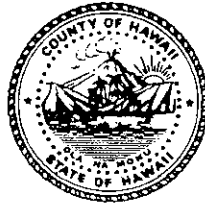


William P. Kenoi
Mayor



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 31, 2011

Mr. Jason Tateishi, P. E.
R.M. Towill Corporation
P. O. Box 507
Captain Cook, HI 96704

Dear Mr. Tateishi:

SUBJECT: VARIANCE: VAR 09-051
Applicant: R. M. TOWILL CORP. /JASON TATEISHI P. E.
Owner: ROBERT T. KAMIGAKI, ET. AL.
Request: Variance from Chapter 23, Subdivisions,
Article 6, Division 2, Improvements Required
Tax Map Key: 7-4-004:051 (SUB 88-000048)

After reviewing your variance application, the Planning Director certifies the approval of Variance-VAR 09-051 subject to variance conditions. The variance permits proposed 4-lot subdivision (SUB 88-000048) to be created without providing access and roadway improvements required by Revised Tentative Approval letter dated February 19, 2009. The variance is from Hawai'i County Code, Chapter 23, Subdivisions, Article 6, Division 2, Improvements Required. The Planning Director has concluded that a variance application from the roadway requirements for the proposed subdivision be **approved** based on the following findings:

BACKGROUND

1. **Location.** The subject project consists of 20.98 acres and is a portion of grant 3965 and 4786 situated at Kealakehe Homesteads First Series, North Kona, Hawaii.
2. **Zoning.** The subject property is zoned Agricultural – 5 acre (A-5a) by the County and designated Agriculture (“A”) by the State Land Use Commission (LUC).

3. **Subdivision Application.** The applicants/owners submitted a subdivision application (SUB 88-000048) and preliminary plat map (PPM), dated March 24, 1988, proposing to subdivide subject property into four (4) lots. The department subsequently issued Tentative Approval for the subdivision on February 19, 2009.
4. **Variance Application.** The applicant submitted the variance application on October 23, 2009.
5. **Agency Comments and Requirements**
 - a. Department of Public Works memorandum dated November 23, 2009 (refer to memorandum in variance file).
 - b. The State Department of Health (DOH) memorandum dated November 24, 2009 (refer to memorandum in variance file).
 - c. Department of Water Supply letter dated December 8, 2009 (refer to letter in variance file).
 - d. The Hawai'i County Fire Department memorandum dated December 14, 2009 (refer to memorandum in variance file).
6. **Public Notice.** The applicant filed a transmittal letter dated December 1, 2009 and attached mailing receipt and copy of notice sent to surrounding property owner(s) within 300 feet of the subject property. Notices were provided to surrounding property owners on November 30, 2009. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on November 20, 2009. The applicant submitted an affidavit, dated October 22, 2009, regarding sign posted on the subject property and photograph of the posted sign.
7. **Comments from Surrounding Property Owners or Public.**
 - a. No written comments or objections from surrounding property owners or the general public were received.

ALTERNATIVES/SPECIAL AND UNUSUAL CIRCUMSTANCES

Lot Access/Roadways. The subdivider has been requested to construct access and roadway improvements pursuant Revised Tentative Approval dated February 19, 2009. The subject property currently has access off of Mamalahoa Highway, a public roadway.

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The applicant is requesting a variance to Condition 3-c and 3-f, of the revised Tentative Approval for the proposed subdivision of Lot B. The Department of Public Works, in its memorandum dated November 23, 2009, has stated that they have no objections to the variance request from Conditions 3c and 3f. The applicant is also requesting a variance to allow the roadway within portions of Lot B-5 and Easements A-1 & A-2 be "super elevated" and paved for a width of 40 feet. They contend that due to the steep terrain of the subject property, the required 50 foot roadway section would require extensive grading and possible encroachment into the Old Mamalahoa road right-of-way. They maintain that the proposed 40 foot roadway section reduces the amount of grading and reduces the possibility of encroachment into the County right-of-way. The applicant will submit a geotechnical report to confirm that the roadway section they are requesting is acceptable.

INTENT AND PURPOSE-ROADWAY VARIANCE

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.

Therefore, given the circumstances cited by the applicant and Department of Public Works not objecting to the granting of variance from Conditions 3c and 3f of the Revised Tentative Approval dated February 19, 2009, the Planning Director has concluded that the roadway improvements required for the proposed 4-lot subdivision can be remedied by the variance approval with conditions.

Based on the foregoing findings, this variance 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, it is felt that the applicant's request for variance from roadway improvements cited in the Revised Tentative Approval will not be materially detrimental to the public's welfare and does not cause substantial adverse impact to the area's character and to adjoining properties.

The subject variance application was acknowledged on November 12, 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 June 8, 2011.

VARIANCE DECISION-CONDITIONS

The variance application to allow alternative roadway improvements to be constructed in lieu of certain roadway improvements stipulated by Revised Tentative Approval, dated

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February 19, 2009, to permit proposed 4-lot subdivision (SUB 88-000048) 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. ROAD VARIANCE. The subdivider, owners, their assigns, or successors understand that the four (4) lots arising out of SUB 88-000048 will use and maintain the privately-owned road, and/or any other necessary easement(s), on their own, without any expectation of governmental assistance to maintain the existing privately-owned access or roadway improvements within the subdivision identified on the subdivisions preliminary plat map, or any other necessary access and utility easement(s) within or upon proposed lots or proposed subdivision.

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 88-000048. The proposed lots shall form a 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 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 utility and access easement.
- b. 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 88-000048. Should the improvement district require acquisition of any privately-owned rights-of-way fronting the lots arising out of SUB 88-000048, 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

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herein shall be credited towards the requirements of the Unified Impact Fees Ordinance.

- c. The future lot owner(s) agree to participate in any road maintenance agreement or/and pay their fair share to maintain the roadway. 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.
3. The subdivision application's final plat map for proposed 4-lot subdivision shall meet all the requirements of the Hawai'i County Zoning Code and the Subdivision Code not covered by this variance.
4. 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 subject Variance-VAR 09-051 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

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xc: DPW - Engineering Division
SUB 88-000048