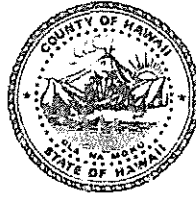


Harry Kim
Mayor



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 05-034
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: 2-5-005:080, (SUB 04-0169)

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 existing Uhaloa Road Right-of-Way and proposed road lot ("2-R") in lieu of required roadway and shoulder improvements required by the Planning Department for proposed subdivision (SUB 04-0169). 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, Parcel 2 containing approximately 5.23 acres, is within "Hilo Scattered Lots Kaumana Subdivision-Unit 2" being a

portion of the Government Land of Kaumana, and situated at Kaumana, South Hilo, Hawaii.

Zoning. The subject property is zoned Single-Family Residential RS-10 (RS-7.5, RS-10, and O) and designated Urban ("U") by the State Land Use Commission (LUC). (Refer to copy of PD letter dated November 10, 2004 in SUB 04-0169 file).

2. **Subdivision Request/PPM.** The land owner-DHHL submitted a subdivision application (SUB 04-0169). The subdivision application's preliminary plat map (PPM) was prepared by R. M. Towill Corporation is dated August 6, 2004 (Rev.) 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 16-lot subdivision (13 buildable lots) will permit 3 proposed building lots to access via Uhaloa Road (30-foot wide right-of-way created by the Territory of Hawaii or State of Hawaii circa 1933) and 10 proposed building lots to access proposed roadway within a 50-foot wide cul-de-sac road lot "Lot 2-R". 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 a 15-foot pavement and 10-foot wide paved swales and 5-foot wide shoulder improvements within the existing 30-foot wide Uhaloa Right-of-Way and 32 foot wide pavement/swales/shoulders per DPW Standard Detail R-32 within the 50-foot wide cul-de-sac roadway lot ("2-R") according to construction plans approved by the DPW, DWS, and State-DOH., during 2001. The applicant submitted copy(s) of the typical road section of the "as-built" roadway improvements within 30-foot wide Uhaloa Road created by the Territory of Hawaii (State of Hawaii) and proposed road lot "2-R" owned by the State of Hawaii-DHHL.

4. **Agency Comments and Requirements-WH (VAR 05-034):**

- 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 (04-0169) states in part:*

"The portions of Uhaloa Road fronting the subdivision is a substandard government road right-of-way that is not maintained by the County. DPW recommends that the substandard road should be improved with minimum 32-ft wide dedicable pavement, concrete curbs, gutters and sidewalks within a minimum 50-ft wide right-of-way conforming with DPW Std Det R-32.

§23-86/§23-95. For Road Lot 2-R, construct minimum 32-ft wide dedicable pavement with concrete curbs, gutters and sidewalks within a minimum 50-ft wide right-of-way conforming with DPW Std Det R-32. The roadway structure shall be designed to support axle and wheel loads permitted under Section 291-35, Hawaii Revised Statutes (HRS)."

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 30-foot wide Uhaloa Road Right-of-Way was planned or subdivided by the Territory of Hawaii (State of Hawaii) circa 1933 and appears to belong to the State of Hawaii/DLNR or County of Hawaii. In essence, the proposed subdivision subdivides a pre-existing property created by the Territory of Hawaii (State of Hawaii/DHHL) utilizing 30-foot right-of-way (Uhaloa Road)

created by Territory of Hawaii in the 1930s and proposed 50-foot wide cul-de-sac roadway lot "2-R" owned by the State of Hawaii-DHHL. In essence, this variance permits the alternative paved roadways constructed within the 30-foot wide Uhaloa Road Right-of-Way and proposed 50-foot wide roadway lot "2-R" constructed in 2001 to be utilized for the proposed subdivision access will be via individual driveways to roadway within Uhaloa Road 15-foot wide roadway/5-foot wide paved swale/5-foot wide shoulder constructed within the 30-foot wide Uhaloa Road Right-of-Way and 32-foot wide pavement within proposed cul-de-sac road lot "Lot "2-R" constructed per DPW Standard Detail R-32. These alternative street design and paved roadway improvements within both rights-of-way include necessary street lights, signage, striping, etc., and shall be required to comply with the American with Disabilities Guidelines (ADAAG) requirements. The paved roadway/shoulders/swales within Uhaloa Road right-of-way and proposed cul-de-sac roadway lot "R-2" will eventually be maintained by the County.

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 utilize the existing alternative paved access and paved roadway/shoulder/swales improvements constructed within Uhaloa Road and paved roadways constructed per DPW Standard Detail R-32 within the proposed roadway lot "Lot R-2" constructed by the State of Hawaii-DHHL in 2001 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 recently constructed alternative paved roadways, paved swales and shoulders within a 30-foot wide right-of-way created by the Territory of Hawaii (State of Hawaii) nearly 70 + years ago and within a proposed 50-foot wide cul-de-sac roadway lot "2-R". The original 30-foot wide Uhaloa Road Right-of-Way was created and is part of roadway network developed in the 1930s by the Territory of Hawaii (State of Hawaii). Most of the building lots created by this subdivision will access the existing paved 32-foot wide pavement within the proposed cul-de-cac roadway lot "2-R" that was constructed per DPW Standard Detail R-32. The proposed 16-lot subdivision creates 13 building lots or leased DHHL lots (2 lots will not be left open or undeveloped) and 1-cul-de-sac roadway lot "2-R" from a lot created many years ago.

The applicant, on behalf of the owner, is requesting a variance to allow the alternative paved roadways within the Uhaloa Road Right-of-Way and proposed 32-foot wide roadway within the cul-de-sac roadway lot "2-R", "as built", to be utilized for the proposed subdivision. These alternative paved roadways, paved swales, and shoulder improvements are consistent with other existing paved or similar paved roadways with nearby or surrounding residential subdivisions and/or comply with DPW Standard Detail R-32. Therefore, after considering the existing network of roadways within the immediate area and other unusual requirements regarding road dedication, etc., the Planning Director has determined that these alternative paved road/shoulder/swales constructed by State of Hawaii-DHHL within the 30-foot Uhaloa Road Right-of-Way created by the Territory of Hawaii (State of Hawaii) and existing roadway improvements within the cul-de-sac roadway lot "2-R" constructed per DPW Standard Detail R-32 in 2001 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 existing 30-foot Uhaloa Road R.O.W. and proposed cul-de-sac roadway lot "2-R" owned by the State of Hawaii/DHHL 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 05-034 and any (SUB 04-0169) tentative subdivision approval conditions.

The proposed paved roadway and shoulder improvements shall be installed and completed in accordance with approved subdivision or approved construction plans approved by the affected agencies, DPW, DWS, State-DOH, and State of Hawaii/DHHL. The road improvements within the existing 30-foot wide Uhaloa Road Right-of-Way created by the Territory of Hawaii (State of Hawaii) and proposed 50-foot wide cul-de-sac roadway lot "2-R" owned by the State of Hawaii/DHHL; including necessary culvert and drainage improvements, and other

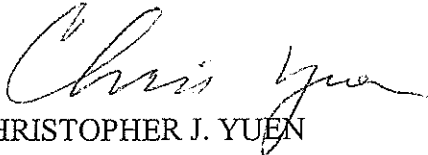
Gordon Ring, P.E.
R. M. TOWILL CORPORATION
Page 7
February 24, 2006

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.

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 J. YUEN
Planning Director

WRY:mad

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xc: DPW-Engineering Branch
DWS-Engineering Branch
SUB 04-0169