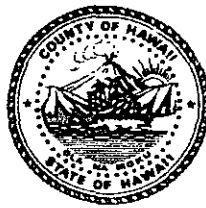


William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563

County of Hawai'i
PLANNING DEPARTMENT

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

July 11, 2013

Mr. Daniel Jandoc, Project Coordinator
State of Hawai'i – Dept. of Accounting and General Services
Management Branch, Division of Public Works
P. O. Box 119
Honolulu, HI 96810

Dear Mr. Jandoc:

SUBJECT: Application: Variance VAR-13-000139
Applicant: WILSON OKAMOTO CORPORATION
Owners: STATE OF HAWAII/UNIVERSITY OF HAWAII - HILO
Request: Variance from Chapter 25, Zoning, Article 5, Division 7,
Section 25-5-76, Minimum Yards, (a), Permitted Projections
into Yards and Open Space Requirements (Encroachment
into Southern Side Yard Setback)
TMK: 2-4-001:170 (Lot 3)

After reviewing your variance application, the Planning Director certifies the **approval** of VAR 13-000139, subject to conditions. The variance allows for the construction of a 1,092 square foot radio equipment building with a minimum 8 foot to a minimum 10.75 foot side (south) yard setback and associated side yard open space. This allowance is in lieu of the required minimum 20-foot side yard setback and 14-foot side yard open space requirement. The variance is from the subject property's minimum side (south) yard setback requirement pursuant to the Hawaii County Code, Chapter 25 (Zoning), Article 5, Division 7, Section 25-5-76 minimum yards and Article 4, Division 4, Section 25-4-44 (a), Permitted projections into yards and open space requirements.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 1.42 acres (61,855.2 s.f.) and is situated approximately 400 feet east of Komohana Street between Nowelo Street and Puainako Extension.
2. **County Zoning.** Agricultural – 1 Acre (A-1a)

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State of Hawai'i – Dept. of Accounting and General Services
Management Branch, Division of Public Works
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3. **State Land Use Designation.** Agricultural
4. **Setback Requirements.** 20-feet for sides
5. **Use Permit.** Use Permit 13-000038 (USE 13-000038) was issued on April 18, 2013 by the Windward Planning Commission to allow for the construction of a 75-foot tall, self-supported telecommunication tower with mounted antennas and related structures.
6. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on May 13, 2013. The variance application's site plan map was prepared by the owner/applicant. The variance site plan, dated May 1, 2012, denotes the placement of the proposed Radio Equipment Building protruding into the minimum 20-foot south side yard setback. Given the triangular shape of the property the 20-foot setback requirement could not have been met into the southeastern corner of the parcel.
7. **County Building Records.** None (Vacant Land)
8. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated May 28, 2013.
(See attached DOH memorandum)
 - b. Department of Public Works – Building Division e-mail dated June 18, 2013.
(See attached DPW e-mail)
9. **Public Notice.** The applicant filed a transmittal letter with copy of the notices sent to surrounding property owners via USPS. According to USPS certificate of mailing receipts and affixed postal receipts, the first and second notices were mailed on May 13, 2013 and May 25, 2013, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on May 31, 2013.
10. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written comments or objections from surrounding property owners of the general public were received.

GROUNDS FOR APPROVING VARIANCE

Special and Unusual Circumstances

- (a) *There are special or unusual circumstances applying to the subject real property which exist either to a degree which deprives the owner or applicant of substantial property*

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rights that would otherwise be available, or to a degree which obviously interferes with the best use or manner of development of the property.

The Variance application meets criterion (a) for the following reasons:

The applicant submitted the variance application to allow for the construction of a Radio Equipment Building with an 8-foot minimum to a 10.75-foot side yard setback and associated side yard open space, in lieu of the minimum 20-foot side yard setback and associated 14-foot side yard open space requirement.

The applicant has stated in his background report: "The 1.42-acre trapezoidal-shaped parcel was created when a single femur was discovered in a collapsed lava tube during archaeological surveys related to the US Department of Agriculture (USDA) Pacific Basin Agricultural Research Center".

The burial site (site 22080) is located toward center of the subject property. Given the location of the burial site, the shape (trapezoid) of the subject property and the preservation of a 100-foot clearance from the burial site restrict the placement of the Radio Equipment Facility in meeting with the requirement of a 20-foot side yard setback.

