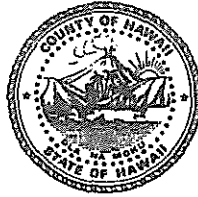


Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED® AP
Deputy Director

County of Hawaii
PLANNING DEPARTMENT

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

May 11, 2006

Mr. James Leonard
JM LEONARD PLANNING, LLC
1100 Ainalako Road
Hilo, HI 96720

Dear Mr. Leonard:

SUBJECT: VARIANCE PERMIT-VAR 06-019

Applicant: LYNCH HAWAII DEVELOPMENT, LLC
Owners: BIG ISLAND COUNTY CLUB HOMES, LLC
Request: Variance from Chapter 23, Subdivisions,
Improvements Required

Tax Map Key: 7-1-005:010, 022, 026, 028, 032, 033, 040, 041, 058, 059, 067,
and 069, (SUB 90-000189)

After reviewing your variance application, the Planning Director certifies the approval of Variance Permit-VAR 06-019 subject to variance conditions. The variance from Condition No. 3 of Planning Department's letter dated October 12, 2005 granting revised preliminary subdivision approval to subdivision (SUB 90-000189). The variance is from the roadway and signage requirements of the Hawaii County Code, Chapter 23, Subdivisions, and roadways and signage required by the Department of Public Works (DPW) or Chapter 23, Subdivisions, Article 3, Design Standards, Division 4, Street Design, Section 23-48, Cul-de-sacs, Article 6, Improvements, Division 2, Improvements Required, Section 23-86, Requirements for dedicable streets, Section 23-87, Standard for non-dedicable street; escrow maintenance fund, Section 23-88, Non-dedicable street; private dead-end street, Section 23-93, Street lights, and Section 23-94, Street name and traffic signs.

MAY 15 2006

BACKGROUND

1. **Location.** The referenced TMK property(s), consisting of approximately 402 acres, are situated at Puuanahulu, North Kona, Hawaii. The pending (BICC) subdivision including the BIIC golf course are situated makai of the Puu Lani Ranch Subdivision located approximately 20 miles northeast of the Kailua-Kona via Palani Road and Mamalahoa Highway. Direct access to the pending subdivision is makai of the Mamalahoa Highway.
2. **Zoning.** The subject property is zoned Agricultural (A-1a) by the County and designated Agriculture ("A") by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM (Revised).** The owner's submitted proposed subdivision application (SUB 90-000189) of the above subject TMK property(s). The revised preliminary plat map (PPM) proposing the creation of building lots, golf course, etc. was issued Tentative Subdivision Approval (TA) according by letter dated October 12, 2005 in the subdivision file.
4. **Variance Application.** The subject variance application was acknowledged by Planning Department letter dated March 17, 2006. The applicant's background report "February 2006", Page 1, states in part:

"NATURE OF THE REQUEST

The Owner, Big Island Country Club Homes, LLC, (BICCH) is requesting certain variances from the Subdivision Control Code to allow for a roadway design that deviates from the County of Hawaii's Subdivision Code and Standard Details. In certain instances, due to the existing site constraints, cul-de-sacs streets would exceed the County standard in terms of maximum length and number of lots per cu-de-sac (sic) and a waiver from the County standards is requested. Additionally, in order to achieve its design objectives, BICCH seeks to provide a private roadway system that, while meeting the minimum standards for right-of-way and pavement widths, deviates from the Standard Details through the elimination of curbs and the provision of grass swales with street trees for the typical subdivision roads; and through the provision of grass swales for the private dead-end streets serving six or less lots. BICCH is also seeking variances to allow for the use of custom light standards and traffic signs as part of the planned subdivision."

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The applicant is requesting the following variances and following reasons/summaries state in part:

“Section 23-48, Cul-de-sac.”

“The proposed subdivision has been laid out in relation to the site topography and existing Big Island County Club Golf Course. In certain instances, there are areas that exist between the golf fairways, which, though suitable for agricultural lot development, only allow for a single access to the proposed lots resulting in a cul-de-sac that exceed the requirements of Section 23-48 (a) pertaining to cul-de-sac lengths. In this instance a through street could not be provided without having a detrimental impact to the golf course and golf course operation. The single cul-de-sac road, however, serves only seven lots and provisions for a turn-around are integrated into the design of this roadway. Therefore a variance from the subdivision requirements of Section 23-48 (a) would be deemed appropriate and is requested by the applicant.”

“Section 23-88 (b)” or Non-dedicable street; private dead-end street; and reference is made to the following typical street sections-Exhibit 3A and Exhibit 3B included with the applicant’s background report.

