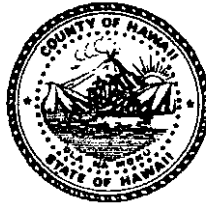


William P. Kenoi  
Mayor



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

January 9, 2014

Mr. Sidney Fuke, Planning Consultant  
100 Pauahi Street, Suite 212  
Hilo, HI 96720

Dear Mr. Fuke:

**SUBJECT: Application: VARIANCE – VAR-13-000166**  
**Applicant: SIDNEY FUKU, PLANNING CONSULTANT**  
**Owners: KAMEHAMEHA SCHOOLS/BISHOP ESTATE**  
**Lessees: JAMES L. KERVER AND MELANY L. KERVER**  
**Request: Variance from Chapter 25, Zoning, Article 5, Division 7, Section 25-5-76, Minimum Yards, Section 25-4-44, Permitted Projections into Yards and Open Space Requirements (Encroachment into the East Front Yard Setback and Northwest Side Yard Setback) and Article 4, Division 5, Section 25-4-55 (1) Parking for Persons with Disabilities.**  
**TMK: 8-3-003:019; (Lot16)**

After reviewing your variance application, the Planning Director certifies the **approval** of VAR-13-000166 which will amend Variance 210 (VAR-85-000010), subject to variance conditions. The variance will allow for the front (east) yard setback and associated open space of 13.25 feet to 16.5 in lieu of the previously approved 22-foot front (east) yard setback and associated open space, and a 1-foot 3 inch side (northwest) side yard setback and associated open space. This allowance is in lieu of the minimum 30-foot front yard setback and associated 24-foot front yard open space requirement and 20-foot side yard setback and associated 14-foot side yard open space requirement, in accordance with the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards, (2) (A) and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open space requirements, (a). This variance also allows for the proposed handicap access aisle with a width ranging from 2 feet to 8.8 feet in lieu of the required 8-foot wide access aisle, in accordance with the Hawai'i County Code, Chapter 25, Zoning, Section 25-4-55 (1) parking for persons with disabilities.

### **BACKGROUND AND FINDINGS**

1. **Location.** The subject property consists of approximately 2.47 acres of land and is situated at Kahauloa 2nd, South Kona, Hawai'i. The subject property's street address is 85-5799 Mamalahoa Highway.
2. **County Zoning.** Agricultural – 5 acres (A-5).
3. **State Land Use.** Agricultural.
4. **Setback Requirements:** 30 feet for front and rear; 20 feet sides.
5. **Notice of Violation (NOV):** This variance is issued to address all of the non-compliance issues stated in the Notice of Violation and Order (ZCV 2011-102W) Notice of Violation (ZCV 2011-102W) dated February 19, 2013.
6. **Variance application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on August 30, 2013, and other submittals related to the variance request and variance application; a subsequent amended application was received on September 13, 2013; the variance application's site plan map, dated August 14, 2013 is drawn to scale and denotes the positions of the existing structure (The Coffee Shack) into the east front yard setback and northwest setback and open space.

This variance request addresses the additional encroachments discovered when a more recent survey was completed, and relief from the ADA access aisle width requirement of 8 feet.

A recent site plan shows that the existing structure encroaches 18.85 feet into the 20-foot side (northwest) yard setback and an additional 5.5 feet to 8.75 feet in the previously approved 22-foot front (east) yard setback and the access aisle width will vary from 2 feet to 8.5 feet.

7. **Background Information:** On September 26, 1984, the Planning Commission granted a Special permit (SPP 566) for the use of an existing building for coffee storage and related activities. Subsequently, additional amendments to Special Permit 566 were approved to allow for the construction of a storage building on April 19, 1985, to allow for an establishment of a retail outlet for coffee and coffee related products within the new building on May 28, 1986, and allow for an espresso bar, ice coffee drinks and food preparation/sales area on August 24, 1994. The existing structure is known as the coffee shack.

