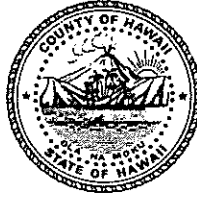


Stephen K. Yamashiro  
Mayor



Virginia Goldstein  
Director

Russell Kokubun  
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**  
**P 417 370 002**

March 2, 1998

Mr. David Kaapu  
75-167E Hualalai Road, Ste. 2  
Kailua-Kona, Hawaii 96745

Dear Mr. Kaapu:

Variance Application WH(VAR 98-02)  
Variance No. 904  
Applicant: DAVID KAAPU  
Owners: ANDY AND BESSIE MATSUYAMA  
Request: Variance from Minimum Front Yard, Side Yard and Open Space  
Requirements  
Tax Map Key: 8-2-015: 017

After reviewing your application and the additional information submitted, the Planning Director certifies the approval of your variance request to allow an existing non conforming commercial building with a 1.8 feet front yard in lieu of the minimum 15 feet front yard, a 0.0 feet front yard open space in lieu of the minimum 5 feet open space; a 5.0 feet side yard in lieu of the minimum 10 feet side yard; a 3.0 feet side yard open space in lieu of the minimum 5 feet open space, as required by Chapter 25, Article 5, Division 10, Section 25-5-106(1)(2) and Chapter 25, Article 4, Division 4, Section 25-4-44(a).

The subject property is located at Lot 1-B, being a portion of L.C. Aw. 8452:9 to A. Keohokalole, at Kealakekua, South Kona, Hawaii, Tax Map Key: 8-2-015: 017.

#### SPECIAL AND UNUSUAL CIRCUMSTANCES

1. The subject property consists of .528 acres of land area.
2. The subject commercial building was issued the following building permits:

02350

MAR 16 1998

Mr. David Kaapu  
Page 2  
March 2, 1998

- a. Building Permit No. 13182 issued on January 6, 1953 for the construction of a quonset hut.
- b. Building Permit No. 22761 opened on March 14, 1960 and closed on October 4, 1960 for the reconstruction of a quonset hut into a repair shop and office.
- c. Building Permit No. 52123 opened on July 21, 1972 and closed on November 1, 1972 for the addition of a utility room.
- d. Building Permit No. 53116 opened on July 20, 1972 and closed on November 1, 1972 for the addition of a bath and bedroom.
- e. Building Permit No. 005120 opened on September 24, 1981 and closed on November 17, 1981 for the addition to the main building.
- f. Building Permit No. 005840 opened on April 15, 1983 and closed on April 19, 1983 for the repair of liquor store.
- g. Building Permit No. 885715 opened on August 1, 1988 and closed on November 3, 1988 for the repair to bakery.
- h. Building Permit No. 885958 opened on October 13, 1988 and closed on November 3, 1988 for the addition of a hood fan with gas suppressant system.
- i. Building Permit No. 896679 opened on November 27, 1989 and closed on December 15, 1989 for the construction of a handicap ramp.
- j. Building Permit No. 915656 opened on May 31, 1991 and remains open for the addition of a hood.
- k. Building Permit No. 926557 opened on December 21, 1992 and remains open for replacement of roof.
- l. Building Permit No. 945350 opened on May 16, 1994 and remains open for the extension of a gas burner, gas flue through roof.
- m. Building Permit No. 945959 opened on December 8, 1994 and remains open for the installation of a door.

