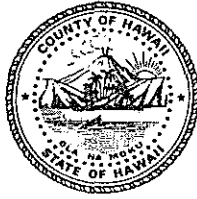


Harry Kim  
Mayor



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

February 14, 2002

Mr. Sidney M. Fuke  
SIDNEY FUKU PLANNING CONSULTANT  
100 Pauahi Street  
Hilo, HI 96720

Dear Mr. Fuke:

**VARIANCE PERMIT NO. 1254 (VAR 01-078)**

**Applicant:** SIDNEY FUKU, PLANNING CONSULTANT  
**Owner:** DON MATSUURA, M.D./LIMITED PARTNER  
**Request:** Variance from Minimum Yards,  
and Open Space Requirements  
Pursuant to Chapter 25, the Zoning Code

**Tax Map Key: 2-2-023:010, Lot 4**

After reviewing your application, site plan, and the information submitted, the Planning Director certifies the approval of your variance request subject to conditions. Variance Permit No. 1254 recognizes the existing building's position and allows a proposed 550 square feet +/- expansion to an existing doctor's (Dr. Matsuura) office on a corner lot. Portions of the existing building and planned addition are within one of Lot 4's two front yards along an old 30 feet wide railroad right-of-way lot. The existing building's uses and position was allowed pursuant to Use Permit No. 35 (USE 35). The variance requested will recognize portions of the existing building, "As Built", to remain within the affected front yard and allow portions of the proposed office addition to be located within the minimum 10 feet front yard and corresponding 5 feet open space requirements in lieu of the minimum 20 feet front yard and attendant 14 feet front yard open space requirements, pursuant to the Zoning Code, Chapter 25, Article 5, Division 1, Section 25-5-7, Minimum yards, (a) (2) (A), and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open spaces.

*ML*  
014764

FEB 15 2002

## **BACKGROUND AND FINDINGS**

1. **Property Description and Location.** The subject property, being Lot 4 and containing 39,484 square feet, is Grant 9109 and situated at Waiakea, Waiakea Houselots 2<sup>nd</sup>. Series, South Hilo, Hawaii.

The property is zoned Single-Family Residential (RS-10) by the County and designated Urban "U" by the Land Use Commission (LUC). The existing medical office building and other site improvements were permitted under Use Permit No. 35 (USE 35) subject to conditions in 1985. Final Plan Approval (FPA) to allow the existing office building's position and related site improvements was granted on June 23, 1986 subject to conditions.

2. **Variance Application/Applicant's Explanation-Request.** The applicant, on behalf of the owners, submitted the variance application, site plan, supplemental information, tax clearance, and \$250.00 filing fee.
3. **Variance Application-Site Plan.** The applicant's site plan or map was prepared by Peter Vincent & Associates, LLC. The site plan, dated September 27, 2001, identifies the "AS BUILT" location of the existing office building, and location of the proposed 550 square feet +/- addition to the doctor's office. The site plan denotes a building or dashed line identifying building limits within the property that were defined or imposed in the 1986 FPA.

There appears to be a conflict between the existing building's minimum yards or the building's position allowed pursuant to the FPA dated June 23, 1986 and interpretations of the minimum yards and minimum building setbacks for the proposed office addition according to Zoning Code definitions. The subject property is a "corner lot" with frontage along Kinoole Street and an old 30' wide railroad right-of-way (R/W). The 1986 FPA did not consider the subject lot as a "corner lot." As a corner lot, the yard along the railroad R/W is hereby redesignated a front yard in lieu of the "side yard" determination under the 1986 FPA. Furthermore, as a result of being a corner lot, the corresponding "yard" between the existing building and the adjoining "mauka" property line shared with the adjoining property (TMK: 2-4-056:019) will become a minimum 10 feet "side yard" line in lieu of the minimum 20 feet "rear" yard determination imposed by the 1986 FPA.

The site plan does not denote location or identify any existing cesspool(s) or Individual Wastewater System(s) (IWS) on the property. However, the planned building improvements will not significantly change the clinic's existing sewage requirements or displace sewage lines located elsewhere within the property.

