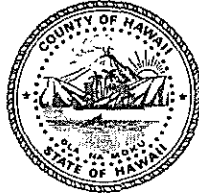


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
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

7000 0600 0024 2905 3011

May 31, 2001

USCOC OF HAWAII 3, INC.
c/o Michele S. Loudermilk, Esq.
CADES SCHUTTE FLEMING &
WRIGHT ATTORNEYS AT LAW
P. O. Box 939
Honolulu, HI 96808-0939

Dear Ms. Loudermilk:

VARIANCE PERMIT NO. 1200 (VAR 01-003)

Applicant: USCOC OF HAWAII 3, INC.

Owners: RALPH ROLLIN OLSON, ET AL.

**Request: Variance from the Minimum Yards and Permitted Projections
Into Yard and Open Spaces, Pursuant to Chapter 25, Zoning**

Tax Map Key: 6-4-001:002

After reviewing your application and the information submitted on behalf of it, the Planning Director certifies the approval of your variance request. Variance Permit No. 1200 allows the existing 240 square feet equipment building to remain on and within the affected area of the subject property "AS BUILT" with a minimum 2.5 feet building set back from the respective boundary line in lieu of the minimum 20 feet building set back and minimum 14 feet clearspace requirements, as required by the Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), and Article 4, Section 25-4-44, Permitted projections into yards and open spaces, respectively.

004770

JUN 05 2001

FINDINGS AND RECOMMENDATION

The Planning Director has concluded that the variance request from the minimum yards should be approved based on the following findings:

SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property containing 3.136 acres is Lot 6-A of Mana Road Estates, Being a Portion of Grant 4741 to Martin Campbell and Grant 4878 to William Campbell, Situated at Puukapu, Waimea, South Kohala, Hawaii.

The subject TMK property and project area is zoned Agricultural (A-3a) by the County. The subject parcel, and the adjacent and surrounding parcels are designated Agriculture "A" by the State Land Use Commission.

SP NO. 1087: On November 17, 2000, the Planning Commission approved an existing 135-foot telecommunication lattice tower, antennas, accessory equipment building and accessory structures, co-located facilities of Mobile Communications Corporation of America, and security fence on approximately 1800 square feet of land. Special Permit No. 1087 is subject to conditions listed in a certified letter dated December 14, 2000.

2. The applicant's representative submitted a "STATEMENT IN SUPPORT OF VARIANCE APPLICATION COUNTY OF HAWAII" dated December 22, 2000.

Please refer to this 6-page statement and other related attachments and maps in subject variance file.

3. Final Plan Approval (FPA) dated October 25, 1993 permitted the "New Transmitter Tower Site", the existing 135 feet telecommunication lattice tower (B NO. 936240), and equipment building (B NO. 936241). Subsequent to the receipt of FPA dated October 25, 1993 and issuance of the referenced B NO.(s), it appears the applicant constructed a 240 square feet equipment building within the 20 feet side yard.

The map or site plan drawing attached to the variance application, drawn to scale and dated May 26, 2000, by WES THOMAS & ASSOCIATES, INC., identifies the location of the existing triangular shaped-antenna "Tower" structure, accessory equipment "Building", and surrounding fencing improvements within the subject TMK property. Pursuant to the variance information provided by the applicant and other records in the Hawaii County Planning Department, it appears that the existing tower-antenna and other related telecommunication building improvements "AS BUILT" were sited on the property prior to approval of SPP No.1087.

4. For the record, a site inspection to view the existing building improvements was conducted by Hawaii County Planning Department staff. Pursuant to FPA dated October 25, 1993, it appears that the existing 135 feet tower-antenna and one of two (2) existing equipment building(s) improvements located within the designated 1800 square feet area of the subject TMK property were approved by the affected agencies and issued 2-Building Permits by the DPW.
5. The applicant submitted a copy(s) of "REAL PROPERTY TAX CLEARANCE" dated October 17, 2000 stating:

"TMK(s): (3) 6-4-001-002-001 & 6-4-001-002-0002

Owner: Richards, Herbert M III/Patti H

This is to certify that the real property taxes due to the County of Hawaii on the parcel(s) listed above have been paid up to and including December 31, 2000. This clearance was requested on behalf Cades, Schutte, Fleming & Wright for the County Planning Department and is issued for this/these parcel(s) only."

