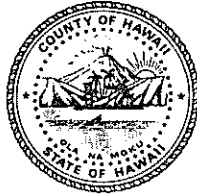


Stephen K. Yamashiro  
Mayor



Virginia Goldstein  
Director

Russell Kokubun  
Deputy Director

## County of Hawaii

### PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252  
(808) 961-8288 • Fax (808) 961-8742

**CERTIFIED MAIL**

7099 3220 0000 4869 7954

December 1, 2000

Mr. Sidney Fuke, Planning Consultant  
100 Pauahi Street, Suite 212  
Hilo, Hawaii 96720

Dear Mr. Fuke;

Variance Application (WH-VAR 00-070)  
Variance No. 1161  
Applicant: SprintCom Inc.  
Variance from Minimum Setback Requirement  
Tax Map Key: 7-4-15: 21

After reviewing your application and all submittals and comments received to date, the Planning Director hereby certifies the approval of your variance request to allow the extension of a existing 65-foot tall telecommunications tower to height of 100 feet with a 10-foot side yard setback in lieu of the required 20-foot side yard setback as required by Chapter 25 (Zoning Code), Article 4 (General Development Regulations), Division 1 (Use Regulations), Section 25-4-12(b)(1) (Telecommunication antennas).

Please accept our sincere apologies for our delay in rendering a decision on this particular matter. Other equally pressing matters before this office contributed to the delay in responding to your request. We appreciate and acknowledge your verbal request for an extension of the disposition of this matter until December 5, 2000.

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Mr. Sidney Fuke, Planning Consultant  
Page 2  
December 1, 2000

### GENERAL BACKGROUND

The subject property is situated at Keahuolu (Kona Industrial Area), North Kona, Hawaii, TMK: 7-4-15: 021. The 1.745 acre site is fully built and fronts Luhia Street and the Queen Ka'ahumanu Highway. The intersection of Kaiwi Street and Luhia Street is located approximately eight hundred (800) feet to its west. According to site plans submitted by the applicant, a 100-foot communication tower is situated on an adjoining property to the north that is setback twenty (20) feet from the property line. The total distance between these two existing towers is approximately thirty-five (35) feet.

SprintCom is proposing to extend an existing 65-foot tower by thirty five (35) feet and in so doing, co-locate its communication facilities on the extended tower. The required setback for the proposed 100-foot tower, based on a 1:5 ratio, is twenty (20) feet. As the tower is located ten (10) feet from the side property line, an additional ten (10) feet setback is required. However, as the applicant is choosing not to relocate the tower, a 10-foot setback variance is being requested.

Specific improvement that are proposed upon that portion of the existing telecommunications tower to be extended would include the installation of twelve (12) flat panel antennas, a solid microwave dish, and related communication equipment.

According to Department of Public Works-Building Division records, the existing 65-foot tall communications tower was constructed in 1993 through the issuance of Building Permit No. 885142. The erection of this tower on the subject property was accomplished in compliance with all applicable codes and regulations in force at the time of its construction.

Section 25-4-12(b)(1) (Telecommunications antennas) of the Zoning Code, which requires that telecommunication towers maintain a minimum yard setback of one foot for every five feet of antenna or tower height, was adopted into law in 1996 (Ordinance No. 96-160) after the construction of the existing tower in 1993.

At its meeting of October 12, 2000, the Kailua Village Design Commission voted to forward a recommendation of denial of the subject application since 1) to approve such a variance would set a bad precedent; 2) to heighten the telecommunication tower would be inconsistent with the objectives sought to be accomplished by The Master Plan for Kailua-Kona, and that 3) the applicant should consider other alternatives to the request.

Mr. Sidney Fuke, Planning Consultant  
Page 3  
December 1, 2000

In reviewing all of the information to date and the criteria for a variance, the Planning Director approves the issuance of this variance from the minimum side yard requirements of the Zoning Code for the reasons as discussed in detail below.

