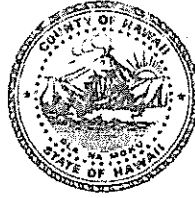


Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED™ AP
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

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

February 24, 2006

Gordon Ring, P.E.
R. M. TOWILL CORPORATION
420 Waiakamilo Road, Suite 411
Honolulu, HI 96817-4950

Dear Mr. Ring:

SUBJECT: VARIANCE PERMIT NO. VAR 05-033
Applicant: R. M. TOWILL CORPORATION
**Owners: DEPARTMENT OF HAWAIIAN HOME LANDS-
DHHL/STATE OF HAWAII**
**Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required**
Tax Map Key: 2-5-005:077 and 079, (SUB 04-0170)

After reviewing your variance application, the Planning Director certifies the approval of your variance request subject to conditions. The applicant is requesting a variance to allow subdivision and construction of alternative paved roadway improvements within the existing Ieie Road Right-of-Way in lieu of roadway and shoulder improvements required by the Planning Department for proposed 6-lot subdivision (SUB 04-0170). 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.

The Planning Director has concluded that the variance from minimum roadway requirements required for proposed DHHL-subdivision can be approved based on the following findings:

BACKGROUND

1. **Location.** The referenced TMK property(s) being containing an aggregate of approximately 1.91 acres, is within "Hilo Scattered Lots Kaumana Subdivision-

FEB 27 2006

Unit 3” being Lot 112, Lot 113, Lot 114, and Lot 115 of Kaumana House Lots, and situated at Kaumana, South Hilo, Hawaii.

Zoning. The subject property is zoned Single-Family Residential (RS-10) and designated Urban (“U”) by the State Land Use Commission (LUC).

2. **Subdivision Request/PPM.** The land owner-DHHL submitted a subdivision application (SUB 04-0170). The subdivision application’s preliminary plat map (PPM) was prepared by R. M. Towill Corporation is dated August 6, 2004 and acknowledged by the Planning Department letter dated November 10, 2004.

Note: A letter from the State of Hawaii-DHHL dated October 27, 2004 states in part:

“DHHL is developing this subdivision under the Hawaiian Homes Commission Act, 1920, as amended (Act). As allowed by the Act, DHHL may exempt itself from various State statutes and County regulations related to subdivision development. Therefore, although the parcels are situated on lands zoned RS-10, they are currently vacant and the subdivision shall be designated and reviewed in accordance with RS-7.5 zoning.”

3. **Variance Application.** Access to the proposed subdivision will be from Ieie Street (previously a 30-foot wide right-of-way created by Territory of Hawaii circa 1933). The applicant, on behalf of State of Hawaii-DHHL, submitted the subject variance application and other submittals on or about April 11, 2005. The DHHL previously constructed roadway improvements within the existing Uhaloa and Ieie Rights-of-Way according to construction plans approved by the DPW, DWS, and State-DOH., during 2001. The applicant submitted copy(s) of the road section of “as-built” roadway improvements within Uhaloa Street and Ieie Street Rights-of-Way (circa 1933) and owned by the DLNR according to a DPW memorandum.

Essentially, the applicant-DHHL is requesting a variance to allow a 6-lot subdivision utilizing an existing paved roadway consisting of 15-foot paved pavement and 10-foot wide paved swales and 5-foot wide shoulder within the 30-foot wide Ieie Road Right-of-Way in lieu of 32-foot pavement within a minimum 50-foot wide Right-of-Way per DPW Standard Detail R-32. These alternative roadway improvements were previously built within the 30-foot wide Ieie Road Right-of-Way by the DHHL in lieu of dedicable roadway standards stipulated by

Chapter 23, Subdivisions. 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.

4. **Agency Comments and Requirements-WH (VAR 05-033):**

- a. The State Department of Health (DOH) memorandum dated August 31, 2005, states:

"The use of individual wastewater systems is allowed. The type and number of individual wastewater systems to be used will be determined by the wastewater rules in effect at the time of building permit application."

- b. The Department of Public Works (DPW) memorandum dated September 1, 2005 states:

"We have reviewed the subject application for a variance forwarded by your memo dated August 11, 2005 and offer the following comment:

Since the subdivision did not receive Tentative Approval, there is no condition set for the subdivision from Hawaii County Code. Therefore, we are not able to review the variance application.

Should there be any questions concerning this matter, please feel free to contact Yingwei Ni in our Engineering Division at Ext. 8327."

- c. The Department of Water Supply (DWS) memorandum dated September 6, 2005, states in part:

"We have reviewed the subject applications and have no comments to the variance request from the roadway improvements."

5. **Notice to Surrounding Owners.** The applicant forwarded a transmittal letter dated November 9, 2005, affidavit, list of surrounding owner(s)-Attachment A, and other submittals. According to the transmittal letter, affidavit, and other submittals received on November 15, 2005, it appears that a copy of a notice was mailed "to the list of individuals listed on Attachment A" on August 17, 2005.

6. **Comments from Surrounding Property Owners or Public.** No further comments to the subject variance application were received from the agencies. No objections from surrounding property owners or public were received:

SPECIAL AND UNUSUAL CIRCUMSTANCES

In considering the applicant's background information and agency comments to the pending subdivision application, the Planning Director has determined that there are special and unusual circumstances applying to the existing roadways or development which deprive the applicant/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. *The DPW memorandum or comments dated December 14, 2004 in the subdivision file states in part:*

"The DLNR owned Ieie Road was recently constructed to private road standards. The DPW will not accept maintenance of the road until it is brought to County dedicable standards and compliance with America with Disabilities Guidelines (ADAAG). The DPW is willing to review a variance from these road standards should one be submitted."