"TMK(s): (3) 6-4-001-002-0003

Owner: Olson, Ralph R Trust & Olson, Mabel M Trust

This is to certify that the real property taxes due to the County of Hawaii on the parcel(s) listed above have been paid up to and including December 31, 2000. This clearance was requested on behalf of Cades, Schutte, Fleming & Wright for the County Planning Department and is issued for this/these parcel(s) only."

6. A copy of the variance application was forwarded to the State Department of Health (DOH) on January 5, 2001 for comment:

To date, it appears that no DOH memorandum objections or comments were received.

USCOC OF HAWAII 3, INC.
c/o Michele S. Loudermilk, Esq.
Page 4
May 31, 2001

7. The Department of Public Works (DPW) memorandum dated February 1, 2001, which states in part:

"We have reviewed the subject application and offer the following comment:

1. Please refer to the attached Building Division comments dated Jan 22, 2001. If you have any questions please contact Kiran Emler of our Kona office at 327-3530."

The attached DPW memorandum dated January 22, 2001 states in part:

"We opposed the approval of the application for the reasons noted below.

All new building construction shall conform to current code requirements.

Permits E945303, EH55601, MH32710 for the subject dwelling were never finalized.

The minimum setbacks shall be maintained as follows:

Residential structures-3 ft. side, 3 ft. rear

Commercial structures-10 ft. side, 10 ft. rear

No openings in the exterior wall are permitted less than 5 ft. from the property line."

8. Proof of mailing a first and second notice of the variance application to the surrounding owners and lessees of record of property interests within 500 feet of the perimeter boundary of the subject property were received on January 11, 2001 and January 22, 2001.

For the record the applicant submitted copies of letters endorsing the subject variance request. The copies of these letters were submitted with the variance application and incorporated into the subject variance file for the record.

The Planning Department received no other oral or written objections to the subject variance application.

USCOC OF HAWAII 3, INC.
c/o Michele S. Loudermilk, Esq.
Page 5
May 31, 2001

The applicant submitted a recent survey map/site plan that identifies the location of the existing tower-antenna, related telecommunication improvements, and fencing improvements. Pursuant to the applicant, the existing 135 feet tower-antenna structure is located approximately 22 feet from the affected boundary line and does not comport to the minimum 27 feet minimum building setback requirements from the recognized property line(s) pursuant to the Zoning Code adopted after 1993 (Ordinance 96-16). Furthermore, we note that in the FPA dated October 25, 1993 for "New Transmitter Tower Site", the listed applicant (United States Cellular) was not made aware of any "minimum yards" or "minimum required building setbacks" for the antenna and equipment building, respectively.

Therefore, considering the foregoing facts and circumstances, it is felt there are special or unusual circumstances applying to the subject property which exist either to a degree which deprive the applicant of substantial property rights that would otherwise be available, or to a degree which obviously interferes with the existing use of the subject property.

ALTERNATIVES

There are no reasonable alternatives in resolving the difficulty of the applicant. Alternatives available to the applicant include the following: Removing the existing building encroachments, relocating that equipment building within the area identified by the applicant or the building envelope prescribed by the Zoning Code, and other similar design alternatives, etc., would be uneconomical at this time. The relocation, or removal of the "system" components housed within the 240 square feet building improvements will disrupt the operation of that particular cell site and could disrupt other nearby antenna/telecommunication improvements.

The applicant, on behalf of the owner(s), is trying to address and resolve the existing building encroachments that were established on the property. No evidence has been found to show indifference or premeditation by the current applicant/owner(s) to deliberately create or intentionally allow the building encroachment problems to occur.

