

APPLICATION REVIEW COMMITTEE REGULAR MEETING MINUTES
DLM Conference Room, 3rd Floor, ITC Bldg., Tamuning, GU 96913
Thursday, February 2, 2023 • 9:30 a.m. to 10:06 a.m.

I. Attendance/Roll Call

Chairperson Cruz called to order, the regular meeting of the Application Review Committee for Thursday, February 2, 2023 at 9:30 a.m.

Present were: Chairperson Celine Cruz (DLM), Christian Benitez (BSP), Nonie Amar (GEPA), Brian Hess (GWA), Mary Rose Wilson (DPW), Russell Kanai (DPR), Sonny Gogue (DLM).

[Excused: Tony Palomo, GPA, and Jeffrey Quitugua, DoAG]

Noting a quorum, Chairperson Cruz moved on to the next item on the agenda.

II. Approval of Minutes

Chairperson Cruz before the members today is the approval of the Minutes from the last ARC meeting of Thursday, January 19, 2023. Members were emailed a copy for review, and Chairperson Cruz asked for a motion.

Christian Benitez, BSP made a motion to approve the Minutes of January 19, 2023.

Chairperson Cruz accepts the motion made by Mr. Benitez and asked for a second to the motion.

Russell Kanai, DPR seconds the motion.

Chairperson Cruz motion is seconded by Mr. Kanai. Noting no discussion, errors or omissions, the motion was put to a vote with all in favor of approving the Minutes.

[Motion passed unanimously; 6 ayes, 0 nays]

III. New Business

Zone Variance

- A. Application No. 2022-59, the Applicant, Maximino C. Mercado, Principal for Techni-Con represented by Harry D. Gutierrez and Carlos R. Untalan; is requesting approval of a previously approved Zone Variance for Use, to allow for the continued operation of a contractor's yard with an office, vehicle, and equipment parking, and materials yard, on Lot 5-R1 and Lot 6-3, Tract 148, in the Municipality of Mangilao, in an "A" (Rural) zone.
Case Planner: Sonny Gogue

Chairperson Cruz turned the floor over to the applicant's representatives to briefly present the application.

Harry Gutierrez explains that the application should have been renewed in 2018, but was not done due to the Covid pandemic. Mr. Gutierrez added that he was unable to meet with the applicant because Mr. Mercado was busy with his current contracts for the military buildup. The

application was submitted and approved in the past; and, the difference with the new application is that the parcel to the left of the subject lot is not part of the current request. Mr. Mercado purchased the lot to the right which is an empty lot and has been included as part of the current application that is before the members today. All activities on the property remain the same and no changes have occurred.

Carlos Untalan presented to the Committee that the original approval of this particular was for Lot 5-1 and Lot 5-R1. Lot 6-3 located to the right abuts Lot 5-R1; and has been included as part of this application, and will be the subject lots for the use variance.

- The initial approval back in 2013 was for Lots 5-1 and 5-R1; however, activities only occurred on Lot 5-R1 and not on Lot 5-1.
- The approval was for a period of four years and should have been renewed in 2018. Mr. Untalan explained that if the use variance request is not approved, the applicant's business license will not be renewed which will create a major impact on his military contracts.
- The applicant's contracts are not solely for the military but for local projects as well. In addition to this, Mr. Mercado conducts community service for the municipality of Mangilao and works with the mayor to maintain school bus stops and disposal of junk cars.
- Techni-Con's current projects with the military range from \$450K to \$2.8 million.
- The original approval was for four years and since the time of approval, there have been no complaints from the surrounding neighbors since the beginning of its operation.
- The use is supported by the Mayor's Office.
- Public utilities occur only on Lot 5-R1 for water and power for a single restroom and the usual electrical requirements for a single-family residence.
- The single-family residence is also used for the company's office.
- There is only a minimum of two to four employees on site.
- Fabrication such as metal cutting is done onsite but is not conducted throughout the day.
- There will be power or water usage occurring on Lot 6-3.
- Mr. Untalan explains that the main factor that led to the variance not being renewed was due to the Covid-19 pandemic which lasted over two years causing government operations to be shut down. He further explains that after looking at the time conditions imposed, unless the applicant is a planner, there is confusion as to when, what, and where the applicant would need to go to submit an application.
- The operation did not begin immediately after the approval since the Notice of Action was not issued until five months after the approval and this is another factor that affected the renewal process.
- The letter received from the mayor who supported the project was not submitted in form of a resolution which is another factor, and Mr. Mercado assumed that the letter would suffice.

