

PLANNING DEPARTMENT  
County of Hawaii  
Hilo, Hawaii

APPLICATION FOR ADMINISTRATIVE VARIANCE )  
by )  
J. DAHLBERG REALTY, INC. ) ADMINISTRATIVE  
from ) VARIANCE NO. 44  
MINIMUM ROADWAY REQUIREMENT )  
in )  
KALAMAKAPALA, SOUTH KONA, HAWAII )  
\_\_\_\_\_ )

ADMINISTRATIVE VARIANCE PERMIT

An administrative public hearing was held by the Planning Director of the County of Hawaii Planning Department on December 10, 1980, on the application of J. DAHLBERG REALTY, INC. for a variance from minimum roadway requirement, more specifically, to allow the creation of a 3-lot subdivision with a 10-foot wide easement and no pavement improvement in lieu of a 50-foot wide right-of-way and 20-foot wide pavement of agricultural standards, respectively, at Kalamakapala, South Kona, Hawaii, Tax Map Key 8-2-09:17, 35 and 37.

After hearing the case, the Planning Director has found:

That there are special and unusual circumstances applying to the subject property which do not generally apply to other properties in the same zoned district.

The subject area was originally 17+ acres in size and was owned by two (2) individuals and an estate. Each of them had one-third (1/3) interest in the property. In 1950, the 17+-acre area was partitioned into two (2) lots consisting of 11+ acres and 6 acres. The latter lot (parcel 35) was subsequently sold. Then, in 1967, the remaining 11+-acre area was partitioned into two (2) lots consisting of 5 acres (parcel 17) and 5.7 acres (parcel 37).

Although individual tax map key parcel numbers were assigned to each lot, no subdivision application was submitted nor granted for the creation of the three (3) lots. Ownership of the lots have changed several times since they were partitioned in 1950 and 1967.

The lots are presently served by a 10-foot wide roadway easement from the Old Government Road which traverses through the center portion of parcel 35 and extends to parcel 37 via the northwestern or Kailua side of parcel 17. Therefore, the issue at hand is to legitimize the subdivision by providing a 10-foot wide roadway easement and no pavement as presently exists.

The illegal subdivision of the area into three (3) lots were discovered by the Planning Department only recently when one (1) of the new landowners applied for a building permit for the construction of a single family dwelling on his lot.

Although the lots have been "in existence" for 13 to 30 years, no definite enforcement action on the part of the Government has taken place during that period. As such, although the illegal subdivision may not have been known until

recently, by its failure to rigidly enforce the Subdivision Control Code, the County may have indirectly contributed to the "appearance" of legitimacy of these lots.

Based on the above, it is determined that special and unusual circumstances exist to a degree which deprive the new landowners of substantial property rights.

Further, the granting of the request will not necessarily be inconsistent with the intent and purpose of the Subdivision Control Code since the present alignment of the 10-foot wide roadway easement has been in existence for many years. The granting of the request also will not be detrimental to the public welfare nor be injurious to improvements or property rights related to properties in the near vicinity. Since the lots have been "in existence" for many years, the public's perception of that area should not change, as approval of the variance request would merely amount to a confirmation of an existing situation. This would be unlike a situation where additional or increased traffic, density, etc. would come to an area. Therefore, the granting of this particular request also will not constitute a grant of personal or special privilege inconsistent with the limitations placed upon other properties.

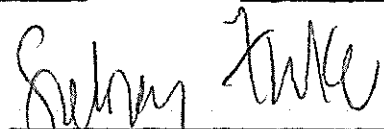
Therefore, the Planning Director hereby grants to the applicant a variance to allow the creation of a 3-lot subdivision with a 10-foot wide easement and no pavement improvements in lieu of a 50-foot wide right-of-way and 20-foot wide pavement of agricultural standards, respectively, at Kalamakapala, South Kona, Hawaii, Tax Map Key 8-2-09:17, pursuant to the authority vested in him by the County Charter, subject to the following conditions:

- Final 7/26/80*
1. That the petitioner or its authorized representative secure tentative subdivision approval within one (1) year from the effective date of the Variance Permit. Final subdivision approval shall be secured within one (1) year thereafter.
  2. That all other applicable rules, regulations and requirements be complied with.

Should any of the foregoing conditions not be met, the Variance Permit may be deemed null and void.

The effective date of this permit shall be from December 11, 1980.

Dated at Hilo, Hawaii, this 30 day of December, 1980.

  
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SIDNEY M. FUKU, Director  
Planning Department

APPROVED AS TO FORM AND LEGALITY:

  
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Deputy Corporation Counsel  
County of Hawaii

Date: 23 Dec 80

December 11, 1980

Mr. James L. K. Dahlberg  
J. Dahlberg Realty, Ltd.  
913 Kanoelehua Avenue  
Hilo, HI 96720

Dear Mr. Dahlberg:

Variance Application (V80-37)  
Minimum Roadway Requirement  
Tax Map Key: 8-2-09:17, 35 & 37

After review of your application and the information presented at the administrative public hearing on December 10, 1980, the Planning Director is hereby certifying the approval of the variance to allow the creation of a 3-lot subdivision with a 10-foot wide easement and no pavement improvements in lieu of a 50-foot wide right-of-way and 20-foot wide pavement of agricultural standards, respectively.

Approval of this request is based on the following findings:

That there are special and unusual circumstances applying to the subject property which do not generally apply to other properties in the same zoned district.

The subject area was originally 17+ acres in size and was owned by two (2) individuals and an estate. Each of them had one-third (1/3) interest in the property. In 1950, the 17+-acre area was partitioned into two (2) lots consisting of 11+ acres and 6 acres. The latter lot (parcel 35) was subsequently sold. Then, in 1967, the remaining 11+-acre area was partitioned into two (2) lots consisting of 5 acres (parcel 17) and 5.7 acres (parcel 37).

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Based on the above, it is determined that special and unusual circumstances exist to a degree which deprive the new landowners of substantial property rights.

Further, the granting of the request will not necessarily be inconsistent with the intent and purpose of the Subdivision Control Code since the present alignment of the 10-foot wide roadway easement has been in existence for many years. The granting of the request also will not be detrimental to the public welfare nor be injurious to improvements or property rights related to properties in the near vicinity. Since the lots have been "in existence" for many years, the public's perception of that area should not change, as approval of the variance request would merely amount to a confirmation of an existing situation. This would be unlike a situation where additional or increased traffic, density, etc. would come to an area. Therefore, the granting of this particular request also will not constitute a grant of personal or special privilege inconsistent with the limitations placed upon other properties.

The conditions of approval are as follows:

1. That the petitioner or its authorized representative secure tentative subdivision approval within one (1) year from the effective date of the Variance Permit. Final subdivision approval shall be secured within one (1) year thereafter.
2. That all other applicable rules, regulations and requirements be complied with.

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Should any of the foregoing conditions not be met, the Variance Permit may be nullified.

Please be informed that the official Variance Permit will be forthcoming under separate cover.

Should you have any questions in the meantime, please feel free to contact us.

Sincerely,



Sidney M. Eake  
Planning Director

NH:gs

cc: Planning Commission  
bcc: Subdivision File 80-145 (via MO/KN)