The Planning Department acknowledges there may be other design or building alternatives available to the applicant and owners recited above. However, these design and building alternatives are deemed to be unreasonable at this time and would place excessive demands on the applicant and current owners when a more reasonable alternative is available by the granting of the subject variance request.

USCOC OF HAWAII 3, INC.
c/o Michele S. Loudermilk, Esq.
Page 6
May 31, 2001

INTENT AND PURPOSE

The intent and purpose of requiring building setbacks within a subdivision are to assure that adequate air and light circulation is available between permitted structure(s) and property lines. The existing tower-antenna structure and one (1) accessory telecommunication building were permitted pursuant to a previous FPA and established on the subject property pursuant to SPP No. 1087. The applicant/owners became aware of the building encroachment problem after the second equipment building and other telecommunication improvements were introduced and constructed within the 1800 square feet area.

The circumstances, which permitted the existing use and building improvements to be established on the subject TMK property, are unique.

The existing building encroachments are not physically and visually obtrusive or easily discernible from the adjacent properties or rights-of-way. It appears the building encroachments do not depreciate or detract from the character of the surrounding other adjacent telecommunication improvements, neighborhood-pastoral uses, public uses, and the existing and surrounding land patterns. It appears the existing building encroachments on the property and within the minimum side yard and respective open space were the result of a misinterpretation of the minimum yards by the applicant or affected agencies. Past agency review to address property use and proposed tower-antenna's location on the property in 1993 did not discover or disclose any building irregularities or disclose any minimum building setback requirements. Therefore, it is felt that the existing 240 square feet building encroachment within the affected yard "AS BUILT" will not detract from the character of the immediate neighborhood or the approved Special Permit (Use) SPP No. 1087.

The subject variance application was acknowledged by certified letter dated January 4, 2001. Additional time to study past agency review, the conditions of SPP NO. 1087, and other records was required by the Planning Director. Pursuant to a letter dated March 23, 2001 and a subsequent telephone request, the applicant agreed to extend the date on which the Planning Director shall render a decision on the subject variance to no later than May 31, 2001.

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 request 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.

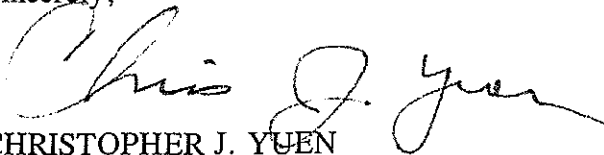
This variance request is approved subject to the following conditions:

1. The applicant/owner(s), their assigns or successors shall be responsible for complying with all stated variance conditions and other conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property damage, personal injury, or death arising out of any act or omission of the applicants/owners, their successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.
3. Portions of an existing telecommunication building will not meet Chapter 25, the Zoning Code's, minimum yard and open space requirements. The approval of this variance allows the existing 240 square feet building encroachments identified on a site plan and dated May 26, 2000, to remain within that respective side yard and respective open space on the subject TMK property.
4. The applicant or authorized representative/designee shall submit an application for Plan Approval and secure Final Plan Approval for the 240 square feet building and/or necessary "after-the-fact" approvals or building permit(s) to permit construction of the 240 square feet building and/or any other related building permit(s) from the DPW. Any outstanding DPW Building Permit(s) and/or other outstanding agency permits shall be addressed and closed by the applicant or authorized representative/designee.
5. The applicant/owner(s), successors or assigns shall comply with all the stated conditions of SPP NO. 1087.
6. Future building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

USCOC OF HAWAII 3, INC.
c/o Michele S. Loudermilk, Esq.
Page 8
May 31, 2001

Should any of the foregoing 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:cps
P:\WP60\WRY\FORMLETT\VARAPPTMK64001002.KONAUSCOC

xc: Real Property Tax Office
SPP NO. 1087
Ministerial Division-Plan Approval