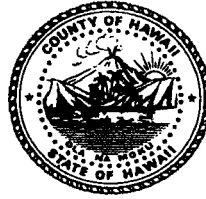


Harry Kim
Mayor



Michael Yee
Director

Daryn Arai
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 16, 2017

Mr. Zendo Kern
P.O. Box 1381
Kea'au, HI 96749

Dear Mr. Kern:

SUBJECT: Special Management Area Use Permit Assessment Application
(SAA 17-001463)
Special Management Area Minor Permit No. 17-000370
Applicant: Dennis Barry Letvin
Land Owner: Dennis Barry Letvin
Request: 2-Lot Subdivision
Tax Map Key: (3) 1-4-027:009, Kapoho Beach Lots, Puna, Hawai'i

This is in response to your Special Management Area Use Permit Assessment Application received on January 9, 2017, for the proposed subdivision of the subject parcel into two (2) lots. Also acknowledged is receipt of time extensions, and the submittal of a revised subdivision map on March 15, 2017.

With no associated improvements, Lot C-2-A will consist of 17,745 square feet and Lot C-2-B will consist of 10,895 square feet.

This 28,640 square foot parcel is zoned Single-Family Residential (RS-10) by the County, designated Urban by the State Land Use Commission and designated Low Density Urban by the Hawai'i County General Plan Land Use Pattern Allocation Guide (LUPAG) Map. This parcel is in the Special Management Area (SMA) but is not located in a "shoreline area" as defined by Section 205A-41, Hawai'i Revised Statutes (HRS).

Previous Special Management Area Determination:

By letter dated September 28, 1994, a Special Management Area (SMA) Use Permit Assessment Application for a two-lot subdivision of TMK: 1-4-027:009 was approved. A variance from the minimum water system and roadway requirements (VAR No. 620) was approved on November 3, 1994. Subdivision No. 6612 was approved on July 27, 1995.

MAR 22 2017

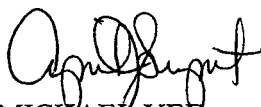
Special Management Area Determination:

According to Chapter 205A-22, Hawai'i Revised Statutes (HRS), as amended, and Planning Commission Rule 9-4(e)(1)(C) relating to Special Management Area, "development" includes the "Change in the density or intensity of use of land, including but not limited to the division or subdivision of land." However, Planning Commission Rule 9-4(e)(2)(M) states that "Development" does not, include the "Subdivision of a parcel of land into four or fewer parcels when no associated construction activities are proposed; ***provided that any land that is so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels;***" (emphasis added). Since the subject property was already part of a previous subdivision action (SUB No. 6612), this proposed subdivision does not qualify for an exemption from the definition of "development." Given that the stated valuation of \$0 is less than the \$500,000 maximum allowable for the issuance of a SMA Minor Use Permit, we have determined that the proposed subdivision meets the requirements for a Special Management Area (Minor) Permit. For this reason and pursuant to Planning Commission Rule Section 9-10(E), Special Management Area Minor Permit No. 17-000370 is hereby issued for the subdivision of the subject property into two separate lots of record, subject to the applicant's compliance with the conditions of approval as specified in the permit.

Finally, please note that existing and/or future landowners are responsible for also complying with the conditions of approval of Variance No. 620, enclosed for reference.

Should you have any questions, please contact Esther Imamura of this office at (808) 961-8139.

Sincerely,


f MICHAEL YEE
Planning Director

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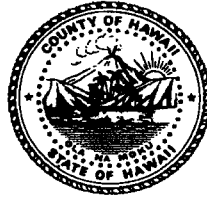
Enclosure: SMM No. 17-000370
DPW Memorandum dated February 22, 2017
Revised subdivision map received March 15, 2017
Variance No. 620

cc w/encls: Planning Division (via email)

cc ltr only: Mr. Leo Asuncion, Director
Office of Planning - DBEDT
P.O. Box 2359
Honolulu, HI 96804-2359

Mr. Jonathan Holmes, Administrative Permits Division

Harry Kim
Mayor



Michael Yee
Director

Daryn Arai
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
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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

Special Management Area Minor Permit No. 17-000370

Project: 2-Lot Subdivision
Applicant: Dennis Barry Letvin
Landowner: Dennis Barry Letvin
Location: Kapoho Beach Lots, Puna, Hawai'i
TMK: (3) 1-4-027:009 **Land Area:** 28,640 square feet

Applicant's Request

1. Project Description:

Proposed is the subdivision of the subject parcel into two (2) lots. With no associated improvements, Lot C-2-A will consist of 17,745 square feet and Lot C-2-B will consist of 10,895 square feet.