#### SPECIAL AND UNUSUAL CIRCUMSTANCES

There are special and unusual circumstances relating to the subject property that "*obviously interferes with the best use or manner of development*" of this site.

1. The subject site is already developed in a manner where all other aspects of the Zoning Code (such as use, setback and parking) have been met. According to the applicant, to relocate the tower to make it consistent with the required yard setback - be it four (4) more feet for the existing 65-foot tower or ten (10) more feet for the 35-foot extension - would not be possible. It would affect the layout of the existing structures on the property. The parking area would also have to be re-adjusted. More critically, access to the existing structures would have to be re-sited at considerable expense.
2. The situation would have been different if the site were not fully developed AND if there were no tower existing on the site. Accommodations could have been made to conform to the new Zoning Code. However, since the project site is fully developed and includes the existing tower, the flexibility to accommodate the construction of a new tower that meets the current requirements of the Zoning Code is severely restricted.
3. Given unlimited financial resources, the existing tower and existing improvements could be relocated to meet the setback requirement. However, that would come at considerable cost to the applicant and/or landowner and would not be feasible. The existing tower is situated in a manner where its relocation, in addition to the need to relocate other existing improvements and structures, would interfere with the best use and development of the subject property.

#### REASONABLE ALTERNATIVES

Although there are alternatives available to the applicant, there do not appear to any reasonable alternatives that would best serve the interests of the applicant, the landowner or the County.

Mr. Sidney Fuke, Planning Consultant

Page 4

December 1, 2000

As noted earlier, it would not be feasible for the applicant to relocate the entire tower to another portion of the site. The site is already extensively developed, with its parking and entrances to the various structures carefully planned and accounted for. Any relocation of existing structures and facilities would require adjustments to both the parking and some of the entrances to these structures.

Notwithstanding the above, there are other alternatives. A new tower could conceivably be built either on this or another site. The Zoning Code allows towers up to 500 feet meeting with the required setbacks. However, that would result in the potential for proliferation of towers on this or another site in this specific area of Kailua-Kona. And this proliferation would occur in a location that serves as a visual "gateway" to Kailua Village.

During a presentation before the Kailua Village Design Commission, the applicant noted that although another site within the Kailua Industrial area is available, it would require a taller (150 feet) tower, unlike the proposed 100 foot tall tower. It would also be located in a more visually prominent area. Other areas studied by the applicant include *mauka* of the Queen Kaahumanu Highway, areas that are permissible but visually more prominent. Further, there have been no comments or objections from the surrounding property owners.

Thus, while there are alternatives, the present one - particularly as it will not materially detract from the intent and purpose of the setback requirement and have not had any opposition from the adjoining or affected property owner - would be the most reasonable. It would minimize the potential proliferation of towers in the area that, cumulatively, could have the potential of being visually intrusive.

#### INTENT AND PURPOSE

The requested relief would still not be inherently violative of the spirit and intent of the Zoning Code. Further, it will "not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or to adjoining properties.

One of the reasons for a yard set back is to maintain open space to enhance air and light circulation and, in the particular case of telecommunication towers, to minimize potential structural/safety impact to adjoining properties from any falling tower or attachments to the tower. In this situation, the open space objective will still be retained. The additional height of

Mr. Sidney Fuke, Planning Consultant

Page 5

December 1, 2000

the tower will not result in a solid mass that would cast any unnecessary shadows on or interfere with the air or light circulation of the adjoining property. Air and light will still be able to circulate and penetrate through the tower and onto adjoining properties.

It should be noted that with a few exceptions (such as a telecommunication tower), the Zoning Code does not require a side yard set back for structures within the General Industrial (MG) zone. Without a yard set back, the circulation of air and light can be significantly impeded. Thus, it is argued that maintaining the existing 10-foot side yard setback for the extended tower will still provide for air and light circulation than other forms of industrial-type structures that could be built right up to the property line.

