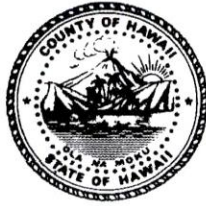


William P. Kenoi  
Mayor



BJ Leithead Todd  
Director

Margaret K. Masunaga  
Deputy

## County of Hawai i

### PLANNING DEPARTMENT

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai i 96720  
Phone (808) 961-8288 • Fax (808) 961-8742

May 18, 2011

Mr. Steven Nagamine  
92-2009-J Ka'ahumanu Street  
Aiea, Hawai'i 96701

**SUBJECT: VARIANCE PERMIT-VAR 09-023**  
**Applicant: STEVEN NAGAMINE**  
**Owner: STEVEN AND VERNA NAGAMINE**  
**Request: Variance from Chapter 23, Subdivisions,**  
**Improvements Required,**  
**Tax Map Key: 2-5-014:022, (SUB 08-000776)**

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Dear Mr. Nagamine,

After reviewing your variance application, the Planning Director certifies the **approval** of Variance 09-023 subject to variance conditions. The variance permits alternative access and roadway improvements for the proposed three (3) lot subdivision (08-000776). The variance is from Hawai'i County Code, Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required, Section 23-88, Nondedicable street, dead-end street, and Section 23-95, Right-of-way improvement.

The Planning Director has concluded that the variance from the minimum subdivision roadway improvement requirements be **approved** based on the following findings:

### BACKGROUND

1. **Location.** The subject property contains approximately 35,000 square feet of land area and is identified as Lot 62, Charles Chong Man Subdivision, portion Grant 4496 to Antone Carvalho, Ponahawai, South Hilo, Hawai'i. The property is located at the corner of Na'auao Street and Na'auau Way.

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2. **Zoning.** The subject property is zoned Single Family-Residence – 10,000 square feet (RS-10) by the County and designated Urban (“U”) by the State Land Use Commission (LUC).
3. **Subdivision Request/PPM.** The applicants/owners submitted a subdivision application (SUB-08-000776) on June 25, 2008 and included a preliminary plat map (PPM) dated March 11, 2008. Subsequently, a revised PPM dated October 12, 2010 was submitted and proposed to subdivide subject property into three (3) lots.
4. **Variance Application.** The applicant submitted the variance application on or about May 19, 2009. The applicant is requesting a variance to permit a three (3) lot subdivision (SUB-08-000776) without constructing dedicable roadway improvements within privately owned rights-of-way.
5. **Agency Comments and Requirements.**
  - a. The State Department of Health (DOH) memorandum dated June 22, 2009 (refer to memorandum in variance file).
  - b. The Hawai‘i County Fire Department memorandum dated June 25, 2009 (refer to memorandum in variance file).
  - c. Department of Public Works (DPW) memorandum dated June 25, 2009 (refer to memorandum in variance file).
6. **Notice to Surrounding Owners/Posted Sign.** The applicant submitted a copy of a notice sent to a list of surrounding property owner(s), and other submittals. Pursuant to these submittals, it appears that the applicant’s notice was mailed to the surrounding property owners by USPS on July 2, 2009. In accordance with Ordinance No. 05-135, the applicants submitted a notarized affidavit, dated September 10, 2008, and photographs to confirm posting of required sign. Notice of this application was published in the Hawai‘i Tribune Herald and West Hawai‘i Today on June 25, 2009.
7. **Comments from Surrounding Property Owners or Public.** No other agency comments were received and no objections were received from surrounding property owners or the public.

#### **ALTERNATIVES/SPECIAL AND UNUSUAL CIRCUMSTANCES**

The subdivider has been requested to construct access and roadway improvements pursuant to an earlier DPW memorandum dated December 5, 2008, or roadway requirements pursuant to

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Chapter 23 subdivisions. The subject property currently has access to a public roadway (Chong Street) via West Na'auao Street.

In lieu of improving or constructing roadways required by the DPW memorandum dated December 5, 2008, the owners contend that the existing paved private roadway (Na'auao Street) is sufficient access to the subject property. The additional two (2) lots to be created by the proposed subdivision will create minimal additional impact. The owner is requesting a variance not to construct roadway improvements, specifically by allowing the retention of the existing private 18 feet roadway improvement (Na'auao Street) and without having to construct minimum 20-ft. wide dedicable pavement with concrete curbs, gutters and sidewalks within a 50-ft minimum right-of-way width conforming to Std Detail R-34/R-32 and street lights, as required by the Department of Public Works memorandum. The existing 18 feet paved roadway within the project area is deemed sufficient to accommodate the additional two lots created by subdivision. Access easement RU-62-A has been eliminated according to revised preliminary plat map date October 12, 2010.

An existing dirt roadway meanders through the subject property which has been used by the surrounding property owners for the past 30 years. The variance proposes to construct a 20 feet wide gravel surface roadway within the 40 feet right-of-way of Na'auau Way to correct the misalignment.