2. Purpose of Project:

The project is to create two lots for estate planning purposes.

3. Project Valuation: \$0

4. Determination:

According to Chapter 205A-22, Hawai'i Revised Statutes (HRS), as amended, and Planning Commission Rule 9-4(e)(1)(C) relating to Special Management Area, "development" includes the *"Change in the density or intensity of use of land, including but not limited to the division or subdivision of land."* However, Planning Commission Rule 9-4(e)(2)(M) states that "Development" does not, include the *"Subdivision of a parcel of land into four or fewer parcels when no associated construction activities are proposed; provided that any land that is so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels;"* (emphasis added). Since the subject property was already part of a previous subdivision action (SUB No. 6612), this proposed subdivision does not qualify for an exemption from the definition of "development." Therefore, the proposed project requires a SMA Minor Permit.

State and County Plans

- 1. State Land Use District:** It is designated Urban by the State Land Use Commission.
- 2. General Plan:** The Hawai'i County General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the parcel as Low Density Urban.

3. **County Zoning:** The parcel is zoned Single-Family Residential (RS-10).
4. **Special Management Area (SMA):** The subject property is located entirely within the Special Management Area (SMA) but is not located in a “shoreline area” as defined by Hawai‘i Revised Statutes (HRS) Chapter 205A-41.
5. **Flood Zone:** X, but the Federal Emergency Management Agency (FEMA) intends to issue a revised Flood Insurance Rate Map on September 29, 2017, which would designate the eastern portion of the subject parcel as Flood Zone AE.

<p style="text-align: center;">Compliance with Objectives and Policies of Chapter 205A, Hawai‘i Revised Statutes (HRS), Regarding the Special Management Area</p>
--

Check all objectives and policies found to be consistent with proposed development. Issuance of SMA Minor Permit requires that activity be consistent with all objectives & policies.

The proposed development is consistent with the following objectives and policies:

- ☒ Development will not have any significant adverse environmental or ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interest. Such adverse effect shall include but not be limited to the potential cumulative impact of individual developments each one of which taken in itself might not have a substantial adverse effect and the elimination of planning options.
- ☒ The proposed development is consistent with the Hawai‘i County General Plan and the Zoning Code.
- ☒ The proposed development does not conflict with the following objectives of Chapter 205A, HRS, to:
 - ☒ Provide coastal recreational opportunities accessible to the public.
 - ☒ Protect, preserve, and where desirable, restore those natural and man-made historic and pre-historic resources in the coastal zone management area that are significant in Hawaiian and American history and culture.
 - ☒ Protect, preserve, and where desirable, restore or improve the quality of coastal scenic and open space resources.
 - ☒ Protect valuable coastal ecosystems from disruption and minimize adverse impacts on all coastal ecosystems.
 - ☒ Provide public or private facilities and improvements important to the State’s economy in suitable locations.
 - ☒ Reduce hazard to life and property from tsunami, storm waves, stream flooding, erosion, subsidence and pollution.
 - ☒ Improve the development review process, communication, and public participation in the management of coastal resources and hazards.
 - ☒ Stimulate public awareness, education, and participation in coastal management.
 - ☒ Protect beaches for public use and recreation.

- ☒ Promote the protection, use, and development of marine and coastal resources to assure their sustainability.
- ☒ The proposed development is consistent with the following policies of Chapter 205A, HRS, relating to:
 - ☒ Recreational Resources
 - ☒ Historic Resources
 - ☒ Scenic and Open Space Resources
 - ☒ Coastal Ecosystems
 - ☒ Economic Uses
 - ☒ Coastal Hazards
 - ☒ Managing Development
 - ☒ Public Participation
 - ☒ Beach Protection
 - ☒ Marine Resources
- ☒ The proposed development conforms to the requirements of Chapter 343, HRS, regarding Environmental Impact Statements.

