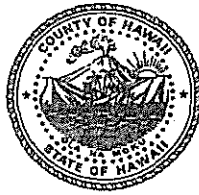


Harry Kim
Mayor



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

November 19, 2004

NANI MAU INC.
c/o Mr. Ken Fujiyama
421 Makalika Street
Hilo, HI 96720

Dear Mr. Fujiyama:

VARIANCE PERMIT NO. 1492 (VAR 04-041)

Applicant: NANI MAU INC.

Owner: NANI MAU INC.

Request: Variance from Chapter 23, Subdivisions

Tax Map Key: 2-2-048:013, (SUB 03-0092-UNIT 2)

After reviewing your variance application, the Planning Director certifies approval of a variance to allow private non-dedicable paved roadway and grassed shoulder and swale improvements to be constructed within proposed cul-de-sac ("ROADWAY LOT A") road lot within proposed subdivision (SUB 03-0092-UNIT 2). The variance request is from Hawaii County Code, Chapter 23, Subdivisions, Article 6, Improvements, Division 2, Improvements Required, Section 23-86, Requirements for dedicable streets and certain roadway conditions stipulated by original tentative subdivision approval letter(s) dated December 17, 2003 and July 27, 2004.

The private non-dedicable standards under Chapter 23, Subdivisions, Section 23-88, Non-dedicable street; private dead-end street applies to dead-end streets or cul-de-sacs serving 6 or less lots. Because the 60 feet wide easement "A" and proposed "ROADWAY LOT A" will serve 17 proposed lots within "UNIT 2", DPW requirements and tentative subdivision conditions dated December 17, 2003 requires the roadway pavement and other access improvements within "Easement A" and "ROADWAY LOT A" to be constructed to dedicable County standards (DPW-Standard Detail R-34). The "R-34" detail requires a 20 feet wide dedicable pavement with paved shoulders and swales.

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The applicant's requested variance complies with the 20 feet wide pavement; the variance is for grassed shoulders and swales in lieu of the paved shoulder and swales specified by "R-34". The proposed 20 feet paved roadway or pavement width and section would comply with the "R-34" dedicable standard. The applicant's proposed non-dedicable and drainage improvements are an extension of an existing paved access roadway situated within an access easement located on adjoining property owned by Nani Mau. The existing roadway design or pavement within the adjoining 60 feet wide easement consists of a 20 feet wide pavement and concrete curbs; with cuts for drainage into the grassed shoulder and swales.

BACKGROUND

1. **Location.** The subject property, containing approximately 53 + acres, being portions of Grant No(s). 13,029, 13,030, 13,031, 13,032, and 13,033, is situated at Waiakea, South Hilo, Hawaii.
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.** The subdivider or applicant submitted a subdivision application (SUB 03-0092). The subdivision application's recent plat map (SUB 03-0092-UNIT 2) is dated July 14, 2004. Tentative subdivision approval to the subdivision application's original PPM was issued on or about December 17, 2003 subject to revised conditions dated July 27, 2004.
4. **Variance Application.** The applicant submitted the original variance application and request was received on or about March 5, 2004 and processed and considered pursuant to the modification to the original tentative subdivision conditions set forth in Planning Department letter dated July 27, 2004 letter.
5. **Agency Comments and Requirements (VAR 04-041):**
 - a. The County of Hawaii Fire Department (HCFD) memorandum is dated April 21, 2004. (Refer to HCFD memorandum in variance file).
 - b. The Department of Public Works (DPW) memorandum, dated April 22, 2004, states in part:

“We have reviewed the subject application and still believe that the conditions of the 12/17/03-tentative approval should be satisfied by the applicant.”

- c. The State Department of Health (DOH) memorandum, dated May 13, 2004, states:

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

- d. **Notice to Surrounding Owners.** The applicant submitted copy of notice sent and other submittals to the Planning Department on April 22, 2004. According to the submittals and receipts, it appears that a copy of the applicant’s notice was sent or mailed on or about April 20, 2004.