Lastly, Mr. Untalan suggested to the applicant that he circulates a petition to his surrounding neighbors seeking their support of the project. Mr. Mercado obtained two signatures from his abutting neighbors who were in support.

Harry Gutierrez added that he was assisting the applicant in purchasing an M-1 zone property along Route 15. The applicant intends to relocate his current operation and use the residence only as a family dwelling for his two daughters who are currently living there. Mr. Gutierrez explained that they were in the process of closing the negotiation on a property located directly across Hawaiian Rock; but, fell through since the owner passed away and the lot went into

probate. He is currently negotiating with another property owner for a parcel that is located along Route 15, and he is hopeful that within a year the applicant will be able to relocate to a new location.

Chairperson Cruz turned the floor over to the members for questions or comments for the applicant's representative.

Brian Hess, GWA stated that GWA is in support of the request for a zone variance. Mr. Hess commented that a septic tank/leaching field system was currently being used.

Harry Gutierrez responds "that's correct."

Brian Hess, GWA Mr. Hess further commented that since there are non-residential activities at the project site and using a residential space as an office, a backflow preventer for the water supply is needed to comply with GWA's requirements for non-residential activities.

Christian Benitez, BSP comments that he had no questions or comments at this time. BSP will review the application as it applies to the policies of Guam Coastal Management and will provide their comments in their position statement.

Russell Kanai, DPR stated that DPR had no objection to the request.

Nonie Amar, GEPA after reviewing the application and the narratives, Mr. Amar comments that it appears that the applicant did not follow the conditions noted on the first NOA that was approved on May 25, 2014.

Carlos Untalan responded that as previously mentioned in his presentation, Mr. Mercado was not knowledgeable in the terms of the conditions noted on the NOA. After speaking with his client, Mr. Untalan explained that Mr. Mercado was not well-versed in understanding the conditions imposed which can be confusing. He further added that as consultants, they are able to understand and decipher the conditions, and it can be "burdensome" to try and comply with them. The submittal of the renewal request was not done on purpose and was merely overlooked. Furthermore, Mr. Untalan explains that they are only obligated to their clients to the product delivery which is the Notice of Action and to explain conditions imposed by the GLUC. And thereafter, they are no longer part of the process unless they are retained by their client.

Nonie Amar, GEPA commented that one of the conditions noted on the NOA was to submit a status report and none was submitted.

Carlos Untalan agreed with Mr. Amar and does not believe that the applicant did it on purpose but simply overlooked it, and further explained that in 2014 when the NOA was issued and four years later, the COVID pandemic was coming in and everything shut down for almost two years (sic).

Nonie Amar, GEPA remarked that the pandemic was in 2020, March. Mr. Amar added that the reason provided was that "they were busy" with construction, and should the GLUC approve the renewal, asked what is the assurance that the conditions would be followed this time.

Carlos Untalan replied that he cannot respond for his client, but as a consultant, he will sit with the applicant and emphasize that the conditions must be met or retain his service to assist with the process.

Mary Rose Wilson, DPW the characteristics and activities noted in the application are light industrial type activities and asked why not request a zone change for light industrial.

Carlos Untalan replied that the applicant does not want to change the characteristics of the neighborhood. And further added that he believes that a zone variance is the best choice since conditions can be imposed versus a zone change.

Mary Rose Wilson, DPW asked if Techni-Con is a contractor.

Carlos Untalan responded yes.

Mary Rose Wilson, DPW in the future, will there be workers at this site. (Mr. Untalan responds "no.") Ms. Wilson added that should they have workers at the site, a new application will have to be submitted.

Harry Gutierrez responded that he was aware of that. And explained that he has been working with Mr. Mercado in looking for property along Route 15 that is zoned M-1 so that he can relocate his operations from his current location.

Mary Rose Wilson, DPW all other comments will be noted in the position statement.

Brian Hess, GWA asked if there will be continued use of the dwelling as residential and use on the property.

Carlos Untalan responded yes, and originally this was the applicant's house where they lived and used a portion of the house for office space. But for the most part, it is used as a single-family dwelling house where his daughter is currently residing.

Brian Hess, GWA stated that after discussion with GWA's Acting General Manager who stated that mixed-use activities in a residential and commercial development must have separate individual water meters due to the difference in utility rates with the activities on the property, and suggested that it would be better if the applicant uses one meter for commercial use. Mr. Hess further added that they have received numerous applications with mixed uses and it is becoming necessary to keep the activities separate in commercial and residential development.

