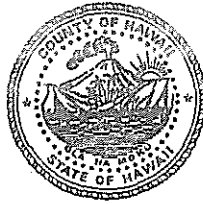


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • Fax (808) 961-8742

October 14, 2005

Mr. Fred Yamashiro
MENEHUNE DEVELOPMENT COMPANY
P. O. Box 657
Kamuela, HI 96743

Dear Mr. Yamashiro:

VARIANCE PERMIT NO. WH (VAR 05-057)

Applicant: MENEHUNE DEVELOPMENT COMPANY
Owners: DEPARTMENT OF HAWAIIAN HOME LANDS-
DHHL/STATE OF HAWAII
Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required
**Tax Map Key: 6-6-004:012-017, Por., 6-6-001:077 Por.,
(SUB 04-0217B)**

After reviewing your variance application, the Planning Director certifies the approval of your variance request subject to conditions. The applicant is requesting a variance to allow construction of alternative roadway improvements within existing rights-of-way and proposed road lot in lieu of required paved roadway, curb, gutter, and other shoulder improvements within existing right-of-way or proposed roadways for a proposed 17-building lots/roadway lot(s)/remnant lot(s) DHHL subdivision (SUB 04-0217B). The variance request is from Hawaii County Code, Chapter 23, Subdivisions, Article 6, Improvements, Division 2, Improvements Required, Section 23-86, Requirements for dedicable standards. The variance allows the subdivision's road fronting the proposed building lots to be built with a 20 feet pavement and 15 feet wide shoulders within existing 40 feet wide and 10 feet wide roadway lots. The proposed pavement width and paved shoulders design will connect with the existing paved roadway and shoulders within adjoining Lalamilo House Lots Subdivision.

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The Planning Director has concluded that the variance from certain tentative approval roadway conditions and requirements for proposed DHHL-subdivision can be approved based on the following findings:

BACKGROUND

1. **Location.** The affected TMK property(s) containing approximately 7.00 acres + are situated at Lalamilo, South Kohala, Hawaii.

Zoning. The subject property is zoned Single-Family Residential (RS-10) and Agricultural (A-5a) by the County and designated Urban ("U") and Agriculture ("A") by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** The land owner-DHHL submitted a subdivision application (SUB 04-0217B). The subdivision application's preliminary plat map (PPM) was prepared by M&E Pacific, Inc. and is dated November 4, 2004. Tentative Subdivision approval was issued to the PPM on April 1, 2005 subject to conditions.
4. **Variance Application.** Access to the proposed subdivision is via an existing State owned right-of-way to Kawaihae Road (State owned Right-of-Way). The applicant, on behalf of DHHL, submitted the subject variance application and other submittals on or about June 17, 2005. A revised full-size map dated July 15, 2005 showing the proposed subdivision (Lalamilo Subdivision Phase I) and Road Lot B and alternative roadway cross sections (Figure 4 and Figure 5) were received on August 10, 2005. Proposed "ROAD LOT B" is owned by State-DHHL and abuts the 40-foot right-of-way (Alaneo Road) created by the State (Hawaii Territory Survey) on or about 1954.

The applicant's written background report or "REASONS REQUESTING VARIANCE" states in part:

"The tentative subdivision approval stated that the roads be constructed with concrete curb, gutter and sidewalks. We are requesting a variance from this. Because the new subdivisions will be connecting to existing subdivision roads that consist of Asphalt swales and shoulders, we would like to construct Asphalt Shoulder and Swales conforming to DWP (sic) standard detail R-33 to match the existing subdivision roads. Also, previously, DHHL discussed this with the County Planning Department."

5. Agency Comments and Requirements-WH (VAR 05-057):

- a. The State Department of Health (DOH) memorandum dated August 17, 2005, states:

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

- b. The Department of Public Works (DPW) memorandum dated September 5, 2005 states:

"We have reviewed the subject application for a variance from the dedicable roadway standards for curb gutter and sidewalk as specified in the tentative approval for the subject subdivision.

Our policy is to recommend concrete curbs, gutters, and sidewalks per Standard Detail R-34 for the roads within areas zoned for RS-10. We recommend pedestrian "safe" as well as "accessible" to maximum extent (sic) feasible, established under our dedicable standards and the Subdivision Code. Subdivisions should incorporate equivalent or better standards for roads serving more than six lots. According to Hawaii County Code, Section 23-89, the authority to require sidewalks is with the County Council.

Should there be any questions concerning this matter, please feel free to call Kiran Emler at our Kona Engineering office, 327-3530."

- c. The Department of Water Supply (DWS) memorandum dated September 7, 2005, states in part:

"We have reviewed the subject applications and have no comments to the variance request from the requirements for curb, gutter, and sidewalk."