Findings

1. As discussed above, the proposed development will not have any significant adverse environmental or ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interest.
2. The proposed activity will not affect public access to the shoreline or public use of the shoreline area.
3. The estimated project cost of approximately \$0 is not in excess of \$500,000.
4. The enclosed Department of Public Works, Engineering Division memorandum dated February 22, 2017, stated the following:

"We have reviewed the subject application for compliance with Chapter 27, Floodplain Management, forwarded by your memo dated February 6, 2017 and offer the following comments for your consideration.

The subject parcel is currently designated as Zone X on the Flood Insurance Rate Map (FIRM) by the Federal Emergency Management Agency (FEMA). Flood Zone X is an area determined to be outside the 500-year floodplain.

However, FEMA intends to issue a revised Flood Insurance Rate Map on September 29, 2017 which would designate the eastern portion of the subject parcel as Flood Zone AE. Flood Zone AE is the Special Flood Hazard Area inundated by the 100-year flood (1% chance of occurring in any given year) where flood elevations have been determined.

Any construction/development within a FEMA designated Flood Zone shall comply with the requirements of Chapter 27, Floodplain Management, of the Hawai'i County Code."

Pursuant to Planning Commission Rule Section 9-10(E), the Planning Director hereby approves the two-lot subdivision, as presented, subject to the applicant's compliance with the conditions of approval as specified below.

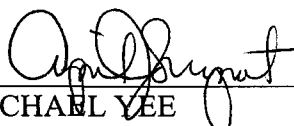
Conditions of Approval

This SMA Minor Permit is subject to the following conditions:

1. The applicant, its successors or assigns shall be responsible for complying with all stated conditions of approval.
2. The applicant shall secure all necessary approvals and permits from other affected federal, state, and county agencies as necessary to comply with all applicable laws and regulations.
3. Final subdivision approval shall be secured within two (2) years from the date of approval of this permit.
4. Future development of the proposed lots shall be subject to review against the SMA rules and regulations as such plans are implemented.
5. An extension of time for the performance of the conditions contained herein may be granted by the Planning Director upon the following circumstances:
 - a) The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence;
 - b) Granting of the time extension would not be contrary to the original reasons for the granting of the permit; and
 - c) The time extension granted shall be for a period of not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended up to one additional year).
6. Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director shall initiate procedures to revoke the permit.

If you have questions, please contact Esther Imamura of this department at (808) 961-8139.

APPROVED:



MICHAEL YEE
Planning Director

3.16.17

Date

DEPARTMENT OF PUBLIC WORKS
COUNTY OF HAWAII
HILO, HAWAII

2017 FEB 23 AM 10 59

PLANNING DEPARTMENT
COUNTY OF HAWAII

DATE: February 22, 2017

Memorandum

TO: Michael Yee, Planning Director

FROM:  Department of Public Works, Engineering Division

SUBJECT: **SMA USE PERMIT ASSESSMENT APPLICATION (SAA 17-001463)**

Applicant: Dennis B. Letvin

Land Owner: Dennis B. Letvin

Request: Proposed Subdivision of Lot C-2 into Lots C-2-A and C-2-B

Location: Kapoho Beach Lots, Puna Hawaii

Tax Map Key: 1-4-27: 009

We have reviewed the subject application for compliance with Chapter 27, Floodplain Management, forwarded by your memo dated February 6, 2017 and offer the following comments for your consideration.

The subject parcel is currently designated as Zone X on the Flood Insurance Rate Map (FIRM) by the Federal Emergency Management Agency (FEMA). Zone X is an area determined to be outside the 500-year floodplain.