Given the shape of the property and the presence of a burial site, special and unusual circumstances exist on the subject property which would interfere with the development

Alternatives

(b) There are no other reasonable alternatives that would resolve the difficulty.

The Variance application meets criterion (b) for the following reasons:

Alternatives available to the current owners to correct and/or address the encroachment of the radio equipment building to be constructed into the affected side yard of the subject property include the following action:

A no-action alternative would deny Federal, State and local agencies to provide for the growing need of public safety agencies for communications services to properly service the community.

Although other sites could have been considered, the applicant has stated the subject site is most advantageous because it is owned by the State of Hawai'i, which negates the need to purchase land also; an existing access roadway and electrical power from Hawaii Electric Light Co. (HELCO) are available to the subject site.

Therefore, there are no reasonable alternatives to resolve the encroachment issue.

Intent and Purpose

(c) The variance is consistent with the general purpose of the district, the intent and purpose of this chapter, and the general plan, and will not be materially detrimental to the public welfare or cause substantial, adverse impact to an area's character or to adjoining properties.

The Variance application meets criterion (c) for the following reasons:

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

The subject property is bordered by a 30-acre and a 267.03-acre parcel which consists of various trees, shrubs and other natural vegetation. Therefore, the proposed improvements will not compromise the overall open space, air and light flow between the structures and property lines sought by the zoning setback requirements.

Based on the foregoing findings, the approval of this application for 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, the variance 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 application is approved subject to the following variance conditions:

1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated 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. No permit shall be granted to allow an ohana, a second single-family or farm dwelling upon the subject property, subject to provisions of the Hawai'i County Code, Chapter 25 (Zoning) or State Law, which may change from time to time.
4. The proposed radio equipment building to be constructed upon the subject property

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("LOT 3") will not meet the minimum rear yard requirement pursuant to Hawai'i County Code, Chapter 25, (Zoning Code), according to the variance application's survey map.

5. Future or new building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

Should any of the foregoing variance conditions not be complied with, the Planning Director may initiate proceedings to null and void Variance-13-000139.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone2\VAR13-000139\TMK2-4-001-170\StateofHawaii.doc.rtf

cc: John L. Sakaguchi, AICP, Senior Planner/Wilson Okamoto Corp.

xc: Real Property Tax Office (Hilo)
Gilbert Bailado, GIS (via email)

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NEIL ABERCROMBIE
GOVERNOR

CLAYTON K. KUMANO
COMMISSIONER

SEP 11 2013 10:09



LORETTA J. FUDDY, A.C.S.W., M.P.H.
Director of Health

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 916
HILO, HAWAII 96721-0916

MEMORANDUM

DATE: May 28, 2013

TO: Bobby Jean Leithead Todd
Planning Director, County of Hawaii

FROM: Newton Inouye
District Environmental Health Program Chief

SUBJECT: Application: Variance – VAR 13-000139
Applicant: WILSON OKAMOTO CORPORATION
Owner: STATE OF HAWAII –
UNIVERSITY OF HAWAII – HILO
Request: Variance from Chapter 25; Zoning, Section 25-5-76
Minimum Yards and Section 25-4-44(a), Permitted
Projections into yards and Open space Requirements
(Encroachment into the Southern Rear Setback)
Tax Map Key: 2-4-001:170, Lot 3

Underground Injection Systems (Ph. 586-4258) which receive wastewater or storm runoffs from the proposed development need to address the requirements of Chapter 23, Hawaii State Department of Health Administrative Rules, Title 11, "Underground Injection Control."

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

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State of Hawai'i – Dept. of Accounting and General Services
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2-4-001170

Nakayama, Larry

From: Wilson, Kelly
Sent: Tuesday, June 18, 2013 9:07 AM
To: Nakayama, Larry
Subject: Variance - VAR 13-000139
Aloha Larry,

PLANNING DEPARTMENT

2013 JUN 18 AM 9:12

First off I apologize for this being a few days late, but was informed to use a reply form that come to find out we no longer use. Re-guarding VAR 13-000139. I see no problem from the Building Division stand point.

Aloha,
Kelly Wilson Non Residential Plan Examiner

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