6. **Notice to Surrounding Owners.** The applicant forwarded a copy of a notice, list of surrounding owner(s) within 300 feet of the referenced TMK property(s) and proof of mailing. According to the submittals, it appears that a copy of a notice was mailed from Kamuela, HI 96743 on or about August 18, 2005 according to the affixed USPO stamp.

7. **Comments from Surrounding Property Owners or Public.** No further comments to the subject variance application were received from the agencies. The following objection letters and/or comments were received:
- a. Objection letter (faxed and hard copy) dated September 1, 2005 received from Jay and Florence Murasaki.
 - b. Objection letters dated September 1, 2005 from John R. Kitchen and Mary Mangarin-Kitchen (Re: Lalamilo Houselots Neighborhood/Community Watch Association), respectively, were received.
 - c. Objection letter dated September 4, 2005 from Roger I. Vargas, Ph. D.

Note: Alternative roadway design or subdivision construction plans which include water mains, hydrants, street lights, signage, etc. will be submitted to the agencies for review and approval. Any drainage, flooding, and accessibility issues and other necessary infrastructure requirements within the subdivision for pedestrian walkways and pedestrian safety will be addressed during the review of the subdivision construction plans. The remaining tentative subdivision approval conditions shall be addressed and met by the developer or subdivider-DHHL prior to final subdivision approval.

SPECIAL AND UNUSUAL CIRCUMSTANCES

In considering the applicant's background information and agency comments or tentative subdivision conditions, the Planning Director has determined that there are special and unusual circumstances applying to the roadways with the proposed subdivision or development which deprive the applicants/owners 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 the subject property.

ALTERNATIVES

The decision alternatives include the following:

1. *Install dedicable roadway improvements within the proposed subdivision pursuant to DPW comments or tentative subdivision approval (TA) letter and roadway conditions dated April 1, 2005*

The TA letter, Condition No. 3-Access and Roadway Improvements, states in part:

“e) For Alaneo Road and the proposed subdivision road, construct minimum 32-foot wide dedicable pavement, with concrete curbs, gutters and sidewalks with a minimum 50-ft. wide right-of-way, conforming with Department of Public Works (DPW) Standard Detail R-32.”

“g) Construct dedicable turnaround conforming to DPW Standard Detail R-32.

(Refer to the applicant’s written explanation or background information “4.” cited above).

2. *Allow the applicant or landowner-DHHL to improve and widen the existing paved roadway within the 40-foot wide right-of-way (Alaneo Road) created in 1954 fronting the proposed subdivision and install alternative a paved roadway within the existing 40-foot State owned right-of-way and proposed “ROAD LOT B” owned by the State-DHHL fronting proposed subdivision.* Prior to submitting the variance application, it appears that the DHHL discussed the following alternative roadway improvements with the Planning Department and other agencies. In essence, this variance will allow the State-DHHL or developer to widen and improve a portion of Alaneo Road or 40-foot wide State owned right-of-way created in 1954 and proposed 10-foot wide “ROAD LOT B” consisting of paved roadway-pavement, paved shoulders, and paved swales cross sections-Figure 4 and Figure 5 submitted by the developer’s engineer in the variance file to match adjoining roadways and shoulders in the Lalamilo House Lots Subdivision-Unit I. Subdivision access to individual or proposed lots will be via individual driveways to Alaneo Road or a paved roadway within rights-of-ways owned by the State and the paved roadway with “ROAD LOT B” owned by the DHHL-State of Hawaii, respectively. The roadway intersection improvements at the intersection of Kawaihae Road and Alaneo Road will be designed to meet State or County requirements and the roadways, drainage, and traffic improvements, e.g. street lights; signage, striping, etc. will be constructed or installed throughout the proposed subdivision according to approved subdivision plans. The alternative street access and paved roadway improvements; including signage and striping, at the intersection of Kawaihae Road and Alaneo Road and/or throughout the proposed subdivision shall be constructed by the subdivider or developer to meet American with Disabilities Act (ADA) requirements.

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The maintenance of the subdivision's access from the intersection of Alaneo Road and Kawaihae Road and proposed paved roadway within existing 40-foot wide County owned segment and "ROAD LOT B" segment together with other subdivision roadway improvements called "Alaneo Road" will eventually become a County maintained roadway.

INTENT AND PURPOSE OF THE SUBDIVISION CODE

The intent and purpose of access requirements to a proposed subdivision is to ensure legal and physical access to the proposed lots that is clearly defined and accessible from a public road by domestic and farm vehicles, police, fire, and other service vehicles under various weather conditions without constant maintenance. The applicant is requesting a variance to allow alternative paved access and roadway improvements in lieu of standard dedicable roadway improvements stipulated by the DPW memorandum dated February 23, 2005 in the subdivision file (SUB 04-0217B) or tentative subdivision approval letter (access and roadway improvements-Condition No. 3) dated April 1, 2005.

Waimea Design Plan (WDP). The WDP prepared in May 1984 was adopted by Resolution No. 214 86 on October 1, 1986. The WDP, page 25, "STREET AND LIGHTING" states in part:

"Standards for safety and public convenience should be paramount; however flexibility should be give for design and consideration.