[Discussion ensues]

Chairperson Cruz stated that a condition can be imposed that if the application is approved that they designate a space within the residential unit, and any activities within that space is metered commercial. When space is designated and occupancy is changed the facility will have to provide a restroom, a room, parking space, etc., and what is being asked for is a variance for use and what needs to be addressed is all the permitting requirements for that particular use. If it cannot be separated at this point it should be the more restrictive which is the commercial use.

Harry Gutierrez remarked that commercial usage is very minimal. Mr. Gutierrez does not believe they utilize more than 1,000 gallons of water a month. There is no vehicle maintenance done at this site and the use of power is also minimal.

Carlos Untalan added that if any oil changes are done it is done by Unitek, and conducted on-site.

[Discussion ensues]

Chairperson Cruz comments from the Case Planner.

Sonny Gogue, Case Planner stated that she had no questions or comments at this time.

Chairperson Cruz the comments perceived by the members was that they had no objections to the use. Chairperson Cruz stated that she is concerned that there was a previous zone variance for use and the conditions imposed were not complied with, and to say that the applicant did not understand the conditions and therefore a renewal was not submitted is not a good enough justification.

She further added that should the zone variance be approved a second time with conditions imposed, and the conditions are not understood again, there is no saying that applicant will not comply again and this is her concern. Conditions that are imposed on applications are getting more sophisticated and it has been realized that these conditions need to be enforceable, and will have to be more complex in terms of conditions that come through for variances and conditional uses. Chairperson Cruz reiterated that she is very concerned that that could be another excuse for the applicant not to comply with the conditions. Additionally, as consultants, you provide and explain the Notice of Action and conditions to their clients. At this point, consultants should be aware that the NOA will expire after a certain period and this would be a business opportunity to reach out to the applicant to offer assistance for the renewal process.

In closing, Chairperson Cruz stated that she is hesitant in recommending approval of the application. Although there are no objections to the use, assurance is needed that this will not be repeated and the conditions imposed will be adhered to by the applicant.

Noting no further discussion, Chairperson Cruz moved on to the next item on the agenda –

IV. Approval of ARC Agenda

Chairperson Cruz the next ARC meeting is scheduled for February 16th; there are is no agenda items and therefore there will be no meeting. The agenda for the next GLUC meeting on February 23, 2023 is tentative at this time.

Next item –

V. Administrative and Miscellaneous Matters

Chairperson Cruz noting none, the next item on the agenda is adjournment. Madam Chair was ready to entertain a motion to adjourn today's meeting.

Chairperson Cruz accepts the motion to adjourn made by Nonie Amar, GEPA, and seconded by Mary Rose Wilson, DPW. The motion was put to a vote with all in favor of adjournment. **(6 ayes, 0 nays)**

The regular meeting of the Application Review Committee for Thursday, February 2, 2023 adjourned at 10:06 a.m.

Approved by:



Celine L. Cruz, Chairperson
Application Review Committee

Date approved: 3/16/23

Transcribed by:



M. Cristina Gutierrez, Recording Secretary
Planning Division, DLM

APPLICATION REVIEW COMMITTEE

Committee Attendance Sheet

Department of Land Management Conference Room
590 S. Marine Corps Drive, 3rd Floor, ITC Building, Tamuning

MEETING: ☒ Regular Thursday, February 2, 2023 ☐ Special _____

Time: 9:30 am Adjournment: 10:00 am

MEMBER	STATUS	SIGN IN (Please Print)
1 DLM, Guam Chief Planner	(Chairperson)	
2 DPW/Vertical	(Member)	
DPW/Horizontal	(Member)	
3 Guam EPA	(Member)	
Guam EPA	(Member)	
4 Bureau of Statistics & Plans	(Member)	
Bureau of Statistics & Plans	(Member)	
5 Department of Agriculture	(Member)	
6 Guam Waterworks Authority	(Member)	
Guam Waterworks Authority	(Member)	
7 Guam Power Authority	(Member)	
8 Department of Parks & Recreation-HPO	(Member)	
9 Joint Regional Marianas	(Ex-Officio member)	
10 Department of Chamorro Affairs	(Ex-Officio Member)	
11 Guam Fire Department	(Ex-Officio Member)	
12 Department of Public Health & Social Services	(Ex-Officio Member)	
13 Guam Public School System	(Ex-Officio Member)	
14 Guam Economic Development Authority	(Ex-Officio Member)	