4. **Building Permit Records.** The copy of the original or approved detailed building construction plans to construct the original medical office was not submitted with the variance application. Building permit requirements to allow the existing building position and the planned office addition will address and meet Department of Public Works (DPW)-Building Division minimum setback requirements for fire control purposes.

5. **Agency Comments and Requirements.**

- a. The Real Property Tax Office memorandum dated December 14, 2001 states in part the following:

“Comments from the Appraisal Section:  
There are no comments at this time”

“Comments from the collection section:  
Current”

Remarks: Real Property taxes are paid through 12/31/01.”

- b. The State Department of Health (DOH) memorandum dated December 13, states in part:

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

- c. The Department of Public Works (DPW) memorandum dated December 17, 2001 states in part:

"We have reviewed the subject application forwarded by your memo dated December 4, 2001 and oppose the approval of the application for the reasons noted below.

Building permit 861248 and electrical permits EH68200, EH68473, & EH69127 for the subject building were never finalized. Please refer questions regarding the permits to the Building Division at phone number 961-8331.”

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- d. The State of Hawaii (DBEDT) dated December 18, 2001 states in part:

“We have reviewed the subject variance application and offer the following comments:

Kamana Street is the only entrance to HCDCH’s 50-unit Hale Olaloa elderly housing project. While we do not believe the proposed office expansion would adversely affect the elderly project, we are concerned with the vehicular and pedestrian safety of our residents resulting from increased traffic that may result from the expansion.”

6. **Notice to Surrounding Property Owners.** The applicant submitted proof of mailing a first and second notice to surrounding property owners. Transmittal letters and a copy of the notice(s) were received on December 3, 2001 and December 12, 2001, respectively.
7. **Comments from Surrounding Property Owners or Public.** No further written agency comments or objections from surrounding property owner(s) to the variance application were received.

#### **SPECIAL AND UNUSUAL CIRCUMSTANCES**

The circumstances to allow the existing medical office building and the required yards or building setback lines for the existing office position constructed in the late 1980s were reconsidered after the variance application was submitted to allow the proposed office addition to the medical clinic building constructed during the 1980s. It appears that the minimum building yards stipulated in the 1980s were incorrectly interpreted or assigned to the property under Plan Approval of the Zoning Code. As reinterpreted, the existing building now requires a variance since the building was sited based on side yard rather than front yard requirements. A small portion of the proposed building expansion that follows the wall of the existing building in the front yard correspondingly requires a variance. No variance is necessary for the reinterpreted side yard along the mauka boundary. Adequate buffers exist along the boundaries of both reinterpreted yards. The railroad R/W will likely remain in open space, which obviates the need for a full front yard setback. Along the mauka boundary, a drainage swale and trees buffer the proposed building expansion from the neighboring structures.

Therefore, considering the variance background information provided by the applicant and other circumstances, it is felt there are special or unusual circumstances applying to the subject property which exist either to a degree which deprive the current owners of substantial property rights that would otherwise be available, or to a degree which obviously interferes with the best use or manner of development of the subject property.

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### ALTERNATIVES

There are no reasonable alternatives in resolving the difficulty of the applicant or current owners. Alternatives available to the applicant or owners to address and correct the existing building encroachments include the following actions:

1. Require the proposed addition to comply with the minimum yard requirements.
2. Redesign and relocate the existing medical clinic and other improvements to fit within the correct building envelope prescribed by the Zoning Code and/or other design and remedial building alternatives.
3. Consolidate Lot 4 with adjoining lots and resubdivide the resultant lot to modify the property geometry and comply with the minimum yard and open space requirements of the Zoning Code.

To require compliance with the lot's minimum yards or impose removal of the existing "AS BUILT" office building and other site improvements constructed within a front yard along an abandoned railroad right-of-way would seem unreasonably harsh and uneconomical at this time. To impose removal or redesign of an existing office building constructed in the 1980s and limit reasonable building expansion would disrupt or limit the permitted building uses.

The option to acquire and consolidate a portion Lot 4 with adjoining lots and resubdivide pursuant to Chapter 23, Subdivisions, was not considered by the applicant/owners.

