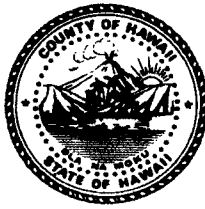


William P. Kenoi
Mayor



Duane Kanuha
Director

Joaquin Gamiao-Kunkel
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

March 22, 2016

Chrystal Thomas Yamasaki, LPLS
Wes Thomas Associates
75-5749 Kalawa Street
Kailua-Kona, HI 96740-1818

Dear Ms. Yamasaki:

SUBJECT: VARIANCE DECISION - VAR-16-000342

Applicant: CRYSTAL THOMAS YAMASAKI, LPLS, WES THOMAS ASSOCIATES

Owner: DANIEL P. MCKINLEY

**Request: Variance from Chapter 23, Subdivisions, Article 6, Division 2,
Improvements Required, Section 23-84, Water Supply**

Tax Map Key: 8-7-009:005 (SUB-15-001550)

Upon review of your variance application, the Planning Director certifies the **approval** of Variance VAR-16-000342 subject to variance conditions. The variance grants relief for SUB-15-001550 from constructing minimum County dedicable water supply system improvements for the three (3) lots 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 referenced property, Lot 1-A-1, Portion of Grant 1973, containing approximately 71.908 acres, is situated in 'Ka'ohē 1st & 3rd, South Kona, Hawai'i.
2. **County Zoning.** Agricultural, 5 acre minimum building site area (A-5a).
3. **State Land Use.** Agricultural (A) and Conservation (C).
4. **General Plan.** Land Use Pattern Allocation Guide (LUPAG) map designates the property as Extensive Agricultural (ea) and Open (ope).

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-15-001550 was submitted to subdivide the subject TMK property into 3 lots. Further action on the subdivision application has been deferred pursuant to this variance application.
7. **Variance Application.** The variance request from water supply improvements for the three (3) lots was acknowledged by Planning Department letter dated February 2, 2016. This variance application includes background history and circumstances and information regarding the pending subdivision application.
8. **Variance Application (VAR-16-000342) Agency Comments and Requirements.**
 - a. State of Hawai'i-Department of Health (DOH): See attached memorandum dated February 9, 2016. (Exhibit A)
 - b. County of Hawai'i Fire Department (HFD): See attached memorandum dated February 12, 2016. (Exhibit B)
 - c. Department of Water Supply (DWS): See attached memoranda dated February 11, 2016. (Exhibit C)
 - d. No other agency comments were solicited and none were received.
9. **Notice to Surrounding Owners/Posted Sign.** The applicant submitted evidence on November 23, 2015, regarding the posting of a public notification sign on the subject property pursuant to Section 23-17(c) of the Hawai'i County Code (HCC). Pictures of the posted sign were also submitted. Evidence dated February 19, 2016 and mailing verification forms indicate that a notice of the application was sent to the surrounding property owners as required by Section 23-17(a).
10. **Comments from Surrounding Property Owners or Public.** Ms. Cindy Whitehawk commented on the subdivision on February 23, 2016 (see attached Exhibit D) objecting to the subdivision on the grounds that the terrain is too steep, some 25% of slope, to access the Makai lots and that there may be historic sites present.

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, far less than might be allowed with the existing A-5a zoning. Although a dedicable water system is a requirement of the code, beyond the one existing water meter, the subject property is not able to be supported by the present service facilities of the existing DWS system, which terminates approximately 4 miles north of the subject property in Ho'okena, and it would be unreasonable to expect the owners to construct the required service upgrades to serve the three (3) lots. 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 through Rule 22, Water Variance, Section 22-6, Exceptions for Large Lot Subdivision.

Rule 22-6 allows that exceptions to the minimum annual rainfall required (60 inches) may be granted if the subdivision results in lots averaging at least 20 acres in size and averaging at least four times the minimum lot size allowed by the zoning.