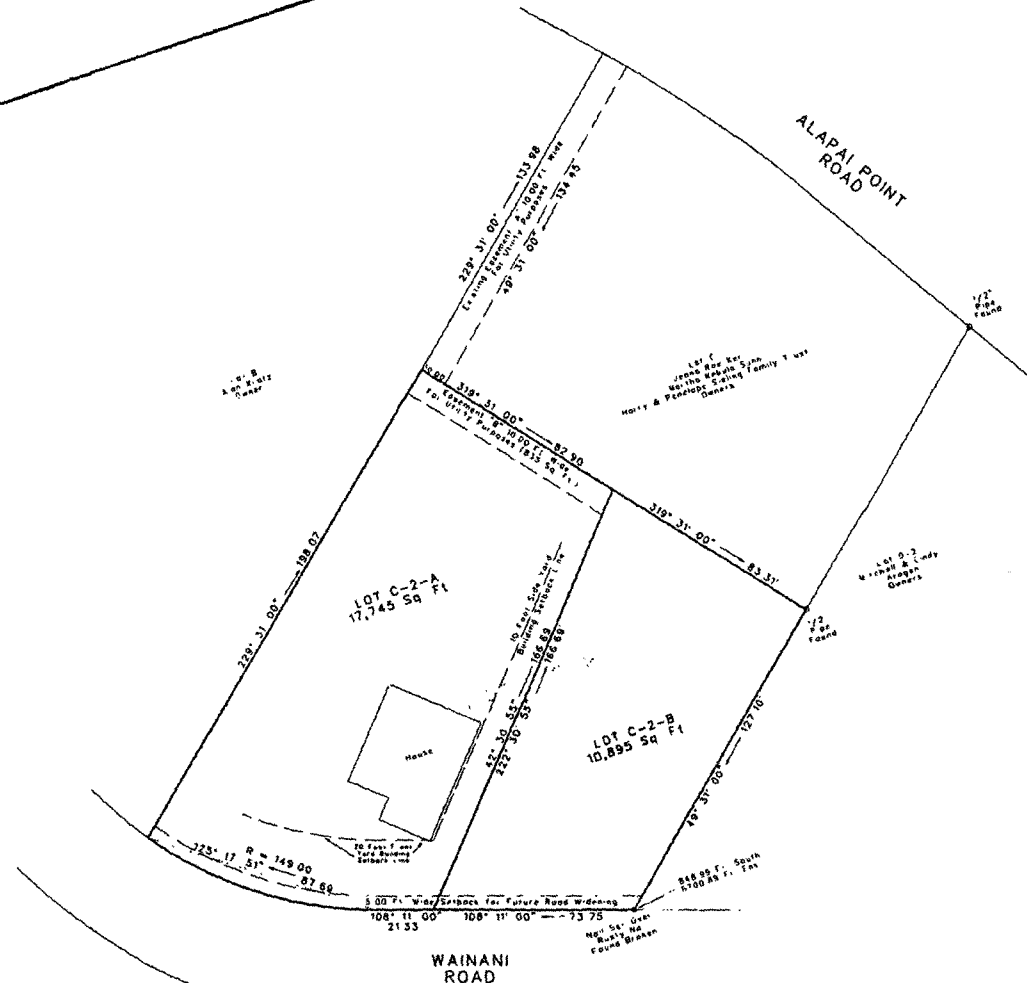
However, FEMA intends to issue a revised Flood Insurance Rate Map on September 29, 2017 which would designate the eastern portion of the subject parcel as Flood Zone AE. Flood Zone AE is the Special Flood Hazard Area inundated by the 100-year flood (1% chance of occurring in any given year) where flood elevations have been determined.

Any construction/development within a FEMA designated Flood Zone shall comply with the requirements of Chapter 27, Floodplain Management, of the Hawaii County Code.

Questions may be referred to Kelly Gomes at ext. 8327.

110032

NOTES
 1. Names of owners of adjoining parcels are shown available for Map records.
 2. Portions shown herein located by an actual survey on the ground conducted on October 10, 2018.
 3. All measurements and calculations are related to Government Survey Station Station KAPOHO.
 4. Subject parcel located in Zone 2 of FWH 15588-1000 C.

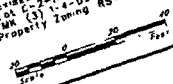


MAP SHOWING
 SUBDIVISION OF LOT C-2
 BEING A PORTION OF RP 4497 AND LP 8177
 LC AW 8559, AP 5 TO C KANAINA
 INTO LOTS C-2-A AND C-2-B
 LOCATED IN KAPOHO, DISTRICT OF PUNA
 COUNTY & ISLAND OF HAWAII, STATE OF HAWAII

Edward Pore
 Licensed Professional
 Land Surveyor #8094
 P.O. Box 1056
 Hilo, HI 96722
 808 943 1774
 EPore3908@gmail.com