In lieu of construction dedicable street pursuant to Section 23-86, the applicant is proposing to construct “non-dedicable” 20-foot wide paved roadways with 15-foot grassed swales on each side of the paved roadway within 50-foot wide rights-of-way (Minor Streets) lieu of roadway improvements specified by DPW-Standard Detail R-39; and, 16-foot wide paved roadways with 2-foot grassed swales within 20-foot wide paved dead-end roadways (Private Road Standards or “Dead End Street Serving Six (6) or Less Lots”. The proposed alternative roadway design still meets county standards for 2-way traffic and provides a streetscape commensurate with the subdivision’s rural theme.

“Section 23-93”-Street lights.

“In keeping with the above design goals of the project and to achieve a sense of visual cohesion to the subdivision design the applicant request that the requirements of Section 23-93 be waived in lieu of custom lighting fixtures proposed for the proposed subdivision as detailed in Exhibit 4.”

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In lieu of construction or installing street lights fixtures meeting DPW standards, the applicant is requesting variance to install custom light lighting fixtures within proposed subdivision commensurate with the streetscape design and subdivision's rural theme. The number of custom light fixtures required and outdoor lighting design (fixture type, intensity, illumination, upward reflection, etc.) throughout the subdivision will be reviewed by the DPW.

"Section 23-94" Street name and traffic signs.

The owner request that the requirements of Section 23-94 be waived in lieu of custom street name and traffic sign fixtures, which in using a wooden post rather than the standard metal square tubing post, would be more in keeping with design goals of the project. Typical examples custom fixtures that might be used within the subdivision are indicated in Exhibit 5."

In lieu of installing "standard" metal street name signs and safety meeting DPW standards, the applicant proposed to install custom "wooden" street name and traffic signs. The installation or placement of the custom street name and traffic signs installed in accordance with approved alternative construction plans. The size and location of these signs will still meet minimum County requirements for safety and traffic.

5. **Agency Comments and Requirements: VAR 06-019:**

- a.. The State Department of Health (DOH) memorandum is dated March 23, 2006 states:

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

- b. The Department of Public Works (DPW) memorandum dated March 27, 2006 states in part:

"We have no objections to the subject variance request, provided the Planning Director finds that there is no use for the roads as County collector or connecting streets to adjacent properties and with the following conditions:

1. The subdivision streets shall not be considered for conveyance to the County unless improved to meet dedicable standards.
 2. The subdivision road traveled-way pavement section shall be constructed in accordance with Hawaii County Code Section 23-86 or approved equal. The roads shall comply with Hawaii County Code Section 23-41 and be improved with stabilized shoulders and swales to the required right-of-way or easement width exclusive of cut and fill slopes.
 3. All Storm drainage generated by the development shall be disposed of on site in a manner meeting with the approval of DPW and the Storm Drainage Standards. This includes not only the roadways but storm runoff attributable to future development of the lots themselves. Exhibit 3B calls the roadside area on both sides a "swale" yet no swale is shown in the typical cross section. A drainage report shall be submitted with construction plans to substantiate how developed lot and roadway runoff is being disposed of within drainage structures and easements on site. Final construction approval will require complete stabilization of the roadsides and drainage system.
 4. Requirements at the entry to Mamalahoa Highway shall meet with the Hawaii Department of Transportation, Highways Division."
- c. The County of Hawaii Fire Department memorandum is dated April 3, 2006. (Refer to the County-HFD memorandum in file).
6. **Notice to Surrounding Owners/Posted Sign.** The applicant's agent submitted affidavits regarding a notice mailed to property owners to list of surrounding property owners and photograph of a sign posted on subject property. According to the agent's affidavits and submittals, it appears that a notice was mailed on or about March 29, 2006; and, the required sign was posted on subject property. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on or about April 3, 2006. Note: The subdivision application's docket number "(SUB 05-000189)" cited in the public notice dated April 3, 2006, Item No. 10, "PURPOSE", should read "(SUB 90-000189)".

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7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received. The following objection letter to the variance application was received from surrounding property owner:

7a. Letter dated April 5, 2006 from Scott Jones.

ALTERNATIVES/SPECIAL AND UNUSUAL CIRCUMSTANCES

Lot Access/Roadways. The first alternative requires the subdividers to construct "Access and Roadway Improvements" pursuant to Condition No. 3 of TA letter dated October 12, 2005 or Chapter 23, Subdivisions, Article 3, Design Standards, Division 4, Street Design, Section 23-48, Cul-de-sacs, Article 6, Improvements, Division 2, Improvements Required, Section 23-86, Requirements for dedicable streets, Section 23-87, Standard for non-dedicable street; escrow maintenance fund, Section 23-88, Non-dedicable street; private dead-end street, Section 23-93, Street lights, and Section 23-94, Street name and traffic signs.