The applicant, on behalf of current owner(s)-Dr. Matsuura, Et al., is addressing the status of past county and agency approvals to allow the existing medical office building to be established on the subject property and need of an owner (Dr. Matsuura) to expand his existing office space. No evidence has been found to show indifference or premeditation by the owner(s) or applicant to deliberately create or intentionally allow the original building encroachment problems to occur.

The Planning Department acknowledges there may be other design or building alternatives available to the applicant and owners beyond those cited above. However, these design and building alternatives are deemed to be unreasonable at this time and would place excessive demands on the applicant or the owner(s) when a more reasonable alternative is available by the granting of the subject variance request to allow the existing building position and proposed office expansion.

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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) and boundary/property lines. It appears that the existing or office encroachments were constructed under a building permit issued by the DPW-Building Division in 1980s. It appears that the building inspections of the premises by the agency(s) or building permit to construct the existing medical building did not disclose any building encroachments or setback issues. It appears that the applicant or current owners were not aware of the building position problems or extent of the encroachment issues until the proposed building addition was contemplated by one of the owner(s) and the applicant. The applicant and the owner(s) are addressing past building position issues and need to expand an existing medical doctor's office to meet current patient demand and other office requirements.

It appears that original and proposed building improvements into the affected front yard will not be physically and visually obtrusive from adjacent property(s) or Kinoole Street. It appears that the original building improvements and uses established on the property since the 1980s have not depreciated or changed the character of the surrounding neighborhood and surrounding land patterns. Inspection of the property during the life of the building permit issued by the County in late 1980s or other agencies did not discover any building encroachment problem(s) or reveal and disclose any irregular building or unusual building setback problems or issues. Therefore, it is felt that the office encroachment into that front yard and proposed expansion to Dr. Matsuura's office will not detract from the requirements and conditions of Use Permit (USE 35) and be consistent with the property's reclassification and other proposed changes to the County's General Plan/LUPAG map being considered at this time which would allow commercial zoning of the property.

The proposed building addition will blend with the existing building design and building geometry. The added office area will not require extensive grading or change existing "swale" and drainage patterns. The off-street parking requirements for the existing clinic will not be changed and existing landscaping materials planted in the vicinity of the proposed addition and along nearby boundary lines will not be displaced or lost.

The variance request and application was acknowledged by letter dated December 4, 2001. Additional time to allow the Planning Director to understand the variance request was necessary. The applicant, on behalf of his client and the owner(s), agreed to an extension of time to February 15, 2002 to render a decision on the subject variance request.

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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 or owner(s), 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. Portions of an existing office building encroach into Lot 4's front yard along the existing railroad right-of-way lot. This variance allows existing and proposed building improvements to remain on the subject property with a minimum 10 feet wide front yard and attendant 5 feet open front yard space requirements to be taken from Lot 4's front boundary line along the railroad right-of-way lot. The approval of this variance allows the existing building encroachments within the affected front yard to remain, "As Built" and allows the proposed addition to Dr. Matsuura's office in accordance with the site plan submitted with the variance application. Future building and further site improvements will be allowed subject to the Use Permit (USE 35) and requirements of the DPW-Building Division and other agencies, in accordance with the reinterpreted yard requirements set forth in this letter.

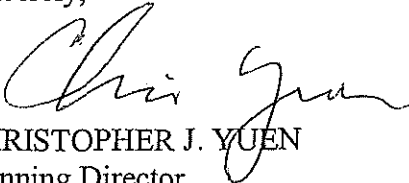
The applicant shall contact the DPW-Building Division to address any outstanding building permits originally issued to build the original medical office building. A DPW-Building permit to allow the proposed office addition shall be secured within two (2) years from the date of this variance permit letter. Any outstanding building and future construction permits issued to the TMK property shall be "finalized" or closed by the DPW prior to any change in ownership or property title.

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4. Future 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 conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,



CHRISTOPHER J. YUEN  
Planning Director

WRY/RRT:cps  
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xc: Real Property Tax Office  
Planning Dept. - Kona  
USE 35/Plan Approval File(s)