- e. **Comments from Surrounding Property Owners or Public.** No further comments to the subject variance application were received from the agencies. The following comments and/or objection letter(s) regarding “ROADWAY LOT B” were received:

- a. Objection letter dated April 29, 2004 from Martin Branco.
- b. Letter dated April 27, 2004 from Glenn Kami.
- c. Objection letter dated April 27, 2004 from Amy E. Watanabe, Trustee of the Etsuko Kami Trust.
- d. Objection letter dated April 27, 2004 from Michael K. Watanabe.

Note: The tentative subdivision conditions and requirements to improve Roadway Lot “B” were changed and modified according to copy of July 27, 2004 letter in variance file. The variance request is from the tentative conditions to install dedicable improvement within “Roadway Lot A”.

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SPECIAL AND UNUSUAL CIRCUMSTANCES

After considering the applicant's project information and variance request, existing and surrounding development, agency comments and/or requirements to proposed subdivision and variance applications, the Planning Director has determined that there are special and unusual circumstances applying to the subject TMK property or proposed development which deprive the applicant or 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. *Provide dedicable access to the proposed development or install dedicable roadway and other infrastructure within the proposed roadway lot "A" pursuant to the DPW roadway comments and Tentative Subdivision letter/conditions dated December 27, 2003.*
2. *Allow alternative private non-dedicable roadway and turn around improvements to be constructed within access easement and proposed 1.22 acre roadway lot. Ownership and maintenance of the privately owned roadway and drainage improvements or non-dedicable roadways, street lights, signage, etc. will be privately constructed and installed by the subdivider within "ROADWAY LOT A". The maintenance of the non-dedicable roadway improvements within the privately owned roadway lot(s) will be addressed and maintained by the roadway lot's owner(s) or "Association" of lot owner/users. This is the selected alternative-Refer to the applicant's variance background and detailed written explanation. In lieu of dedicable cul-de-sac roadway improvements within Roadway Lot A, the developer proposes to utilize and/or install a 20 feet wide pavement, concrete curbs, and grassed shoulders and swales and within proposed cul-de-sac roadway lot "A" containing 1.22 acres. These proposed private non-dedicable roadways within the proposed subdivision will not require extensive grading preparation and paved shoulder improvements. Proposed natural drainage and drywells within the subdivision or respective roadway lot will meet DPW drainage concerns and non-dedicable road standards. The installation of a water supply system meeting DWS requirements, lighting standards, signage, etc., located within the privately owned right-of-way and/or privately owned road lot(s) will be designed and installed by the subdivider.*

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The alternative subdivision construction plans to maintain and/or construct the non-dedicable subdivision access, turnaround, and roadway improvements within the proposed subdivision shall be reviewed and approved by DPW, DWS, and other agencies. Road maintenance within privately owned right-of-ways and common areas within the subdivision including the paved roadway/driveways, shoulders, etc., utilities within the subdivision, mowing of shoulders and islands, etc., will be privately addressed and maintenance and replacement costs shared among the proposed lot owners/users of the respective roadway lots or subdivision's Association.

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 subdivision and proposed lots are clearly defined and accessible by domestic vehicles, police, fire, and other service vehicles under various weather conditions without constant maintenance.

The applicant is requesting a variance to allow private access and roadway improvements in lieu of dedicable roadway improvements within the "ROADWAY LOT A" stipulated by the DPW memorandum to the subdivision and tentative subdivision approval letter. Direct access to proposed lots with frontage along the Railroad Avenue right-of-way will not be permitted.

The proposed access to the TMK property is appropriate for current zoning of the area and intentions by the subdivider. Therefore, based on the representations made by the applicant or subdivider and evaluation of the current traffic patterns, the applicant's proposed alternative access and private non-dedicable roadway improvements to and within the subdivision, the Planning Director has concluded that the respective DPW memorandum and tentative subdivision approval letter dated December 17, 2003/July 27, 2004 can be modified to allow non-dedicable access and roadway improvements within the proposed roadway lot "A".

