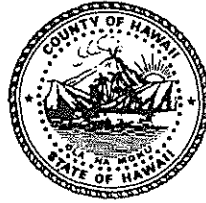


William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

County of Hawai'i

PLANNING DEPARTMENT

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
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July 31, 2009

Reverend Alan J. Cravalho
First Assembly of God-Kahului, Maui
777 Mokulele Highway
Kahului, HI 96732

Dear Reverend Cravalho

SUBJECT: VARIANCE APPLICATION – VAR-08-020

Applicant: Reverend Alan J. Cravalho

Owner: Kings Cathedral & Chapels

Request: Variance from Chapter 25, zoning, Article 5, Division 7, Section 25-5-76, Minimum Yards, (a), Section 25-5-77 Other regulations, and Article 4, Division 4 Section 25-4-44, Permitted projections into yards and open space requirements

TMK: 4-5-010:080; Paalaea to Lauka, Hamakua, Hawaii

After reviewing your variance application, the Planning Director certifies the **approval** of Variance No. 08-020 (Var. 08-020) subject to variance conditions. The variance permits portions of the dwelling to remain upon the subject property with a minimum 4.5 feet 6.24 feet side yard and attendant minimum 0.31 feet to 1.06 feet side yard open space in lieu of minimum 20.00 feet side yard and attendant minimum 14 feet side yard open requirements pursuant to the plot plan or survey map received on March 27, 2008. The variance is from the subject property's minimum side yard and attendant minimum side yard open space requirements pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum yards, (a), Section 25-5-77 Other regulations, and Article 4, Division 4, Section 25-4-44, permitted projections into yards and open space requirements, (a).

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BACKGROUND AND FINDINGS

1. Location. The subject property, consisting of 4.00 Acres, being a portion of Royal patent Grant 3163 to J.D. Ackerman and Land Commission Award 9971:5 to W.P. Leleiohoku, is situated at Paalaea, Hamakua, Hawai'i. The subject property address is 45-3370 Old Mamalahoa Highway. The subject property is zoned Agricultural – 40 acres (A-40A) by the County of Hawaii and designated Urban or "U" by the State Land Use Commission (LUC).
2. Variance Application-Site Plan. The owner's representative submitted the variance application, attachments, and filing fee on March 27, 2008 and other submittals related to the variance request and variance application. The variance application's site plan map is drawn to scale and prepared by Edgardo V. Valera, LPLS. The variance site plan or survey map, undated, received on March 27, 2008, denotes portions of the dwelling is built into the minimum 20 feet side yard setback and minimum 14-foot wide front yard open space.
3. County Building Records:

According to the department of Public Works-Building Division records, Building Permit No. 021631 was issued on November 6, 2002, for a new 1-story, 3,605 square foot gross floor area consisting of 2 bedrooms, 4 baths, dining area, kitchen, interior laundry, combined exercise/great room/weight lifting area, enclosed storage, open entry deck, and nursery.
4. Variance Application (VAR 08-020) Agency Comments and Requirements:
 - a. The State Department of Health (DOH) memorandum dated April 9, 2009 states:

"The Health Department found no environmental health concerns with regulatory implications in the submittals."
 - b. The Department of Public Works (DPW) Memorandum dated December 17, 2008 states:

"We have reviewed the subject application forwarded by your memo dated November 18, 2008 and require approval of the application be conditioned as noted below."

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Building permit #021631 has been put on hold due to the setback problem. Another building permit is required for the necessary alterations to remedy the building code issues due to the proximity of the property line.

The two existing driveway connections to Mamalahoa Highway, as shown on the survey map attached to the subject application, have not received final inspection and their driveway permit applications have lapsed and were voided in 1997. The owner/agent shall obtain a valid permit for the driveways from the Engineering Division, Department of Public Works. Please call 961-8327 with any questions or concerns.

Questions regarding the building permits are to be referred to the building division at 961-8331."

