SUBDIVISIONS, ARTICLE 6, DIVISION 2, IMPROVEMENTS REQUIRED, SECTION 23-84, WATER SUPPLY
TAX MAP KEY: 1-8-007:057 (SUB 07-000655)

In regards to the above-mentioned Variance application, the following shall be in accordance:

NFPA 1, UNIFORM FIRE CODE, 2006 EDITION

Note: NFPA 1, Hawaii State Fire Code with County amendments. County amendments are identified with a preceding "C-" of the reference code.

Chapter 18 Fire Department Access and Water Supply

18.1 General. Fire department access and water supplies shall comply with this chapter.

For occupancies of an especially hazardous nature, or where special hazards exist in addition to the normal hazard of the occupancy, or where access for fire apparatus is unduly difficult, or areas where there is an inadequate fire flow, or inadequate fire hydrant spacing, and the AHJ may require additional safeguards including, but not limited to, additional fire appliance units, more than one type of appliance, or special systems suitable for the protection of the hazard involved.

18.1.1 Plans.

18.1.1.1 Fire Apparatus Access. Plans for fire apparatus access roads shall be submitted to the fire department for review and approval prior to construction.

18.1.1.2 Fire Hydrant Systems. Plans and specifications for fire hydrant systems shall be submitted to the fire department for review and approval prior to construction.



Hawaii County is an Equal Opportunity Provider and Employer.

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NEIL ADERCRUMBIE
GOVERNOR
PLANNING DEPARTMENT
OFFICE OF REGION

2013 MAY 16 AM 9:30



STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 918
HILO, HAWAII 96721-0916

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

MEMORANDUM

DATE: May 15, 2013

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

FROM: Newton Inouye
District Environmental Health Program Chief

SUBJECT: Application: VARIANCE (VAR-130000137)
Applicants: JOHN FLAGG, SUCCESSOR TRUSTEE OF THE
CLAIRE E. FLAGG TRUST DATED MAY 20, 1993,
AS AMENDED
Owner: THE CLAIRE E. FLAGG TRUST
Request: Variance from chapter 23, Subdivisions, Article 6, Division 2,
Improvements Required, Section 23-84, Water Supply
Tax Map Key: 1-8-007:057 (SUB-07-000655)

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-13-000137.ai

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18.2.3.4.7 Traffic Calming Devices. The design and use of traffic calming devices shall be approved by the AHJ.

18.2.3.5 Marking of Fire Apparatus Access Road.

18.2.3.5.1 Where required by the AHJ, approved signs or other approved notices shall be provided and maintained to identify fire department access roads or to prohibit the obstruction thereof of both.

18.2.3.5.2 A marked fire apparatus access road shall also be known as a fire lane.

18.2.4* Obstruction and Control of Fire Department Access Road.

18.2.4.1 General.

18.2.4.1.1 The required width of a fire department access road shall not be obstructed in any manner, including by the parking of vehicles.

18.2.4.1.2 Minimum required widths and clearances established under 18.2.3.4 shall be maintained at all times.

18.2.4.1.3* Facilities and structures shall be maintained in a manner that does not impair or impede accessibility for fire department operations.

18.2.4.1.4 Entrances to fire departments access roads that have been closed with gates and barriers in accordance with 18.2.4.2.1 shall not be obstructed by parked vehicles.

18.2.4.2 Closure of Accessways.

18.2.4.2.1 The AHJ shall be authorized to require the installation and maintenance of gates or other approved barricades across roads, trails, or other accessways not including public streets, alleys, or highways.

18.2.4.2.2 Where required, gates and barricades shall be secured in an approved manner.

18.2.4.2.3 Roads, trails, and other accessways that have been closed and obstructed in the manner prescribed by 18.2.4.2.1 shall not be trespassed upon or used unless authorized by the owner and the AHJ.

18.2.4.2.4 Public officers acting within their scope of duty shall be permitted to access restricted property identified in 18.2.4.2.1.

18.2.3.4.1.2.2 Vertical clearances shall be increased when vertical clearances or widths are not adequate to accommodate fire apparatus.

C- 18.2.3.4.2 Surface. Fire department access roads and bridges shall be designed and maintained to support the imposed loads (25 Tons) of the fire apparatus. Such FDAR and shall be comprised of an all-weather driving surface.

18.2.3.4.3 Turning Radius.

C- 18.2.3.4.3.1 Fire department access roads shall have a minimum inside turning radius of 30 feet, and a minimum outside turning radius of 60 feet.

18.2.3.4.3.2 Turns in fire department access road shall maintain the minimum road width.

18.2.3.4.4 Dead Ends. Dead-end fire department access roads in excess of 150 ft (46 m) in length shall be provided with approved provisions for the fire apparatus to turn around.

18.2.3.4.5 Bridges.

18.2.3.4.5.1 When a bridge is required to be used as part of a fire department access road, it shall be constructed and maintained in accordance with county requirements.

18.2.3.4.5.2 The bridge shall be designed for a live load sufficient to carry the imposed loads of fire apparatus.

18.2.3.4.5.3 Vehicle load limits shall be posted at both entrances to bridges where required by the AHJ.

18.2.3.4.6 Grade.

C- 18.2.3.4.6.1 The maximum gradient of a Fire department access road shall not exceed 12 percent for unpaved surfaces and 15 percent for paved surfaces. In areas of the FDAR where a Fire apparatus would connect to a Fire hydrant or Fire Department Connection, the maximum gradient of such area(s) shall not exceed 10 percent.