DLM Staff

Joseph M. Borja, Director _____
Celine Cruz, Chief Planner _____
Frank Taitano, Planner IV _____
Penner Gulac, Planner IV _____
M. Grace Vergara, Planner III _____
Sonega Gogue, Planner II _____
Edward Sanchez, Planner I _____
M. Cristina Gutierrez, WPS II _____
Sabina Waguk, CSR _____

Public/Speaker - Sign-In Sheet

MEETING:

Regular

11

9:30 AM

10:06 AM

GLUC Form 14 - ARC Public/Speaker Sign-In Sheet - April 2010



Application Review Committee

Guam Land Use Commission/Guam Seashore Protection Commission
Department of Land Management

AGENDA

Thursday, February 2, 2023 @ 9:30 a.m.

Department of Land Management Conference Room
590 S. Marine Corps Drive, 3rd Floor, ITC Building, Tamuning

TIMELINE FOR APPLICATION ON THIS AGENDA

Day #1 – February 2, 2023

Day #30 – March 2, 2023

I. Attendance

Roll Call

[] Quorum

[] No Quorum

II. Approval of Minutes

- ARC Regular Meeting Minutes for Thursday, January 19, 2023

III. New Business

Zone Variance

- A. Application No. 2022-59, the Applicant, Maximino C. Mercado, Principal for Techni-Con represented by Carlos R. Untalan and Harry D. Gutierrez; is requesting approval of a previously approved Zone Variance for Use, to allow for the continued operation of a contractor's yard with an office, vehicle and equipment parking, and materials storage yard, on Lot 5-R1 and Lot 6-3, Tract 148, in the Municipality of Mangilao, in an "A" (Rural) zone.
Case Planner: Sonny Gogue

IV. Approval of ARC Agenda

- A. ARC Regular Meeting, Thursday, February 16, 2023 [No Agenda]
B. GLUC Regular Hearing, Thursday, February 23, 2023 [Tentative]

V. Administrative & Miscellaneous Matters

VI. Adjournment



Application Review Committee

Guam Land Use Commission/Guam Seashore Protection Commission
Department of Land Management

AGENDA – No Agenda

Thursday, February 16, 2023 @ 9:30 a.m.

Department of Land Management Conference Room
590 S. Marine Corps Drive, 3rd Floor, ITC Building, Tamuning

TIMELINE FOR APPLICATION ON THIS AGENDA

Day #1 – February 16, 2023

Day #30 – March 16, 2023

I. Attendance

Roll Call

[] Quorum

[] No Quorum

II. Approval of Minutes

- ARC Regular Meeting Minutes for Thursday, February 2, 2023

III. New Business [None]

IV. Approval of ARC Agenda

- A. ARC Regular Meeting, Thursday, March 2, 2023 [Tentative]
- B. GLUC Regular Hearing, Thursday, March 9, 2023 [Tentative]

V. Administrative & Miscellaneous Matters

VI. Adjournment



GUAM LAND USE COMMISSION

Chairperson Anita B. Enriquez
Vice Chairperson Arthur D. Chan, Jr.

Commissioner Leilani R. Flores
Commissioner Nonito V. Blas, Jr.

Joseph M. Borja, Executive Secretary
Legal Counsel (OAG)

AGENDA

Thursday, February 9, 2023 @1:30 p.m.
Department of Land Management Conference Room
3rd Floor ITC Bldg., Tamuning, GU 96913

[As advertised in the Guam Daily Post on February 2nd and February 7th, 2023]
Livestreamed on YouTube at Guam Department of Land Management Channel

I. **Notation of Attendance/Roll Call** [] Quorum [] No Quorum

II. **Approval of Minutes**

- GLUC Regular Meeting Minutes of Tuesday, December 13, 2022

III. **Old or Unfinished Business [None]**

IV. **New Business**

Zone Change - PUD Amendment

- A. Application No. 2020-38, the Applicant, Grand Harvest, Inc., represented by FC Benavente, Planners; is requesting an amendment of its PUD Master Plan from "PUD-C" to "PUD-R2" zone, for the construction of a 2-story, 12-unit, multi-family building, on a portion of Lot 5050-1-2-3, in the Municipality of Tamuning. Case Planner: Frank Taitano

V. **Administrative & Miscellaneous Matters**

VI. **Adjournment**