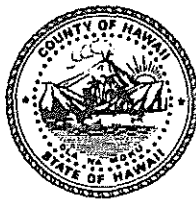


Harry Kim
Mayor



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

August 3, 2006

Mrs. Denise Norman
106 Elm Street
San Carlos, CA 94070

Dear Mrs. Norman:

SUBJECT: VARIANCE PERMIT-VAR 06-040
Applicant: DENISE NORMAN
Owner: DENISE NORMAN
Request: Variance from Chapter 23, Subdivisions,
Improvements-Roadways
Tax Map Key: 3-6-001:013, (SUB 04-000114)

After reviewing your variance application, the Planning Director certifies the approval of Variance Permit-VAR 06-040 subject to variance conditions. The variance permits construction of a "T" turnaround and non-dedicable roadway improvements within existing road right-of-way and other road improvements within proposed 3-lot subdivision (SUB 04-000114) in lieu of constructing dedicable turnaround and roadway improvements required by Tentative Approval Letter dated January 6, 2005. The variance is from Hawaii County Code, Chapter 23, Subdivisions, Article 3, Division 4, Section 23-48, Cul-de-sacs, and Article 6, Division 2, Section 23-86, Requirements for dedicable streets.

BACKGROUND

1. **Location.** The subject TMK property, "LOT 1-A" containing approximately 1.642 acres, being portions of Grant 14195 to Andrew Walker, Portion of Grant 7542 to David W. Branco, Portion of Grant 7746 to Joseph De Costa and Portion of Grant 7867 to Colburn H. Maemae, Manowaiopae Homesteads, is situated at Manowaiopae, North Hilo, Hawaii.

Mrs. Denise Norman

Page: 2

August 3, 2006

2. **Zoning.** The subject property is zoned Single-Family Residential (RS-15) by the County and designated Urban ("U") by the State Land Use Commission (LUC). The property is within the Special Management Area (SMA). Special Management Area Minor Permit No. 169 dated November 4, 2004 allows the proposed 3-lot subdivision subject to conditions. The property does not abut the shoreline.
3. **Subdivision Request/PPM.** The owner's filed proposed 3-lot subdivision application (SUB 04-000114) on or about July 12, 2004. Tentative subdivision approval to permit proposed 3-lot subdivision was granted on January 6, 2005 subject to conditions.
4. **Variance Application.** The applicant filed subject variance application on May 11, 2006. The applicant is requesting variance from tentative subdivision approval letter dated January 6, 2005, Condition No. 3, c., 2. The applicant's background report and discussion regarding an alternative "T" turnaround design and additional improvements to the road within Road Lot A states in part:

Page 1-2: "TURNAROUND"

"Condition 3) c) 2) of subdivision requires a turnaround at the terminus of the existing private access road in conformance with Section 23-48 of the Hawaii County Code. The existing private access road is situated on Road Lot 'A', TMK (3) 3-6-1-76, which is owned in common with other lots using the private road for the subdivision. Although a turnaround area for standard vehicles already exists at this location, Section 23-48 requires a larger turnaround.

The configuration set forth in Section 23-48 of the Hawaii County Code is not feasible at the terminus of the private Road Lot 'A' because the property owner does not own, or otherwise have control over, sufficient square footage of land at that location to construct this type of turnaround.

The type of turnaround set forth in Section 23-48 calls for a "T" turnaround or cul-de-sac. When placed at the terminus of the existing private road, however, both the "T" and the cul-d-sac would each extend beyond the boundaries of road Lot 'A'."

Page 2:

Mrs. Denise Norman

Page: 3

August 3, 2006

"There is a feasible alternative that would resolve the turnaround requirement. A turnaround would be possible in an alternative "T" configuration where the top of the "T" will be the existing private road located on Road Lot 'A' and the stem of the "T" will be located on the subject property. The "T" would be formed by a road entering the subject property perpendicular to the private access road.

The additional area required for the turnaround would be paved with an all-weather dust-free surface to match the existing private road on Road Lot 'A'. This alternative configuration would accommodate emergency vehicles and would meet the distance and turn radius requirements for an approved turnaround.

The Fire Department gave the applicant a sheet of diagrams showing acceptable types of turnarounds for emergency vehicles. The applicant's proposed alternative is one of the types of turnarounds provided by the Fire Department. The sheet of diagrams from the Fire Department is attached to this application with the proposed alternative circled. Applicant has also sketched the proposed alternative so that it is oriented in the proper direction for the proposed subdivision.

Under the proposed alternative, the existing driveway for the existing house located on proposed lot 1-A-1 would be abandoned and moved to a new position fronting the flag lot poles, so that the driveways for each of the three proposed lots would use one Road Lot 'A' access point. There will be a common access easement for the proposed lots over the additional turnaround area, which will not be able to be blocked.