Considering the foregoing issues, there are special and unusual circumstances applying to the subject property which exist either to a degree which deprives the applicant of substantial property rights that would be available or to a degree which obviously interferes with the highest and best use or manner of development of the property.

#### **INTENT AND PURPOSE - ROAD VARIANCE**

The intent and purpose of road/access requirements to a proposed subdivision is to ensure legal and physical access to the proposed lots that are 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 seeking relief from Items 2, 3 and 4a) of the DPW letter dated December 5, 2008 by allowing the retention of the existing private 18 feet wide roadway and the construction of a 20 feet wide gravel roadway within a 40 feet road right-of-way (Na'auau Way) as shown on the Revised Preliminary Plat map dated October 10, 2010.

The applicant has stated: "The nature of this variance per chapter 23 of the subdivision code is requesting permission to permit 3-lot subdivision of above referenced TMK property without constructing dedicable roadway improvements within privately owned rights-of-way. This variance proposes to construct a 20-foot wide gravel surface roadway within the 40 feet right-of-

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way of Na‘auau Way, to replace the existing misaligned dirt roadway that trespasses over applicant’s property. The variance proposes to correct misalignment and provide improved access to the proposed three lot subdivision and existing land owners to the north of the subject property at the applicant’s expense.”

Therefore, based on the information submitted by the applicant and evaluation of the existing and proposed access improvements, the Planning Director has concluded that the proposed tentative approval conditions requiring the subdivider to construct non-dedicable road improvements is not necessary and can be modified subject to variance conditions. Construction plans and a drainage report will still need to be submitted for review and comment prior to issuance of final subdivision approval. Road maintenance for the private right-of-way improvements will be privately addressed and shared among the current owners and users.

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.

The subject variance application was acknowledged on June 18, 2009. Additional time was requested by the Planning Department to complete the variance background report requirements. The applicant granted an extension of time to render a decision on the variance application to May 20, 2011.

#### **VARIANCE DECISION-CONDITIONS**

VAR 09-023, concerning the applicant’s request to allow the proposed three-lot subdivision of the subject property without constructing dedicable road improvements required by the County DPW, is hereby approved subject to following variance conditions:

##### General Conditions

1. The applicant, owners, their assigns, or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant or subdivider and all grantees, successors, and assigns acknowledge that the parcel was created by a variance from the normal subdivision requirements of Hawai‘i County, and that there are no special or unusual circumstances applying to the property, which deprive the owner of substantial property rights, or to a degree which obviously interferes with the best use or manner of development of the property, and hence, no grounds exist, or will exist, for a variance from the subdivision code to permit further subdivision of the

property, and that changes in the owner's personal or financial situation after acquiring the property also will not constitute grounds for a variance from the subdivision code to permit further subdivision of the property.

3. No condominium property regime (CPR) shall be permitted on any lots created by SUB 08-000776.
4. No Planning Department or Building Division permit will be issued to allow construction of an ohana dwelling on the subject property or upon lots created by proposed subdivision, subject to provisions of the Zoning Code or State Law, which may change from time to time.
5. The subdivision application's (SUB 08-000776) final plat map shall meet with all the conditions of this variance and/or the Hawai'i County Zoning Code and Subdivision Code not covered by this variance. No other variances from Chapter 23, Subdivisions, shall be granted to permit subdivision application SUB 08-000776.
6. 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.

Road Variance Conditions:

1. The subdivider, owners, their assigns, or successors understand that the 3-lots arising out of SUB 08-000776 will use and maintain the privately owned roadways and/or necessary easement(s) on their own without any expectation of governmental assistance to maintain the access improvements within and upon Na'auao Street and Na'auao Way identified on the subdivisions plat map or any other necessary access and utility easement(s) within the proposed subdivision.
2. The applicant, owners, their assigns, or successors shall file a written agreement or approved written document with the Planning Department prior to receipt of final subdivision approval of SUB 08-000776. 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 Hawai'i by the Planning Department at the cost and expense of the applicant:
  - a. The current owner(s) or future owner(s) of the lots created by the proposed subdivision (SUB-08-000776) agree to participate in any homeowner or

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maintenance agreement or pay their fair share to maintain the road improvements. 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.

- b. The applicant and/or owner(s) shall indemnify and defend the State of Hawai'i or County of Hawai'i from any and all liability arising out of vehicular access to and from the subject property utilizing this existing private access.
- c. Upon written demand of the County of Hawai'i, 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 08-000776. Should the improvement district require acquisition of any privately-owned rights-of-way fronting the lots arising out of SUB 08-000776, 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*.

Should any of the foregoing stated conditions not be complied with, the Planning Director may proceed to declare the subject Variance Permit null and void.

Sincerely,

  
BJ LEITHEAD TODD  
Planning Director

LHN: rl

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xc: Real Property Tax Office (Hilo)  
DPW - Engineering Division  
SUB 08-000776