5. Notice to Surrounding Property Owners. A copy of first notice and second notice sent by the applicant via USPS to surrounding property owners and mailing certificates were submitted to the Planning Department. According to these submittals, the first and second notices were mailed via the USPS on October 31, 2008 and February 26, 2009, respectfully. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on November 28, 2008.
6. 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.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant, on behalf of the owner submitted the variance application to address and/or resolve the encroachments within the property's minimum 20 feet side yard. The variance application's site plan denotes the location of the single family dwelling upon the subject property. Building Permit No. 021631 was issued on November 6 2002. The permit allowed for the construction of a single family dwelling. The "Site Plan" which was reproduced from the Building Division "Inspector's Copy" of the approved building permit plans. It shows that the single family dwelling (parsonage) structure was to be placed approximately twenty-one (21) feet from a new boundary line created by a consolidation/resubdivision of a portion of TMK property 4-5-010: 082 and the subject property, along the 378.71 foot western common property line. During the review

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process of the detailed drawings of the single family dwelling (parsonage) by the Planning Department the building permit plans were approved by one of our staff without first verifying the validity of the consolidation/resubdivision. There no records of any application for the consolidation/resubdivision of the subject property and adjacent property (TMK: 4-5-010:080) submitted or approved through our office.

The single family dwelling (parsonage) built upon the subject property is permitted pursuant to detailed building construction plans approved by Building Permit 021631. The owners are requesting a variance to allow the single family dwelling (parsonage) to be completed in accordance with Building Permit (021631) and permit portions of the permitted Parsonage to be built and remain within the subject property minimum side yards according to the site plan map submitted with the variance application.

ALTERNATIVES

Alternatives available to the current owners to correct and/or address the single family dwelling (parsonage) encroachments constructed into the affected side yard and open space of the subject property include the following actions:

Remove the single family dwelling (parsonage) encroachments and/or redesigning or relocating the single family dwelling (parsonage) being constructed upon the subject property to fit within the correct building envelope denoted on the recent survey map as prescribed by the Zoning Code. This alternative could be very costly and cost prohibitive.

Consolidate the subject property with adjoining property and resubdivide the property to modify property lines and adjust minimum yard setbacks.

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.

Given the above circumstances and alternatives, the applicant's request for variance could have been avoided during review process of the detailed building plans for the single family dwelling (parsonage) by the Planning Department **before** the building

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permit was issued. Other options include revising or re-designing or abbreviating the size of the approved single family residence (parsonage) to fit within the subject property's building envelope, etc. As mentioned earlier this could be very costly and cost prohibitive to the owner,

The applicant's variance application was acknowledged by letter dated November 18, 2008 and additional time to review the application was required. The applicant granted the Planning Department and Planning Director an extension of time for decision on the Variance Application to July 31, 2009.

Based on the foregoing findings and unusual circumstances, the applicant's request for 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 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. Portions of the dwelling built upon the subject property will not meet the minimum side yard pursuant to Chapter 25, the Zoning Code, according to the variance application's site plan map received March 27, 2008. The approval of this variance permits portions of the dwelling to remain upon subject property according to the survey map received on March 27, 2008.

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4. The applicant, its successors or assigns shall complete improvements according to Building Permit-021631 and/or in accordance with any other building permit(s) issued to subject TMK property by the DPW-Building Division (Hilo). Any further building permit and/or other construction permits issued to enlarge or change or modify the dwelling floor plan being built upon subject TMK property shall be limited to the dwelling footprint permitted by variance and/or constructed upon the dwelling's footprint and within building envelope denoted on survey map undated.

Note: Please be aware that all Building Code requirements must be satisfied and met prior to requesting final inspection of the improvements sanctioned to be constructed pursuant to BP 021631.

5. The applicant shall comply with the following condition reflected in Department of Public Works (DPW) Memorandum dated December 17, 2008 which states:

"We have reviewed the subject application forwarded by your memo dated November 18, 2008 and require approval of the application be conditioned as noted below.

Building permit #021631 has been put on hold due to the setback problem. Another building permit is required for the necessary alterations to remedy the building code issues due to the proximity of the property line.

The two existing driveway connections to Mamalahoa Highway, as shown on the survey map attached to the subject application, have not received final inspection and their driveway permit applications have lapsed and were voided in 1997. The owner/agent shall obtain a valid permit for the driveways from the Engineering Division, Department of Public Works.

6. No permit shall be granted to allow an ohana or second single family or farm dwelling upon the subject TMK property, subject to provisions of the Zoning Code or State Law which may change from time to time.
7. Should the dwelling (footprint) upon the subject property constructed pursuant to building permit 021631 be destroyed by fire or other natural causes, the replacement or new dwelling shall comply with the County Zoning Code and be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

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8. 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 proceed to declare subject Variance-VAR 08-020 null and void.

Sincerely,



BJ LEITHEAD TODD
Planning Director

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xc: Real Property Tax Office (Hilo)
Christopher J. Roehrig, Attorney at Law
Robert Usagawa, Zoning Inspector