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

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

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

The DWS has indicated that the property is not within the service limits of their existing water system facilities. Constructing water system improvements to extend the DWS facilities some four (4) miles 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 extensive improvements and additions required to the existing DWS water system facilities. At an elevation of approximately 1,100 feet above sea level, the drilling of wells and construction of other water system improvements to DWS standards 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):

Although there is inadequate rainfall (approximately 40 inches to 60 inches of rainfall annually) to satisfy individual water catchment through Rule 22 for the three lots, the granting of this variance is consistent with Rule 22-6 and the general purpose of the district. Water catchment is consistent with the intent of the policies of the general plan in that it will further farming opportunities in this area. Water catchment will not be materially detrimental to the public welfare as it serves only private parties.

Subject to conditions, 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 subdivision conforms to the requirements of Rule 22-6, 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 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 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 State of Hawai'i, Bureau of Conveyances by and at the cost and expense of the owners. A copy of the recorded document shall be supplied to the Planning Department for our files.

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.

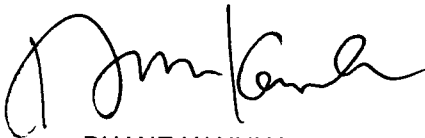
4. The subdivider and all grantees, successors, and assigns, acknowledge that the parcels were created by a variance from the normal subdivision requirements of Hawai'i County, and that there are no longer any special or unusual circumstances applying to the property, and hence, no grounds exist or will 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-15-001550.
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 subdivided lots. No further subdivision of the lots 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 will be allowed, nor will an Ohana Dwelling Unit be permitted or allowed.
8. Any dwelling constructed on any created lot not served by the DWS 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 on a lot not served by the DWS shall also be provided with a minimum 3,000 gallon water storage capacity dedicated for firefighting and emergency purposes. The location and capacity of the emergency water supply system, including the necessary compatible fire apparatus connector system, shall be as specified by the HFD in the memorandum attached to this permit for reference. 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 firefighting 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 the lots, the owner(s) of the lots 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-15-001550) 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.

Chrystal Thomas Yamasaki, LPLS
Wes Thomas Associates
Page 6
March 22, 2016

12. 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.

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

\\COH33\planning\public\Admin Permits Division\Variance\2016\VAR-16-000342 McKinley Water\APVL.docx

Encls: Agency Comments

xc: DWS-Engineering Branch
HFD
T. Dunlap, KCPD (via email)
SUB-15-001550

Cindy Whitehawk
P.O. Box 265
Hōnaunau, HI 96726

xc w/encls: Daniel P. McKinley
667 Rosita Avenue
Los Altos, CA 94024

G. Bailado, GIS Section (via email)



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

2016 FEB 10 pm 2 58
PLANNING DEPARTMENT
COUNTY OF HAWAII

MEMORANDUM

DATE: February 9, 2016

TO: Mr. Duane Kanuha
Planning Director, County of Hawaii

FROM: Eric Honda *EH*
District Environmental Health Program Chief

SUBJECT: **Application: Variance – VAR 16-000342**
Applicant: CHRYSTAL THOMAS YAMASAKI, LPLS, WES THOMAS ASSOCIATES
Owner: DANIEL P. MCKINLEY
Request: Variance from Chapter 23, Subdivisions, Article 6 Division 2, Improvements Required, Section 23-84, Water Supply
Tax Map Key: 8-7-009:005 (SUB-15-001550)

The Health Department found no environmental health concerns with regulatory implications in the submittals.