A gate would be constructed at the end of the turnaround. The gate will be positioned where it will not encroach upon the turnaround area. The gate will open into the lots, so as not to impede the turnaround area."

Page 3-4: "ACCESS ROAD"

"Road Lot 'A' is owned in common with neighboring landowners of the subdivision. It is specifically designated in the applicant's deed as the area of land where an access road may be built.

Mrs. Denise Norman

Page: 4

August 3, 2006

Since the existing concrete road runs right along the northern boarder (sic) of Road Lot 'A', it is not possible to further widen the existing concrete road on its northern side to include the shoulder and swales called for in the subdivision conditions. The road can be widened on the southern side by four feet to create a 20-foot roadway. However, it is impractical to add a shoulder and swale to the southern side due to the steep slope and the alteration of the existing natural drainage.

The existing concrete road is sloped north to south for drainage. The existing road would need to be demolished and completely re-built to meet the standard Subdivision Code requirements. Currently, the Road Lot 'A' drains onto the owner's property along the length of the proposed Road Lot 'A' improvements. Re-building the road to conform specifically to the subdivision code would change the drainage, which is a condition of the subdivision approval to be preserved.

Changing the location of the road would also require complete re-alignment of the existing intersection improvements where the existing access road meets the Mamalahoa Highway.

Adding the paved shoulders and swales as indicated in the Subdivision Code would also require a large expanse of pavement, which would conflict with the rural setting of the area and negatively impact the area's rural character. Additionally, the drainage would be altered and require hardscape drainage improvements that otherwise would be unnecessary and would detract from the rural character."

Page 4:

"There is sufficient land on the south side of the existing 16-foot wide concrete road to add four feet of all-weather dust-free surface to the width of the road. The addition of four feet of all-weather dust-free surface on the south side of the road would produce a 20-foot wide all-weather dust-free roadway, which meets the subdivision requirement.

Adding four feet of all-weather dust-free surface on the south side of Road Lot 'A' and leaving the slope as is would also allow for existing drainage to be maintained, which is consistent with the drainage conditions of subdivision."

5. **Agency Comments and Requirements: VAR 06-040:**

- a. The County of Hawaii Fire Department memorandum is dated June 11, 2006. (Refer to memorandum in variance file).

"In that the catchment system will also be used for fire protection, it is recommended that the fire department connection to the tank be located in an area accessible by fire apparatus."

- b. The State Department of Health (DOH) memorandum dated June 8, 2006 states:

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

- c. The Department of Public Works (DPW) memorandum dated June 20, 2006 states in part:

"We have reviewed the subject application and offer the following comment:

1. The DPW still believes that the minimum road improvements required by the subdivision code and included as a condition for the subdivision's tentative approval (1/6/06 (sic)-tentative approval, condition 3c) should be provided. However, should the Planning Director determines (sic) that the variance request is justified and the roadway's existing condition is sufficient to support the subject subdivision, the DPW defers to that determination."

- d. The Department of Water Supply (DWS) memorandum dated June 16, 2006 states:

"We have reviewed the subject variance application and our comments from our letter of December 1, 2004, to the applicant, copied to you, still stand. Further, the applicant shall be informed that the required water system improvements shall be constructed in accordance with the Department's current Water System Standards and Rules and Regulations. A copy of our December 1, 2004, letter is attached for your reference."

6. **Posted Sign/Notice to Surrounding Owners/Posted Sign.** The applicant submitted a notarized affidavit and photograph of a sign posted on subject property. According to the affidavit, photograph, and other submittals, the required sign was posted on subject TMK property on or about May 13, 2006 and notice was mailed on or about June 7, 2006 to a list of surrounding property owners.
7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received. No written objections to the variance application were received from surrounding property owners or public.

ALTERNATIVES/SPECIAL AND UNUSUAL CIRCUMSTANCES

Lot Access/Roadways. The first alternative requires the applicant or subdivider to modify or acquire additional property to expand the privately owned right-of-way (Road Lot A-TMK: 3-6-001:076) to create a "cul-de-sac" (turnaround) at the terminus of "Road Lot A" and improve or widen the "CONCRETE DRIVEWAY" (currently 16 feet +/- wide) to a minimum 20 feet wide dedicable pavement and paved shoulders meeting dedicable DPW road standards (DPW Standard Detail R-34) within a modified Road Lot A pursuant to tentative approval letter conditions-Condition 3) c, 2, dated January 6, 2005 .