2. *Allow the applicant or landowner-DHHL to subdivide the referenced property(s) to access and utilize existing paved roadways improvements within the existing 30-foot wide State owned rights-of-way. Prior to submitting the variance application, it appears that the DHHL discussed the proposed subdivision and installed roadway improvements within existing rights-of-way.*

Public records show Uhaloa Road and Ieie Road (30-foot wide) were planned and subdivided by the Territory of Hawaii (State of Hawaii). In essence, the proposed subdivision is a consolidation/resubdivision of 4 pre-existing lots created by the Territory of Hawaii fronting a 30-foot wide "paper road" (Ieie Road) into 6 lots now owned by the State of Hawaii-DHHL fronting paved roadway/ shoulder/ swales constructed within a State of Hawaii owned Right-of-Way by the State of Hawaii-DHHL. The proposed subdivision results in the creation of 2 additional lots owned by the State of Hawaii-DHHL. In essence, this variance recognizes the access paved roadways constructed

within the 30-foot wide "paper road" Ieie Road according to construction plans approved by the agencies circa 2001 and pursuant to the "IEIE ROAD SECTION" dated "APRIL 2005" in the variance file. Subdivision access will be via individual driveways to the existing Ieie Road consisting of 15-foot paved pavement and 10-foot wide paved swales and 5-foot wide shoulder. These alternative or paved roadway improvements within the 30-foot wide Ieie Road Right-of-Way also include necessary street lights, signage, striping, etc., and comply with the American with Disabilities Guidelines (ADAAG) requirements as a condition of approval of the variance. These alternative paved roadway/paved swale/shoulder improvements within the Ieie Road 30-foot wide Right-of-Way will be eventually maintained by the County **and** this 6-lot DHHL subdivision is subject to a "Memorandum of Agreement Between the County of Hawaii and the Department of Hawaiian Home Lands" (Effective Date: December 20, 2002).

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 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. The applicant is requesting a variance to allow alternative and acknowledge the paved access and paved roadway/shoulder/swales improvements constructed within Uhaloa Road and Ieie Road 30-foot wide rights-of-way in lieu of dedicable roadway improvements required by Chapter 23, Subdivisions.

The neighborhood and network of roadways within this area was subdivided many years before the adoption of the Zoning and Subdivision Codes in 1966-1967. The construction of new roadways and shoulders within a network of roadways or rights-of-way established or planned nearly 70 + years ago, e.g. without curbs, gutters and sidewalks, etc. can be designed and installed to maintain a consistent paved roadway within this neighborhood. Furthermore, the subdivision will create 2 new lots from 4-lots previously created by the Territory of Hawaii (State of Hawaii) or State of Hawaii-DHHL.

The subdivision's access to Uhaloa Road and Ieie Road will utilize 30-foot wide road rights-of-way created by the Territory of Hawaii (State of Hawaii) many years ago. The subdivider is requesting a variance to allow the proposed subdivision's access and roadways to utilize these existing 30-foot wide rights-of-ways and construct paved roadways within these rights-of-ways that are consistent with existing paved roads within Uhaloa Road and the adjoining residential areas. Therefore, after considering the network of roadways within this immediate area and other unusual requirements regarding road dedication, maintenance, etc., the Planning Director has

determined that the applicant's request to construct and/or acknowledge the alternative paved road/shoulder/swales built within 30-foot rights-of-way created by the Territory of Hawaii (State of Hawaii) are adequate for the proposed subdivision; and, finds there are special and unusual circumstances applying to the property and there are no other reasonable alternatives available.

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.

The variance requested to construct and/or acknowledge the installation of alternative paved roadways, shoulders, and swales within the proposed subdivision or existing 30-foot rights-of-way owned by the State of Hawaii is subject to following variance conditions:

1. The developer, subdivider, owners, their assigns, or successors shall be responsible for complying with all stated conditions of VAR 05-033 and any (SUB 04-0170) tentative subdivision approval conditions.

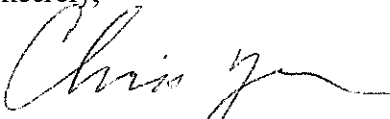
The proposed paved roadway and shoulder improvements shall be installed and completed in accordance with approved subdivision or associated construction plans approved by the affected agencies, DPW, DWS, and State-DOH. The improvements within the respective 30-foot wide rights-of-way owned by the State of Hawaii/DLNR or County of Hawaii; including necessary culvert and drainage improvements, and other necessary utilities-streetlights, signage, shall comply or meet the American with Disabilities Accessibility Guidelines (ADAAG) requirements **and** "Existing infrastructure shall be subject to County inspection prior to being accepted by the County for operation, repair, and maintenance. The County may require DHHL to repair any damage such as leaks, holes, sags, or deterioration affecting the operation of the existing infrastructure, identified as a result of the inspection".

2. The owner-State of Hawaii-DHHL shall construct the required subdivision improvements (or bond) such improvements pursuant to this variance and meet tentative subdivision approval conditions prior final subdivision approval.

Gordon Ring, P.E.
R. M. TOWILL CORPORATION
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February 24, 2006

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

Sincerely,



CHRISTOPHER Y. YUEN
Planning Director

WRY/DSA:mad
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xc: DPW-Engineering Branch
DWS-Engineering Branch
SUB 04-0170