The access to the proposed subdivision is via the old Mamalahoa Highway (State owned and maintained Right-of-Way). The applicant is requesting variances to permit construction of alternative "non-dedicable" paved roadways, light fixtures, and signage, etc. within the privately owned rights-of-ways or proposed roadway lots within the pending subdivision. The developer or owners will construct a privately owned "non-dedicable" roadway system meeting "the minimum standards for right-of-way and pavement widths", grass swales with street trees, custom light fixtures and traffic signs, etc. in accordance with alternative subdivision construction plans. In addition, these alternative subdivision construction plans include the installation of a privately owned "non-dedicable" water supply system for the proposed building lots, fire protection, golf course use, etc. The upkeep and maintenance of these privately owned subdivision improvement will be borne by the users.

INTENT AND PURPOSE OF THE SUBDIVISION CODE

Roadway Variance. 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.

According to the applicant, "the proposed subdivision has been designed with the goal of creating an environment that is in keeping with the rural and historical character of the area and providing more of a natural fee to the neighborhoods being created".

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The applicant states in his background:

“Overall, the design goals for the proposed subdivision roadways are to:

Provide an efficient roadway system that is responsive to natural site conditions and constraints;

Provides a street section that helps to mitigate internal traffic speed to achieve a safer street environment;

Provide for a more natural and pedestrian friendly environment;

Provide a design that is in keeping the rural character and historical context of the project area; and

Provide a sense of visual cohesion throughout the subdivision.”

The proposed subdivision and surrounding areas are rural in character. The Planning Director finds that the applicant's proposed alternative “non-dedicable” infrastructure improvements and design goals for the proposed subdivision's roadways can meet the intent and purpose of Chapter 23, Subdivisions. To this end, the applicant or subdivider will install non-dedicable” access and roadways, alternative lighting, street signage, and other roadway improvements; including a privately owned water supply system and fire protection, in accordance with alternative subdivision construction plans that are reviewed and approved by the agencies. Maintenance of the completed non-dedicable subdivision improvements will be privately addressed and paid for by the users.

The subject variance application was acknowledged by letter dated March 17, 2006. The applicant agreed to extend the decision date to on or before May 16, 2006.

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.

DETERMINATION-VARIANCE CONDITIONS

The variance from the Condition No. 3 of TA letter dated October 12, 2005 to allow non-dedicable access and roadway improvements; including lighting fixtures and signage, within proposed subdivision (SUB 90-00189), 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. **ROAD VARIANCE.** The subdivider, owners, their assigns, or successors understand that the lots arising out of SUB 90-000189 will use and maintain the privately owned road and any utility easement on their own without any expectation of governmental assistance to maintain the existing access or roadway improvements within the privately owned roadway lots and/or utility easement identified on the subdivision's revised preliminary plat map or any other necessary access and utility easement(s) within the proposed subdivision.

The applicant, owners, their assigns, or successors shall file a written agreement or approved written document with the Planning Department within one (1) year from the issuance of tentative subdivision approval and prior to receipt of final subdivision approval of SUB 90-000189. The proposed lots shall form an Homeowner or Road Association or include appropriate deed language, being covenants, conditions, and restrictions, which affect the entire property and/or proposed lots arising from the approval of the pending subdivision application and be duly recorded at the Bureau of Conveyances of the State of Hawaii by the Planning Department at the cost and expense of the applicant:

- a. The applicant and/ or owner(s) shall indemnify and defend the State of Hawaii or County of Hawaii from any and all liability arising out of vehicular access to and from the subject property utilizing this existing private utility and access easement.

Upon written demand of the County of Hawaii, the applicant and /or owners, their assigns, or successors shall agree to participate and pay their fair share percentage of any improvement district adopted for the purpose of roadway improvements serving the proposed lot(s) arising out of SUB 90-000189.

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Should the improvement district require acquisition of any privately owned rights-of-way fronting the lots arising out of SUB 90-00189, such rights-of-way shall be dedicated to the County without cost and the value of the dedication credited to the fair share contribution of the respective lot owner(s). 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.

- b. The future lot owner(s) agree to participate in any road maintenance agreement or/and pay their fair share to maintain the privately owned roadway lots and/or utility easements.

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 written or 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 or ownership of the existing property or approved subdivided lots.

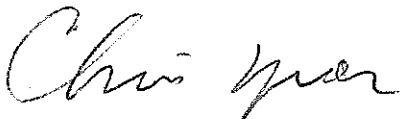
- 4. The subdivision application's (SUB 90-000189) final plat map shall meet all the requirements of the Hawaii County Zoning Code and the Subdivision Code not covered by this variance. No other variances from Chapter 23, Subdivisions, shall be granted to permit subdivision application SUB 90-00189.
- 5. 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.

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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.

Thank you for your understanding and patience during our review.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

WRY/DSA:cd
P\WP60\WRY\FORMLETT\VARNO06-091SUBROADWAYBICC.LEONARD-LYNCHHAWIIDEVLLC

xc: DPW-Engineering Branch
DWS-Engineering Branch
SUB 90-000189
Scott Jones