Curbs, gutters, and sidewalks should not be required unless drainage and/or pedestrian and vehicular traffic dictate.

The construction of roads to rural standards—without curbs, gutters and sidewalks, is a major aspect of the ranch character of Waimea. Consequently, where there is a clear need for such elements in all but the central commercial areas, their design could incorporate rural appearances; for example, rolled curbs without sidewalks.

Where possible, light standards should be distinctive in character and complement the natural environment of Waimea. Light standards and intensity of illumination should relate to the type of street and adjacent land use. Upward reflection should be minimized."

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The proposed subdivision is zoned residential (RS-10) and small area may be zoned agricultural. The proposed subdivision is outside of the WDP's commercial area and is within an area called or designated "Low Density Residential". The property's access to the Kawaihae Road is via an existing paved roadway and unimproved section of Alaneo Road (40-foot wide State right-of-way created in 1954). The applicant or DHHL can create "ROAD LOT B" and will construct paved road/shoulder/swale improvements within the unimproved sections of the existing 40-foot State owned right-of-way and "ROAD LOT B". The roadway lots fronting the proposed subdivision together create a 50-foot wide right-of-way width. The subdivider is requesting a variance to allow the proposed subdivision's access and roadways to match existing roadways within an adjoining subdivision. In addition, a DPW requirement to require an overall minimum 50 feet wide right-of-way would be hardship since the Territory of Hawaii (State of Hawaii) created the 40-foot right-of-way and/or current access to the subdivision and surrounding neighborhood in 1954 prior to the adoption of the Zoning and Subdivision Codes in 1966-1967; and, widening this 40-foot right-of-way, becomes more onerous due to previously approved subdivisions and rules or legal requirements to distinguish the difference between State owned rights-of-way and rights-of-way owned by the State-DHHL. As such, tentative subdivision conditions to create a dedicable 50-foot wide roadway parcel and/or improving Alaneo Road consisting of or becoming a paved street, pavement, concrete, concrete gutters-curb, concrete sidewalk, etc. meeting DPW-Standard Detail R-32 and/or R-34 would be a hardship and/or not possible. Therefore, after considering the future network of roadways within the immediate area, adjoining roadway design and County maintained roadway improvements constructed within an adjoining subdivision(s), street and lighting design guidelines fostered for this existing neighborhood or area identified by the WDP, unusual land tenure and/or difficulty to widen and combine road lot(s) for dedication meeting DPW or County requirements etc., the Planning Director has determined that the developer's or the State-DHHL request to construct paved road/shoulder/swales in accordance with Figure 4 and Figure 5 throughout the portion of a proposed DHHL-State of Hawaii subdivision is reasonable.

DETERMINATION-VARIANCE CONDITIONS

Based on the foregoing findings, this variance request 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, the variance requested 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.

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The variance requested to modify Tentative Subdivision Approval letter dated April 1, 2005, Condition No. 3, (e) (g), to permit subdivision access utilizing existing a State owned right-of-way and construct paved roadways, shoulders, and swales to be installed within existing State owned right-of-way and "ROAD LOT B" owned by the State-DHHL created by proposed subdivision is subject to following variance conditions:

1. The developer, subdivider, owners, their assigns, or successors shall be responsible for complying with all stated conditions of VAR 05-057 and revised or remaining subdivision (SUB 04-217B) tentative approval conditions dated April 1, 2005.

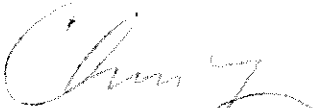
The proposed paved roadway, paved shoulder, paved swale improvements, and necessary drainage improvements, etc. shall be installed within existing State owned right-of-way and proposed "ROAD LOT B" fronting the subdivision pursuant to this variance and subdivision construction plans approved by the affected agencies.

2. A drainage study shall be prepared and submitted to the DPW for review and approval. Any required drainage system, including grading, and/or grubbing within the subdivision shall be constructed and/or approved by the DPW. The subdivision construction plans to install alternative access and roadway improvements within the State right-of-way and "ROAD LOT B" including any necessary culvert and drainage improvements, and other appurtenances, e.g. necessary utilities-streetlights, signage, ADA, etc. shall be designed by a licensed engineer and submitted to the affected agencies for review and approval. The subdivision construction plans for any dedicable and/or non-dedicable subdivision improvements within the existing and proposed rights-of-ways shall be submitted to the affected agencies for approval.
3. The applicant, owners or subdivider shall construct the subdivision improvements (or bond) such improvements pursuant to this variance and remaining tentative subdivision approval conditions or final subdivision approval.

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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,



CHRISTOPHER J. YUEN
Planning Director

WRY:cd

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xc: DPW-Engineering Branch
DWS-Engineering Branch
SUB 04-0217B