Prepared For Owner
 Dennis Barry Kelly
 RP 4497, LP 8177
 HI 96778-9721

This map was prepared by me
 or under my direct supervision on
 10/10/2018
 I am a Licensed Professional
 Land Surveyor #8094
 State of Hawaii
 Project # LK110416
 Date November 4, 2018
 Date Revised March 20, 2019
 Drawn by E. Pore
 Check by E. Pore
 Title Lot C-2-A and C-2-B
 File # 15588-1000 C
 Property Zoning RS-10



VAR 620

CERTIFIED MAIL

November 3, 1994

Mr. Steven J. Menezes, Esq.
Menezes Tsukazaki Yeh & Moore
Attorneys At Law
100 Pauahi Street, Suite 204
Hilo, HI 96720

Dear Mr. Menezes:

Variance Application (VAR 94-57)
Applicant: F. Robert Insinger
Request: Variance From Minimum Water System and Roadway
Requirements
Tax Map Key: 1-4-27: 9; Subd. No. 94-72

After reviewing your application and the information submitted on behalf of it, including comments received from consulting agencies, the Planning Director by this letter, hereby certifies the approval of your variance request to allow the creation of a two (2)-lot subdivision without a water system meeting the minimum water requirements of the County Department of Water Supply as required by Article 6, Division 2, Section 23-84 (1) of the Subdivision Control Code and with access off of a 40-foot wide private roadway easement with substandard improvements in lieu of the minimum 50-foot wide right-of-way with a twenty foot wide pavement as required by the Subdivision Control Code. The subject property consisting of 50,201 square feet is located within Kapoho Beach Lots Subdivision, Extension 2, Alapai Point Section, Puna, Hawaii.

The approval of the variance request to allow the proposed subdivision without the minimum water requirements is based on the following:

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Mr. Steven J. Menezes, Esq.
Page 2
November 3, 1994

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances that exist which would warrant or necessitate a waiver from the minimum requirements to service the proposed two (2)-lot subdivisions. The Department of Water Supply stated: "The proposed subdivision is not within the service limits of the Department's existing water system facilities."

Therefore, considering the foregoing issues, it has been determined that there are special and unusual circumstances applying to the subject property which exists either to a degree which deprives the 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 the subject property.

ALTERNATIVES

There are no reasonable alternatives in resolving the required water system requirements. To bring a County water system into the subdivision by the individual applicant would not be economically feasible.

The other alternative would be to drill wells to create a private water system. However, due to the limited nature of the 2-lot subdivision would also be cost prohibitive. Also, there is no assurance that adequate water would be found. As such, the imposition of upgrading and extending the existing public water system or the creation of a private water system in this area for the proposed two (2) lot subdivision would be putting excessive demands upon the applicant when a more reasonable alternative is available.

In addition, the area receives approximately 100 inches of rain annually which will more than adequately support a private water catchment system. The applicant can also purchase water if necessary for the private catchment system.

INTENT AND PURPOSE

The subject property consisting of 50,201 square feet is located within the County's Single Family Residential 10,000 square feet, zoned district. Under the zoning designation, the minimum building site area is 18,000 square feet. The applicant is proposing a two (2)-lot subdivision with area exceeding the minimum 10,000 square foot lot size requirement of the Zoning Code.

Mr. Steven J. Menezes
Page 3
November 3, 1994

The intent and purpose of requiring a water system in this case is to assure that adequate water is available for human consumption and fire protection. In this situation, the substitute private water catchment system is considered adequate.

Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning and Subdivision Control Code and the County General Plan, and 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 property.

The water variance is therefore approved, subject to the following conditions:

1. The applicant, his assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. The applicant, his assigns or successors, shall file a written agreement with the Planning Department prior to receipt of final subdivision approval containing the following stipulations and covenants which shall be duly recorded at the Bureau of Conveyances of the State of Hawaii by the Department at the cost and expense of the subdivider:
 - a. The applicant/subdivider agrees and accepts the fact that a County dedicable public water system is not now or in the foreseeable future able to service the subdivision.
 - b. The applicant/subdivider agrees and accepts the fact that the County will not, at any time, bear the responsibility of supplying public water to the subdivision.
 - c. Any existing and/or future dwellings not serviced by County water system constructed on the property shall have a minimum 6,000-gallon water storage facility for domestic consumption for water catchment. This catchment system shall adhere to the Department of Public Works, Building Division's "Guidelines for Owners of Rain Catchment Water Systems" as well as the State Department of Health requirements related to water testing and water purifying devices.