WORD: VAR 16-000342.eh

EXHIBIT
A

103563

William P. Kenoi
Mayor



16 FEB 16 PM 3 07

Darren J. Rosario
Fire Chief

Renwick J. Victorino
Deputy Fire Chief

PLANNING DEPARTMENT
COUNTY OF HAWAII

County of Hawai'i
HAWAII FIRE DEPARTMENT
25 Aupuni Street • Suite 2501 • Hilo, Hawai'i 96720
(808) 932-2900 • Fax (808) 932-2928

February 12, 2016

TO : DUANE KANUHA, PLANNING DIRECTOR

FROM : DARREN J. ROSARIO, FIRE CHIEF

SUBJECT : Variance – VAR-16-000342

Applicant: Chrystal Thomas Yamasaki, LPLS, Wes Thomas Associates

Owner: Daniel P McKinley

Request: Variance from Chapter 23, Subdivisions, Article 6, Division 2,
Improvements Required, Section 23-84, Water Supply

Tax Map Key:8-7-009:005 (SUB-15-001550)

The Hawai'i Fire Department has no comments or issues with regards to the Variance as noted above.

Handwritten signature of Darren J. Rosario.

DARREN J. ROSARIO
Fire Chief

CB:ds

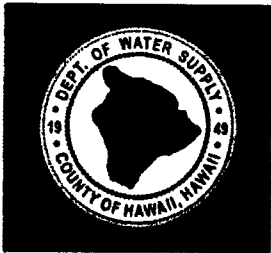
EXHIBIT

B

103641



Hawai'i County is an Equal Opportunity Provider and Employer.



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

February 11, 2016

2016 FEB 12 pm 2:49
PLANNING DEPARTMENT
COUNTY OF HAWAII

TO: Mr. Duane Kanuha, Director
Planning Department

FROM: Keith K. Okamoto, Manager–Chief Engineer

SUBJECT: Variance Application (VAR 16-000342)
Subdivision Application No. 15-001550
Subdivider - McKinley, Daniel P.
Tax Map Key 8-7-009:005

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

Please be informed that the subject property is not within the service limits of the Department's existing water system facilities.

Therefore, the Department's existing water system facilities cannot support the proposed subdivision at this time. Extensive improvements and additions, which may include, but not be limited to, source, storage, booster pumps, transmission, and distribution facilities, would be required.

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

Sincerely yours,

Keith K. Okamoto, P.E.
Manager–Chief Engineer

TS:dfg

copy – Wes Thomas Associates
Mr. Daniel P. McKinley

EXHIBIT
C

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

103616

PLANNING DEPARTMENT
COUNTY OF HAWAII

Preface: in Kailua Planning Department, I was given an address to send e-mail to:
There was a problem delivering your email to:
planning@hawaiicounty.org

Calling the Hilo office was useless. Could not get through the automated phone system and no operator answers. So I am faxing the letter:

Subject: VAR-16-000342

February 23, 2016

Concerning the property owned by Daniel P McKinley, TMK: 8-7-009:005 being subdivided into 3 parcels. The plat map in the planning department shows a narrow parcel being divided into three sections with two of the plats accessible by a flag strip on the north edge of the property.

The property is STEEP descending 1200 vertical feet in a distance of 4100 feet. This is a 25% grade if it was even for the entire distance, making it illegally steep for a road. On top of this there are two pali in the flag area. Even on foot, it is physically impossible to access the 2 proposed makai lots via a straight access as shown on the plans.

Also of concern is a stone wall next to Na Ala Hele Trail which runs perpendicular to said flag area. The plans show the wall must be destroyed where the flag area traverses it.

Please also note that in the past Mr. McKinley has tried to get access via Kahoe Road in the subdivision of Kona Paradise to the south of his property. Access via this privately owned road has been denied by the property owners in Kona Paradise.

By the way, I received the letter of the variance application on Saturday, February 20, 2016, stating that all comments must be filed with the planning director by Thursday, February 25, 2016. This leaves only three business days for driving an hour to the Kailua planning department to view the plans before comments must be filed. In my opinion this is an extremely short allowance of time, making it a challenge to do so with such short notice.

Cindy Whitehawk
PO Box 265
Honaunau HI 96726

808-987-2662
blossoming_whitehawk@yahoo.com

EXHIBIT

D

103799