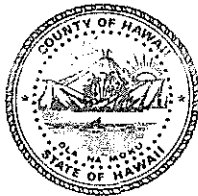


Harry Kim
Mayor



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

October 2, 2002

Mr. Rick Taniguchi
c/o CROWN CASTLE INTERNATIONAL
94-547 Uke'e Street, Suite 209
Waipio, HI 96814
197

Dear Mr. Taniguchi:

VARIANCE PERMIT NO. 1318 (VAR 02-051)

Applicant: RICK TANIGUCHI
Owner: CROWN CASTLE INTERNATIONAL
Request: Variance from Hawaii County Code,
Chapter 25, Zoning, Minimum Yards
Tax Map Key: 3-2-004:004, Portion (SPP 1168)

After reviewing your application and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No.1318 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 "August, 2002". The telecommunication use, antennas, support buildings, and related site improvements are permitted pursuant to Special Permit No. 1168 (SPP 1168). The subject variance application was submitted pursuant to SSP 1168 conditions. The variance request is to allow the 156 feet high tower-antenna to remain with a 18.5 feet front yard and 26.5 feet side yard in lieu of the minimum 30.2 feet yard or setback required for 156 feet high antenna from any property line and allow any main support buildings or accessory buildings to remain with a 7.5 feet side yard in lieu of the minimum 20 feet side yard and attendant minimum 14 side yard clear space requirements. The variance is from the Hawaii County Zoning Code, Chapter 25, Article 4, Division 4, Section 25-4-12, Telecommunications antennas, (b) (1), Article 5, Division 7, Section 25-5-76, Minimum yards, (a), and Division 4, Article 4, 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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c/o CROWN CASTLE INTERNATIONAL
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BACKGROUND AND FINDINGS

1. **Location.** The subject property (leased area), is located within Lot 13 which consists of 18.364 acres, is a portion of Grant 4713, Kahuku Homesteads, and situated at North Hilo, Hawaii.

The property is zoned Agricultural (A-20a) by the County and designated Agriculture "A" by the Land Use Commission (LUC). It appears that the applicant (Crown Castle International) leases a portion of Lot 13 with frontage along the Homestead Road right-of-way. The leased site-area is within Lot 13 and between common side boundary line(s) shared with Lot 14 and adjoining parcel-TMK: (3) 2-2-004:031.

2. **Variance Application-Site Plan.** The variance application, attachments, and filing fee were deemed complete on August 7, 2002. The applicant's site plan drawing identifies the towers and support building positions, "AS BUILT", on the area within subject TMK property (Lot 13). The variance application site plan map is dated "August, 2002".

Note: The telecommunication antennas and accessory buildings (use) on the subject TMK property are permitted pursuant to SPP 1168. 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 (VAR 02-051):**

- a. The State Department of Health (DOH) memorandum dated August 27, 2002, states:

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

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- b. The Department of Public Works (DPW) memorandum dated August 26, 2002, states in part:

"We have reviewed the subject application forwarded by your memo dated August 12, 2002 and have the following comments:

Approval of the application shall be conditioned as follows:

Building permit no. 020246 for the dwelling has no status of inspection.

The minimum setbacks shall be maintained as follows: residential structures-3 ft. side and 3 ft. rear; commercial structures-5 ft. side and 5 ft. rear."

Note: It appears that the applicant-owner (leased area) and variance request is not affiliated with the outstanding building permit (B P No. 020246) or connected with any other construction permits issued for any **dwelling** located elsewhere on subject TMK property (Lot 13).

However any antenna structures or support (accessory) buildings located within the lease area of the subject TMK property may be subject to DPW review or other agency requirements. Applicant-Owner or other users shall comply with the conditions of SPP 1168 and comply with any building requirements, pursuant to Chapter 25, Zoning or County of Hawaii Building Codes. All new building construction or additions to the existing antenna of support buildings shall conform to current code requirements.

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 August 5, 2002 and August 16, 2002 by the applicant (Crown Castle International).

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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.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant (Crown Castle International) 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 yards and attendant side yard open space requirements pursuant to the Hawaii County Zoning Code. The applicant (Crown Castle International) and other users became aware of the encroachment issues during review and consideration of SPP 1168. No evidence has been found to show indifference or premeditation by applicant or other users or the contractors/builders to ignore any County Code requirements or intentionally create or allow the building encroachment issues or problems to occur.

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.

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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.

It appears that existing building encroachments within the affected 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 yard(s) will not detract from the character of the immediate neighborhood or the subdivision.

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:

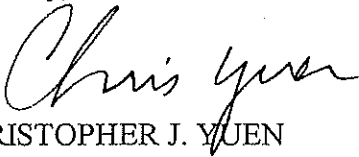
1. The applicant/owner(s), their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), their assigns or successors shall comply with SPP 1168 conditions.
3. The applicant/owner(s), successors or assigns shall indemnify and hold the 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 attendant 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 "August, 2002", to remain, "AS BUILT".
5. Confer with the DPW-Engineering Division 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 1168
Real Property Tax Office - Kona
Planning Dept. - Kona