On September 13, 1985, Final Plan approval was granted for the additional storage and office building, On March 23, 1987, Final Plan Approval was issued for the addition to the basic structure and observation deck with a requirement for six (6) parking stalls.

**8. Agency Comments and Requirements:**

- a. The State Department of Health (DOH) memorandum dated September 20, 2013. (See attached)
- b. No comments have been received from Department of Public Works – Building Division as of this date.

**9. Public Notice.** The applicant submitted a copy of notice mailed to surrounding property owners (including affidavits) by U.S.P.S. According to these submittals, the notice(s) were mailed on September 23, 2013. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on September 15, 2013.

**10. Time Extension.** The applicant's original variance application was received on August 30, 2013 and a subsequent amended application was received on September 13, 2013. Additional time to review the application was required. The applicant granted the Planning Director an extension of time to issue a decision on the Variance Application until January 10, 2014.

**11. Comments from Surrounding Property Owners or Public.** No written comments or objections from surrounding property owners or general public were received by the Planning Department.

**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 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 criteria (a) for the following reasons:**

The applicant submitted the variance application to address the additional encroachment in the front and side yard setback and associated open space. On June 17, 1985, Variance 210 (VAR 85-000010) was granted to allow for a 22-foot front (east) yard setback and associated open space.

A recent survey of the subject property shows that the existing structure encroach an additional 5.5 feet to 8.75 feet into the previously approved 22-foot front (east) yard setback and associated open space. The survey map also reveals that the existing coffee

shack structure encroaches 18.75 feet into the 20-foot side (northwest) yard setback.

The applicant has stated in its background report that the current owners were not involved with the permitting and construction aspects associated with the area requiring the variance and the parking requirements were never addressed by the previous owners in conjunction with the initial expansion of the building.

The topography of the subject property played a major factor in the placement of the existing structure and the ADA van accessible stall and access aisle.

The approval of the initial variance (VAR 210) also referred to the topography as a major factor in granting of the variance. The variance stated that *“Although there is adequate land to construct the proposed addition, the topography (severe slope) of the property is such that in order to construct the addition to the present grade of the existing structure, extensive filling and construction of a retaining wall would be require.”*

The applicant has stated that *“Given the location of the existing structure, the only feasible place to provide conforming size parking would be at the lower end of the property, which the applicants intend to do. This location, however, has a slope that varies from nearly 2% to 30%. Thus, because use of this sloping topographic condition, it becomes unfeasible to provide the handicap stall in that area.*

Therefore, given the topography of the subject property and the placement of the existing structure, special and unusual circumstances exist on the subject property which would interfere with highest and best use of the subject property.

### **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 building encroachments constructed into the affected front (east) and side (northwest) side yard setback and open space of the subject property include the following actions:

Remove the building encroachments and/or redesign or relocate the existing coffee shack structure (The Coffee Shack) constructed upon the subject property to fit within the correct building envelope denoted on the recent survey map as prescribed by the Zoning Code. Given the topography of the subject site, any structural or design correction of the structure to meet setback requirement would leave unattractive reconstruction scars.

With regards to the proposed ADA van accessible stall and access aisle, the steep topography of the subject site limits the placement of the accessible stall and access aisle.

The owners are trying to implement reasonable alternatives to address the remaining items of the Notice of Violation (NOV). In doing so, the owners have agreed to find a new parking area as well as address the need to amend and/or clarify the Special Permit. Therefore, the owners are proposing to relocate the parking area to the lower (southeast) end of the property and the required ADA van accessible stall near the entrance of the structure. Since only one handicap stall is being provided, that stall must be ADA van accessible.

Accessible parking spaces for vans shall be one hundred eight inches wide (9 feet) by two hundred sixteen inches (18 feet) in length, with a ninety-six inches (8 feet) wide accessible aisle.

Because of the limited frontage between the building and the roadway, only partial of this requirement can be achieved. Therefore, the owners are proposing an access aisle of 8 feet by 8 feet, with the balance of the access aisle width ranging from 2 to 4 feet. The conforming area will be fronting the entrance to the structure and should be sufficient. If needed, the vehicle can move slightly forward or backward within the stall to ensure access to and from the vehicle onto the conforming (8'x8') area. It should be noted that access aisle space requirement for sedans is ninety-six inches (5 feet).