The second alternative acknowledges the subdividers variance to provide a alternative "T" turnaround approved by the Hawaii County Fire Department ("Acceptable alternative to the 120' hammerhead.") by using or incorporating portions or "poles" of proposed lots and lot geometry to create a "T" turnaround to facilitate vehicle and emergency vehicle turnaround and increasing the width of the existing roadway" (16 feet wide concrete road) to become a 20 feet wide "all-weather dust free surface" with grass shoulders and swales.

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.

Mrs. Denise Norman

Page: 7

August 3, 2006

The proposed subdivision and adjoining lots are zoned residential. The proposed subdivision has frontage along the Hawaii Belt Highway and privately owned road lot-Road Lot A. Access to the subject TMK property and proposed subdivision and adjoining lots are limited to the existing concrete road/turnaround within Road Lot A. The applicant's background report indicates that alternative construction plans to create a "T" turnaround and paved "back-up" utilizing the "poles" of the proposed subdivision meeting to create a turnaround meeting with Hawaii County

Fire Department approval and additional paved road improvements to widen the existing 16 feet concrete road to a minimum 20 feet roadway within Road Lot A, including necessary DWS pipeline improvements, drainage improvement, grass shoulders, etc. will be submitted to the agencies for review and approval. Access to the proposed subdivision and cost to install the "T" turnaround and widening to the road within Road Lot A and proposed subdivision will be privately addressed and borne by the applicant (subdivider). The alternative "T" turnaround design within Road Lot A and proposed subdivision ("poles") for emergency vehicles (i.e. fire, police, etc.) and additional road improvements will be constructed in accordance with approved alternative construction plans prior to issuance of final subdivision approval.

Therefore, after considering the status of existing turnaround improvements within Road Lot A and alignment and condition of the (16 feet wide) roadway within Road Lot A, the Planning Director has concluded that the variance to allow the applicant or subdivider to design and install an alternative "T" back-up design within Road Lot A and proposed subdivision and additional road improvement to the road within Road Lot A would be adequate to facilitate access and "turnaround" for emergency fire vehicles and additional road improvements and access to additional lots created by the proposed subdivision. As such the specific roadway condition requiring a dedicable "cul-de-sac" and dedicable roadways and shoulder improvements within Road Lot A can be modified subject to variance and variance conditions.

The subject variance application was acknowledged by letter dated May 25, 2006 and additional time to complete the variance background report and consider agency comments was necessary. The applicant agreed for an extension of time to render a decision on the subject variance to August 31, 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.

Mrs. Denise Norman

Page: 8

August 3, 2006

DETERMINATION-VARIANCE CONDITIONS

The variance requested from the tentative subdivision condition requiring dedicable turnaround and dedicable road and shoulder improvements within existing Road Lot A or variance from tentative subdivision approval letter dated January 6, 2005, Condition No. 3, c., 2, 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. Submit alternative construction plans for the "T" turnaround located within Road Lot A and within proposed subdivision ("poles") and pavement improvements, including any necessary drainage and DWS water line improvements, to the affected agencies (including the Hawaii County Fire Department) for approval. Access to the proposed 3-lot subdivision will be consolidated to a common access easement and the existing 16 feet wide private "concrete" road within Road Lot A shall be widen to a minimum 20 feet, between the intersection of Road Lot A and Hawaii Belt Road up to the approved 120 feet "T" turnaround. Shoulder (grass swales) improvements, signage, utilities, street lights, etc. shall be installed in accordance with approved alternative subdivision construction plans. Further improvements at the intersection of Road Lot A with the Hawaii Belt Road shall meet with DPW and/or State DOT approval.
3. ROAD VARIANCE. The subdivider, owners, their assigns, or successors understand that the lots arising out of SUB 04-000114 will use and maintain the privately owned road and within Road Lot A any access/utility easement(s) on their own without any expectation of governmental assistance to maintain the existing access or roadway improvements within the privately owned Road Lot A/proposed "T" turnaround, and/or common easement identified on the subdivision's preliminary plat map or approved final subdivision plat map.

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 04-000114. 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 the existing privately owned access roadway.

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 04-000114. Should the improvement district require acquisition of any privately owned rights-of-way fronting the lots arising out of SUB 04-000114, 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 road and shoulders within Road Lot A, common access easement(s), and the paved roadway within the "T" turnaround.

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 04-000114) final plat map, including the identification of the "T" turnaround 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 04-000114.

Mrs. Denise Norman

Page: 10

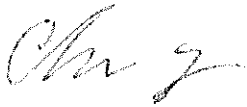
August 3, 2006

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.

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:ld

PWP60\WRY\FORMLETT\VAR06-040SUBROADWAYTMK36001013.NORMAN

xc: DPW-Engineering Branch
DWS-Engineering Branch
SUB 04-000114