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 subject variance application was acknowledged by letter dated April 13, 2004. The original tentative approval subdivision conditions were recently revised by the Planning Director. As such the original variance request and time to modify to revise and complete the variance background was necessary. The applicants agreed to extend the decision dated to November 15, 2004, whereupon, on or before said decision date, the Planning Director shall render a decision on the subject variance.

The variance requested to allow a proposed subdivision without providing the dedicable roadway within "ROADWAY LOT A" or roadway improvements stipulated by the DPW memorandums is hereby granted and subject to the following variance conditions:

1. The subdivider, owners, their assigns, or successors shall be responsible for complying with all stated conditions of this variance.
2. The subdivider, owners, their assigns, or successors understand that the proposed lots arising out of SUB 03-0092-UNIT 2 will use and maintain the privately owned 60 feet wide access easement and privately owned ROADWAY LOT A, non-dedicable paved roadways, grassed roadway shoulders, lighting fixtures, signage, etc. within the adjoining access easement and subject TMK property or proposed privately owned right-of-way roadway on their own without any expectation of governmental assistance to maintain the access and non dedicable roadway improvements within the subdivision.

The location of any privately owned entry gate(s), including gate swing, shall be approved by the DPW.

3. The applicants or owners shall submit water system plans and subdivision construction plans for the alternative roadway or non-dedicable roadway improvements within the proposed subdivision (SUB 03-0092-UNIT 2) for approval by affected agencies. The applicant or subdivider shall construct the approved subdivision improvements (or bond) such alternative subdivision construction improvements pursuant to variance/tentative subdivision approval or final subdivision approval.
4. The applicants, 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 revised tentative subdivision approval and prior to receipt of final subdivision approval of SUB 03-0092-UNIT 2.

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This agreement shall contain the following deed language, being covenants, conditions, and restrictions, which affect the entire property and/or proposed lots arising from the approval of the subject 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 owners 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 the private roadway rights-of-way or common areas within the existing TMK property designated on the subdivision application's (SUB 03-0092-UNIT 2) final plat map.
- b. 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 03-0092-UNIT 2 or/and adjoining public roads or rights-of-way.

Should the improvement district require acquisition of any privately owned rights-of-way arising out of SUB 03-0092-UNIT 2, 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 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.

- c. Each lot created by SUB 03-0092-UNIT 2 shall have no more than one dwelling. No ohana dwelling or second dwelling shall be permitted on any lot created by SUB 03-0092-UNIT 2. The subject property or any of the proposed lots arising out of the proposed subdivision or subsequent subdivision phases may not be made subject to a condominium property regime.

- d. The owners understand that the lots created by SUB 03-0092-UNIT 2 have been approved with this road variance, and that they will use and maintain the privately owned access road to and within their property, water system, and drainage improvements on their own without any expectation of governmental assistance, including any road improvements within all privately owned rights-of-way and/or common areas.
- e. The lot owner(s) or users of proposed "ROADWAY LOT" agrees to participate in any road and/or maintenance agreement.

Said maintenance shall include, without limitation, timely repair of the private roadway and/or filling of any and all rutted areas and "potholes", mowing of the grassed roadway shoulders/islands within the privately owned roadway lot or common areas to ensure that existing drainage patterns are maintained and any soil runoff within and along parts of privately road lots and common areas do not affect the proposed lots, surrounding property or immediate areas.

- f. 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.
5. The owners, their assigns or successors shall pay any outstanding real property taxes due and comply with the requirements and safety regulations pertaining to subdivisions, tentative subdivision approval conditions, approved subdivision construction plans, variance conditions, 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

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xc: DPW-Engineering Branch
DWS-Engineering Branch
SUB 03-0092
Planning Dept.-Kona
Martin Branco
Glenn Kami
Amy E. Watanabe, Et al.
Michael K. Watanabe