18.2.3.4.6.2* The angle of approach and departure for any means of fire department access road shall not exceed 1 ft drop in 20 ft (0.3 m drop in 6 m) or the design limitations of the fire apparatus of the fire department, and shall be subject to approval by the AHJ.

18.2.3.4.6.3 Fire department access roads connecting to roadways shall be provided with curb cuts extending at least 2 ft (0.61 m) beyond each edge of the fire lane.



DEPARTMENT OF WATER SUPPLY • COUNTY OF HAWAII
 348 KEKUAO'A STREET, SUITE 20 • HILO, HAWAII 96720
 TELEPHONE (808) 961-8050 • FAX (808) 961-8657

January 8, 2008

TO: Mr. Christopher J. Yuen, Planning Director
 Planning Department

FROM: Milton D. Pavao, Manager

SUBJECT: SUBDIVISION APPLICATION NO. 07-000655
 SUBDIVIDER - JAMES M. FLAGG
 TAX MAP KEY 1-R-007:057

We have reviewed the subject application for the proposed subdivision.

Please be informed that the subject property is not within the service limits of the Department's existing water system facilities. Also, the subject property is at an elevation where water cannot be delivered by the Department's existing water system facility.

Further, the subject property was created by a subdivision which was approved under a Waiver from the Department's water requirements for subdivisions, which has been recorded with the Bureau of Conveyances. If a variance is approved, the Waiver must be canceled prior to granting final subdivision approval.

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

Sincerely yours,

Milton D. Pavao
 Milton D. Pavao, P.E.
 Manager

RQ:dflg

copy - James M. Flagg
 The Independent Hawaii Surveyors, LLC

... Water brings progress... 037114

BJ Leithead Todd
 May 23, 2013
 Page 8

- (c) be located between 8 ft and 16 ft from the Fire department access. The location shall be approved by the AHJ;
- (d) not be located less than 24 inches, and no higher than 36 inches from finish grade, as measured from the center of the FDC orifice;
- (e) be secure and capable of withstanding drafting operations. Engineered stamped plans may be required;
- (f) not be located more than 150 feet of the most remote part, but not less than 20 feet, of the structure being protected;
- (g) also comply with section 13.1.3 and 18.2.3.4.6.1 of this code;
- (4) Commercial buildings requiring a fire flow of 2000gpm shall be provided with a second FDC. Each FDC shall be independent of each other, with each FDC being capable of flowing 500gpm by engineered design standards. The second FDC shall be located in an area approved by the AHJ with the idea of multiple Fire apparatus conducting drafting operations at once, in mind.
- (5) Inspection and maintenance shall be in accordance to NFPA 25.
- (6) The owner or lessee of the property shall be responsible for maintaining the water level, quality, and appurtenances of the system.

EXCEPTIONS TO SECTION 18.3.8:

- (1) Agricultural buildings, storage sheds, and shade houses with no combustible or equipment storage.
- (2) Buildings less than 800 square feet in size that meets the minimum Fire Department Access Road requirements.
- (3) For one and two family dwellings, agricultural buildings, storage sheds, and detached garages 800 to 2000 square feet in size, and meets the minimum Fire Department Access Road requirements, the distance to the Fire Department Connection may be increased to 1000 feet.
- (4) For one and two family dwellings, agricultural buildings, and storage sheds greater than 2000 square feet, but less than 3000 square feet and meets the minimum Fire Department Access Road requirements, the distance to the Fire Department Connection may be increased to 500 feet.
- (5) For buildings with an approved automatic sprinkler system, the minimum water supply required may be modified.

If there are any questions regarding these requirements, please contact the Fire Prevention Bureau at (808) 932-2911.

DARREN J. ROSARIO
 DARREN J. ROSARIO
 Fire Chief
 RP/ac

JAT

These are my comments which I hope you will take into consideration when reviewing this application.

Yours truly,

Marie Knight (Stanley)

c.c. Carlsmith Ball, LLP

PLANNING DEPARTMENT
2013 MAY 27 PM 7:52

Street

1615 Frolis

Oshawa, Ontario Canada
L1K 0L4
May 28, 2013

WITHOUT PREJUDICE

TO: Planning Department

RE: VAR 13-000137 - Application by John Flagg
TMK Nos. (3) 1-8-007-057 (SUB-07-000655)

Dear Sirs:

I submit this correspondence by e'mail as I received the letter from Carlsmith Ball, LLP, advising me of this Variance Application on May 28 and my deadline for submission is May 29.

I act as Trustee for the Estate of Marjorie Yosepenko who presently owns two lots as a surrounding property owner and I am in the process of purchasing these two lots.

I want to express opposition to the above-referenced proposal for the following reasons:

1. The size of the existing lot is unique and adds to the diversity of the neighbourhood;
2. There are already so many of the smaller lots and three more lots would certainly not be advantageous to the character of the present neighbourhood;
3. The severance of this lot into three lots will create a dangerous precedent to other owners of the larger lots applying for the severance of their lot.

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