Relative to the issue of protection from a falling tower or any attachments on the tower, it should be noted that the Zoning Code now provides for more restriction than before. The Code now requires all towers and any of the attachments to have a "hard survivability for sustained winds of one hundred miles per hour." This also has to be certified by a licensed structural engineer. There was no such requirement for telecommunication towers constructed before 1996. The applicant has indicated that they will comply with this new requirements to ensure that the extended tower can survive sustained winds of 100 miles per hour.

It should also be noted that the adjoining property (TMK: 7-4-15: 20) is already fully developed. There is a 24-foot wide driveway on the eastern edge of that property. The existing 65-foot tower has an existing 10-foot set back. Thus, with the 24-foot wide driveway and existing 10-foot set back, the proposed 100-foot tower would be approximately 35 feet to the nearest structure on the adjoining property. Notwithstanding property lines, that would more than meet the net effective set back of twenty (20) feet for the proposed 100-foot tower.

Although not germane to the variance, there is an existing 100-foot tall tower on the adjoining property, approximately 35-feet from the proposed tower. The applicant was not successful in its efforts to co-locate on said tower.

Finally, there is the issue of the Natural Beauty and Economy elements of General Plan. Visual considerations are important, particularly as this area serves as a "gateway" to Kailua Village. Such an image is important to the vitality of the visitor industry.

Mr. Sidney Fuke, Planning Consultant

Page 6

December 1, 2000

Approval of this project would allow the applicant to co-locate its uses on an existing tower. That would avoid having to construct another tower either on this or an alternative site in this area. In so doing, it would help minimize the proliferation of towers. And this goal would be achievable without being significantly violative of the purpose and intent of the set back requirement.

In summary, with the more stringent requirement of the Zoning Code, the existing tower will be made even more safe. The objectives (open space and safety) sought by the set back thus will not be materially and significantly compromised; given the current development configuration of the affected adjoining property, the net effective set back from adjoining structures will still be maintained; and allowing this relief - while not compromising safety and the basic intent of the set back - will help minimize the visual proliferation of towers (which are allowed in the MG zone) in this area and in so doing, be consistent with the General Plan. This action would thus result in more of a fulfillment rather than a detraction from the public's interest.

While the concerns of the Kailua Village Design Commission regarding the extension of the existing telecommunication tower is noted, to simply deny the applicant's request on the basis of its approval setting a "bad precedent" is not factor that cannot be considered by the Planning Department since such a criteria is not defined by the Planning Department's Rules of Practice and Procedure. Secondly, we feel that the objectives of The Master Plan for Kailua-Kona are being met by the subject request through efforts by the applicant to co-located its facilities on an existing tower. This will help to minimize any mauka-makai visual impacts from streets or public views by focusing the improvements on an existing tower instead of constructing additional telecommunication towers within the area. Finally, the applicant has demonstrated within its application and in its presentation before the Kailua Village Design Commission that various alternatives were explored. In the final analysis, the subject request was found to be the most reasonable of all of the alternatives considered.

In view of the foregoing, it is maintained that approval of this variance would not be inherently violative of the spirit and intent of the Zoning Code.

This variance request is approved, subject to the following conditions:

1. The applicant, his assigns or successors, shall be responsible for complying with the stated conditions of approval.

Mr. Sidney Fuke, Planning Consultant

Page 7

December 1, 2000

2. Plan approval for improvements to the telecommunication tower shall be applied for and secured within one year from the date of issuance of this variance.
3. All other applicable Federal, State, and County codes, rules and regulations shall be complied with.
4. Should any of the foregoing conditions not be substantially complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Should you have any questions, please feel free to contact Daryn Arai of this department.

Sincerely,

  
VIRGINIA GOLDSTEIN  
Planning Director

DSA:jkg

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c: Kailua Village Design Commission  
West Hawaii Office  
Plan Approval Section