- d. Provide a water supply system sufficient for fire-fighting consisting of a minimum 3,000 gallons of water per existing and/or proposed future dwelling on the property meeting with the approval of the Hawaii County Fire Department. If dwellings are spaced closer than 50 feet apart, 4,000 gallons of water per dwelling will be required.
- e. In the event that there are any amendments or changes to the subdivision after the agreement is signed, the applicant/subdivider shall be responsible for informing the department of the amendments or changes so that the agreement can reflect the amendments or changes; further, the written agreement shall be considered as a condition and covenant returning with the land and shall be binding upon the applicant/subdivider or owner, his successors and assigns, and shall be incorporated as an exhibit and made part of each agreement of sale, deed, lease, or other similar documents affecting the title or ownership of each subdivided lot.
- f. In the event that any of the lots are provided by a water service (individual meter) from the Department of Water Supply or an approved private water system, the above covenants for the specific property will no longer be in effect.
- g. Comply with all other applicable State and County rules and regulations.

The approval of the roadway variance is based on the following:

SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances that exist which would warrant or necessitate a waiver from the minimum roadway requirements for this proposed two (2) lot subdivision. The roadway leading to the proposed subdivision is approximately one and one-half (1 1/2) miles from the Kaimu-Kapoho Road. The roadway is not considered to be a major thoroughfare, secondary arterial or will even serve as a through road for further development of this area.

Therefore, considering the foregoing facts, it is determined that there are special and unusual circumstances applying to the subject property which exist 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 the property.

Mr. Steven J. Menezes, Esq.
Page 5
November 3, 1994

ALTERNATIVES

There are no reasonable alternatives in resolving the minimum road requirements. To upgrade approximately one and one-half (1 1/2) miles of the substandard private roadway by the subdivider would not be economically feasible.

The imposition of this off-site improvements to the petitioner alone is unfair and unreasonable as others who stand to benefit are not contributing to the cost of the improvements.

Based on the above circumstances, the off-site improvement requirement is determined to be financially infeasible and would put unnecessary burden and hardship on the petitioner for this limited two (2) lot subdivision.

INTENT AND PURPOSE

The intent and purpose of requiring minimum roadway improvements is to assure that adequate road access is available to serve the subdivision.

The subject property consisting of 50,201 square feet is located within the County's Single Family Residential-10,000 square feet zoned district.

Under this zoning designation, the minimum building site area is 10,000 square feet. The applicant is proposing a two (2) lot subdivision with area exceeding the minimum 10,000 square feet lot size requirement of the Zoning Code.

The existing substandard roadway easement is essentially "grandfathered" in having served the existing lots. The applicant is also aware that any further subdividing of the property served by this access will not be permitted unless the road standards of the Subdivision Control Code are met; meaning no further variance will be considered for this roadway.

Based on the foregoing finding this variance request would be consistent with the general purpose of Zoning district, the intent and purpose of the Zoning and Subdivision Control Codes, and the County General Plan; and will not materially detrimental to the public's welfare; and will not cause substantial adverse impact to the area's character and to adjoining properties.

The roadway variance request is approved, subject to the following conditions:

Mr. Steven J. Menezes, Esq.

Page 6

November 3, 1994

1. The applicant, its assigns or successors, shall be responsible for complying with all stated conditions of approval.
2. No further subdivision of the subject property utilizing the subject roadway shall be permitted unless said roadway meets Subdivision Control Code requirements without variances.
3. The subdivider shall submit a deed covenant indemnifying the State and County from any liability related to vehicular access to be recorded with the new deeds.
4. Provide roadway improvements fronting the subject subdivision in compliance with the Department of Public Works non-dedicable agricultural standards. Submit construction plans for approval by the appropriate agencies. *Deleted
PP
4/10/95*
5. Comply with all other applicable State and County rules and regulations.

Sincerely,

Virginia Goldstein

VIRGINIA GOLDSTEIN
Planning Director

EC:mjh
5492D

xc: Subdivision No. 94-72
Department of Water Supply
Department of Public Works