Mr. David Kaapu  
Page 3  
March 2, 1998

3. A survey map prepared by John D. Weeks, Inc., on November 3, 1997 and updated on December 5, 1997, shows the existing non conforming commercial building with a 1.8 feet front yard in lieu of the minimum 15 feet front yard. As such the building encroaches 13 feet 2-3/8 inches into the required 15 feet front yard.
4. The survey map shows the existing non conforming commercial building with a 0.0 feet front yard open space in lieu of the minimum 5 feet open space. As such the building encroaches 5 feet into the required 5 feet open space.
5. The survey map shows the existing non conforming commercial building with a 5.0 feet side yard in lieu of the minimum 10 feet side yard. As such the building encroaches 5 feet into the required 10 feet side yard.
6. The survey map shows the existing non conforming commercial building with a 3.0 feet side yard open space in lieu of the minimum 5 feet open space. As such the building encroaches 2 feet into the required 5 feet open space.
7. When the building permit was approved, the owners received all of the necessary Department of Public Works, Building Division approvals for the building.
8. When approved by the Planning Department, the plans would have had to have shown that all minimum required setbacks were going to be adhered to for the proposed building in 1953.
9. There appears to have been a construction staking error in the siting of the structure on the property. This occurred in 1953 when the building was constructed. There also appears to have been a very minor siting error made at the time of construction with the encroachment. No other evidence has been found to show otherwise.
10. It has been over 45 years since the construction of the existing building was approved by the County, and the applicants are trying to resolve a situation which they had no control over and have honestly conducted a certified survey to ensure the disclosure of all facts concerning the building.
11. The variance application was filed with the Planning Department on January 2, 1998.

Therefore, considering the foregoing facts, the Planning Director has determined that there are special or unusual circumstances applying to the subject property which exist either to a degree which deprives the owners or applicant of substantial property rights that would otherwise be

Mr. David Kaapu  
Page 4  
March 2, 1998

available or to a degree which obviously interferes with the best use or manner of development of the subject property.

### ALTERNATIVES

1. The owners on their own volition are honestly trying to resolve this long standing problem which was not created by them. The investigation of this particular matter has not revealed any deliberate or intentional grounds in allowing the encroachments to occur.
2. Any architectural alterations or design changes to the building to conform with the minimum setbacks would create undue and excessive hardships for the applicants when other more reasonable options are available.

Based on the above cited considerations, there are no reasonable solutions available without excessive demands being placed on the owners when a more reasonable alternative is available by the granting of this variance application.

### INTENT AND PURPOSE

The intent and purpose of requiring buildings setbacks within a subdivision is to assure that adequate air and light circulation is available between structures and property lines. The existing building on the subject property is presently 13 feet 2-3/8 inches into the required 15 feet front yard, 5 feet into the required 5 feet front yard open space, 5 feet into the required 10 feet side yard and 2 feet into the required 5 feet side yard open space. These encroachments front Mamalahoa Highway and an on street parking lot. Thus, the encroachments into the front yard, side yard and open space will not diminish the ability for adequate light and air to circulate and will still provide adequate open space. Therefore, while the Zoning Code requires a minimum 15 feet front yard, 5 feet front yard open space, 5 feet side yard and 2 feet side yard open space in this particular case, the encroachment will not visually or physically impact or be adverse to any adjacent properties or development with the granting of this variance. The rest of the existing building complies with the minimum yard requirements of the Zoning Code.

There were no objections from any of the participating government agencies or any surrounding property owners.

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, this variance will not be materially

Mr. David Kaapu  
Page 5  
March 2, 1998

detrimental to the public's welfare and will not cause substantial adverse impact to the area's character and to adjoining properties.

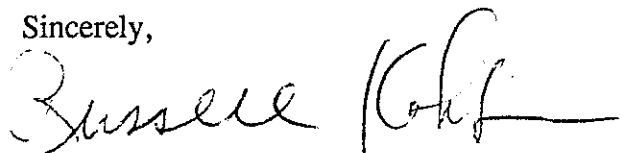
This variance request is approved, subject to the following conditions:

1. The owners, assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The approval of this variance shall be included in the conveyance document for the subject property and a copy of the recorded conveyance document shall be submitted to the Planning Department within a year from the effective date of approval of this variance.
3. If applicable, approval from the Board of Appeals for all Building Code Violations will be obtained.
4. Any encroachments within the County right-of-way shall be removed.
5. All other applicable State and County rules and regulations shall be complied with.

Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Should you have any questions, please feel free to contact Royden Yamasato of this department at 327-3510.

Sincerely,



VIRGINIA GOLDSTEIN  
Planning Director

EMM: rld  
a:\82015017\matsuyama.app

xc: West Hawaii Office