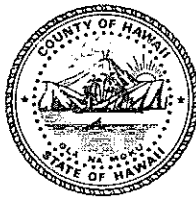


Harry Kim
Mayor



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

August 29, 2002

Mr. Gerald Park
GERALD PARK URBAN PLANNER
1400 Rycroft Street, Suite No. 876
Honolulu, HI 96814

Dear Mr. Park:

VARIANCE PERMIT NO. 1305 WH (VAR 02-035)

Applicant: GERALD PARK URBAN PLANNER
Owner: HAWAII ELECTRIC LIGHT COMPANY, INC.
Request: Variance from Hawaii County Code,
Chapter 25, Zoning
Tax Map Key: 7-2-002:013, (SPP 1126)

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No.1305 allows the "AS BUILT" positions of the existing telecommunication antennas-main buildings, accessory buildings, and supporting structures located on the subject property pursuant to the variance application site plan "MAY 2002". The telecommunication use, antennas, and related site improvements are permitted pursuant to Special Permit No. 1126 (SPP 1126). The subject variance application was submitted pursuant to SSP 1126 conditions. The variance request is from the subject property's minimum 20 feet side yard(s) and attendant minimum 14 feet side yard open space requirements, and, minimum 15 feet distance required between the walls of main buildings, pursuant to the Hawaii County Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), Section 25-5-77, Other regulations, Article 4, Division 4, Section 25-4-12, Telecommunications antennas, (b) (1), Section 25-4-44, Permitted projections into yards and open spaces, (a), (b), and Section 25-4-47, Minimum distance between main buildings on same building site, respectively.

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BACKGROUND AND FINDINGS

1. **Location.** The subject property, consisting of 0.230 acre, is located at about the 3400 feet elevation on the slope of Mount Hualalai. The property is situated in the Ahupua'a of Kaupulehu, North Kona, Hawaii.

The property is zoned Agricultural (A-20a) by the County and designated Agriculture "A" by the Land Use Commission (LUC). The subject property's size and area are "non-conforming".

2. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on June 12, 2002. The applicant's site plan drawing identifies the towers and support building positions, "AS BUILT", on the subject TMK property. The variance application site plan map is dated "MAY 2002".

Note: The telecommunication antennas and accessory buildings (use) on the subject TMK property are permitted pursuant to SPP 1126. The antennas, support buildings, and related site improvements located on the property, "AS BUILT", will be allowed to remain subject to SPP conditions and other Hawaii County Zoning Code requirements.

3. **Agency Comments and Requirements-WH (VAR 02-035):**

- a. The State Department of Health (DOH) memorandum dated July 8, 2002, states:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."

- b. The Department of Public Works (DPW) memorandum dated July 9, 2002, states:

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

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Please refer to the attached Building Division comments dated July 1, 2002.

If you have any questions please contact Kiran Emler of our Kona office at 327-3530.”

The attached DPW memorandum dated July 1, 2002, states in part:

“Approval of the application shall be conditioned on the comments as noted below.

All new building construction shall conform to current code requirements.

Others: There are 5 towers on the property with support facilities, however, there is only one building permit on record for one tower. Owner shall show proof of building permits or take out building permits for the remaining four towers and supporting facilities.”

3. **Notice to Surrounding Property Owners.** Proof of mailing a first and second notice was submitted to the Planning Department. For the record, it appears that the first and second notice was mailed on June 18, 2002 and July 5, 2002 by the applicant
4. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received and no objections from the surrounding property owners or the public were received.

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SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant, on behalf of the owners, is trying to resolve building position issues created after the telecommunication towers, support buildings, and related site improvements were established and built within the subject property. The variance application's site plan map shows the towers and other site improvements positions, "AS BUILT". This site plan identifies building encroachments into the lot's minimum 20 feet side yards and attendant side yard open space requirements pursuant to the Hawaii County Zoning Code. The applicant, HELCO, and other users became aware of the encroachment issues during review and consideration of SPP 1126. No evidence has been found to show indifference or premeditation by HELCO-other vendees or the contractors/builders to ignore any County Code requirements or intentionally create or allow the building encroachment issues or problems to occur. It appears that antenna(s) and other related site improvements were constructed under building permit(s) and other construction permits issued by the County. It appears that building inspections of the premises by the agencies during construction of the site improvements did not disclose any building encroachment issues or building setback irregularities.

ALTERNATIVES

Alternatives available to the applicant or owner(s) to address and correct the existing building encroachments include the following actions:

1. Removing the existing towers and building encroachments or redesigning or relocating the tower and support buildings to fit within the correct building envelope prescribed by the Zoning Code.
2. Consolidation and resubdivision of the existing TMK property with adjoining TMK property to increase property size or modify property lines and adjust minimum yards to meet minimum yard requirements for the use and position of all tower and related building improvements.

INTENT AND PURPOSE

The intent and purpose of requiring building setbacks within a subdivision are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines.

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It appears that existing building encroachments into the affected side yard(s) and attendant side yard open space requirements are not physically and visually obtrusive from adjacent property(s) or the existing rights-of-way. It appears the building encroachments do not depreciate or detract from the character of the surrounding agricultural uses, public uses, and surrounding land patterns. Therefore, it is felt that these building encroachments within the affected side yard(s) will not detract from the character of the immediate neighborhood or the subdivision.

The subject variance application was acknowledged by letter dated June 19, 2002 and additional time to consider agency comments was necessary. The applicant agreed to extend the date on which the Planning Director shall render a decision on the subject variance to no later than September 6, 2002.

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.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

This variance request is approved subject to the following conditions:

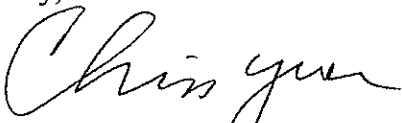
1. The applicant/owner(s), their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), their assigns or successors shall comply with SPP 1126 conditions.
3. The applicant/owner(s), successors or assigns shall indemnify and hold the 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.

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4. The tower-antenna and support buildings or portions of those existing building improvements located on the subject property will not meet Chapter 25, the Zoning Code's minimum yard and side yard open space requirements. The approval of this variance allows those towers-antennas, main and accessory support buildings, appurtenances, and other perimeter site improvements located on the subject TMK property and identified on the variance application's site plan map, dated "MAY 2002", to remain, "AS BUILT".
5. Confer with the DPW-Engineering Division (Kona) to discuss building permit requirements for existing and any new building improvements. New building construction within the subject TMK property shall be subject or conform to current State law and County ordinances and regulations pertaining to building construction and building occupancy.

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

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xc: SPP 1126
Real Property Tax Office - Kona
Planning Dept. - Kona