Because one of the encroachments is within the front yard setback, to consolidate the subject property with the roadway and re-subdivide the property to modify property lines and adjust minimum front yard setbacks are not viable options. Also, the parcel that is most affected by the side (east) yard encroachment is owned by someone else, therefore, to consolidate the subject parcel with the adjoining parcel and re-subdivide the property to modify property lines and adjust the minimum side yard setback is not practical.

Therefore, the imposition of other alternatives such as removal of the encroachment through structural or design corrections is considered excessive when more reasonable alternatives are available.

### **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 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.

Based on the foregoing findings and unusual circumstances, the applicant's request 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 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. This can be substantiated, to some degree, by the fact that majority of the properties in the area share the same topographic conditions as the subject property with many of the structures being built close to highway, similar to that of the subject site.

Also, no comments or objections were received from the surrounding property owners or general public in response to the Notification of Surrounding Properties Owners.

#### **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 Hawai'i 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. The approval of this variance is only from the Zoning Code's minimum side yard setback and front and side yard open space requirement. The approval of this variance allows the existing single-family dwelling to remain on the subject property, pursuant to the variance application's site plan map.
4. No permit shall be granted to allow an ohana or farm dwelling upon the subject property, subject to provisions of the Zoning Code or State law which may be changed from time to time.
5. The existing single-family dwelling situated on the subject property will not meet the minimum side yard setback and front and side yard open space requirement pursuant to Chapter 25, the Zoning Code. The approval will allow the existing single-family dwelling to remain on the subject property in accordance with the plot plan submitted on August 14, 2013.
6. 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.

Sidney Fuke, Planning Consultant  
Page 7  
January 9, 2014

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance-VAR 13-000166 null and void.

Sincerely,



DUANE KANUHA  
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CoH02\Zone8\VAR13-000166\TMK8-3-003-019\Kerver.doc.rtf

xc: Kona Office  
Real Property Tax Office (Kona)  
Gilbert Bailado, GIS (via email)  
Horace Yanagi – zoning Inspector (Kona)

Sidney Fuke, Planning Consultant

Page 8

January 9, 2014

NEIL ABERCROMBIE  
GOVERNOR'S DEPARTMENT  
OFFICE OF THE GOVERNOR

2013 SEP 24 AM 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: September 20, 2013

TO: Duane Kanuha  
Planning Director, County of Hawaii

FROM: Newton Inouye  
District Environmental Health Program Chief

SUBJECT: Application: Variance – VAR 13-000166  
Applicant: SIDNEY FUKU, PLANNING CONSULTANT  
Owner: KAMEHAMEHA SCHOOLS/BISHOP ESTATE  
Lessee: Variance from Chapter 25, Zoning, Article 5, Division 7,  
Section 25-5-76 Minimum yards and Section 25-4-44(a),  
Permitted Projections into Yards and Open Space  
Requirements (Encroachment into the Eastern Front Yard  
Setback)  
Tax Map Key: 8-3-003:019, Lot 16

Wastewater Branch has no objections to the proposed variance application. However, the applicant is reminded that the existing cesspool is classified as a large capacity cesspool by EPA or a cesspool injections well by the State and should have been abandoned by April 5, 2005.

We recommend that you review all of the Standard Comments on our website: <http://hawaii.gov/health/environmental/env-planning/landuse/landuse.html>. Any comments specifically applicable to this project should be adhered to.

The same website also features a Healthy Community Design Smart Growth Checklist (Checklist) created by Built Environment Working Group (BEWG) of the Hawaii State Department of Health. The BEWG recommends that state and county planning departments, developers, planners, engineers and other interested parties apply the healthy built environment principles in the Checklist whenever they plan or review new developments or redevelopments projects. We also ask you to share this list with others to increase community awareness on healthy community design.

WORD: VAR 13-000166.ni

087688