

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
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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

December 11, 2014

Peter Souza Jr., L.P.L.S.
Crossroads Land Surveying
P. O. Box 9017
Kailua-Kona, Hawai'i 96745

Dear Mr. Souza:

SUBJECT: Application: VARIANCE – VAR-14-000243
Applicant: PETER H. SOUZA JR., L.P.L.S.
CROSSROADS LAND SURVEYING, LLC
Owners: MICHAEL WATMAN AND ALICE A. WATMAN
Request: Variance from Chapter 25, Zoning, Article 5, Division 1,
Section 25-5-7, Minimum Yards (Encroachment into Front
(Southwest) Yard Setback
Tax Map Key: 6-8-026:038; Lot 38

The Planning Director certifies the **approval** of Variance 14-000243, subject to conditions. The variance will allow portion of the single-family dwelling to remain on Lot 38, with a minimum 16.7 feet front (southwest) yard setback in lieu of the minimum required 20-foot front yard setback. The variance is from the subject property's minimum 20-foot front yard requirement pursuant to the Hawaii County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards.

BACKGROUND AND FINDINGS

1. **Location.** The subject property consists of approximately 13,229 square feet of land, is located within the Waikoloa Village Subdivision, situated at Waikoloa Village, South Kohala, Hawai'i. The subject property's street address is 68-3531 Aaka Way.
2. **County Zoning.** Single-Family Residential – 10,000 sq. ft. (RS-10).
3. **State Land Use.** Urban.
4. **Setback Requirements.** 20-feet for front; 10-feet for sides. (Section 25-4-42 Corner building sites. (a) On any corner building site, the interior lines shall be side lot lines and all rear yard regulations shall be inapplicable.)

5. **Variance Application-Site Plan.** The applicant, Peter H. Souza, Jr., submitted the variance application, attachments, filing fee, and associated materials on October 14, 2014. The variance application's site plan map is drawn to scale and was prepared by Peter H. Souza L.P.L.S. (Crossroads Land Surveying, LLC) and denotes the existing single-family dwelling encroaching into the front (Southwest) yard setback.

The applicant submitted the variance application to address or resolve the encroachment of the single-family dwelling into the 20-foot front (southwest) yard setback as required by the Zoning Code.

The survey map shows that a portion of the single-family dwelling encroaches 3.3 feet into the 20-foot front (southwest) yard setback.

6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (020895) was issued on July 3, 2002 to the subject property for the construction of a single-family dwelling consisting of 3 bedrooms, 2-1/2 baths, living room, kitchen and dining area.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum dated October 29, 2014. (See attached).
 - b. The Department of Public Works Department – Building Division. memorandum dated November 13, 2014.
8. **Notice to Surrounding Property Owners.** The applicant submitted a copy of notice mailed to surrounding property owners (including affidavits) by U.S.P.S. According to these submittals, the first notices were mailed on November 5, 2014, and the second notices were mailed on July 11, 2014. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on October 24, 2014.
9. **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 owner/applicant submitted the variance application to address or resolve the encroachments of the single-family dwelling into the 20-foot front yard setback as required by the Zoning Code.

The survey map shows that portions of the single-family dwelling encroach 3.3 feet inches into the 20-foot front (southwest) yard setback.

No evidence has been found to show indifference or premeditation by the past owners or builders to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the original dwelling improvements constructed in 2002 nearly 12 years ago were constructed under valid building permits and other construction permits issued by the County. It also appears that past building permits inspections of the premises by the agencies during construction of the dwelling improvements did not disclose any building encroachment issues or building setback irregularities at that time.

Therefore, based on the above mentioned information, special and unusual circumstances do exist to an extent that they deprive the owner of sustainable property rights that would otherwise be available, or which unreasonably interfere with the best use or manner of development 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 side yard open space of the subject property include the following actions:

Redesign or relocate the proposed single-family residence upon the subject property to fit within the correct building envelope denoted on the recent survey map as prescribed by the Zoning Code. The irregular shape of the subject property and a limited driveway access onto the subject property constrict the area and placement of the proposed single-family dwelling.

Because the encroachment is within the front yard setback, to consolidate the subject property with the existing roadway and to re-subdivide the property to modify property lines and adjust minimum side yard setbacks are not viable options; therefore, there are no reasonable alternatives to resolve the encroachment issue.

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's welfare or cause substantial, adverse impact to an area's character or to adjoining properties.

The variance application meets criteria (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.

The encroachments are located in the front yard setback adjacent to the roadway. Therefore, it should not obstruct or prevent adequate air circulation and exposure to light 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.

This can be substantiated, to some degree, by the fact that no comments or objections were received from the surrounding property owners or general public in response to the Notification of Surrounding Properties Owners.

Therefore, the variance would be consistent with the general purpose of the zoning district and not be materially detrimental to the public's welfare or cause substantial adverse impact to the area's character or to adjoining properties. As such, it is felt that the issuance of this variance will not depreciate or detract from the character of the surrounding properties.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

Based on the variance application's survey map, the single-family dwelling built upon the subject property ("LOT 38") does not meet the minimum front yard setback and front yard open space requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

This variance request is **approved** subject to the following 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.

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 change from time to time.
5. 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 14-000243 null and void.

Sincerely,



DUANE KANUHA
Planning Director

LHN:nci

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xc: Kona Office
Real Property Tax Office (Kona)
Planning GIS, Gilbert Bailado (via email)

Peter Souza Jr., L.P.L.S.
Crossroads Land Surveying
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December 11, 2014

NEIL ABERCROMBIE
GOVERNOR



LINDA ROSEN, M.D., M.P.H.
DIRECTOR OF HEALTH

PLANNING DEPARTMENT
COUNTY OF HAWAII

2014 OCT 30 PM 3:06

STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. BOX 916
HILO, HAWAII 96721-0916

MEMORANDUM

DATE: October 29, 2014

TO: Duane Kanuha
Planning Director, County of Hawaii

FROM: Newton Inouye *NI*
District Environmental Health Program Chief

SUBJECT: Application: Variance – VAR 14-000243
Applicants: PETER H. SOUZA JR. L.P.L.S.
CROSSROADS LAND SURVEYING, LLC
Owner: MICHAEL WATMAN AND ALICE A. WATMAN
Request: Variance from Chapter 25, Zoning, Article 5, Division 1,
Section 25-5-7 Minimum Yards; (Encroachment into the
Southwest Front Yard Setback).
Tax Map Key: 6-8-026.038

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

PLANNING DEPARTMENT
COUNTY OF HAWAII

2014 NOV 14 PM 2: 5 .



BUILDING DIVISION – DPW

COUNTY OF HAWAII – 101 Pauahi Street, Suite 7 – Hilo, Hawaii 96720
Hilo Office (808) 961-8331 • Fax (808) 961-8410 Kona Office (808) 323-4720 • Fax (808) 327-3509

November 13, 2014

To: Duane Kanuha, Planning Director

SUBJECT: Variance VAR 14-000243

TMK: 6-8-026:038

This is to inform you that our records on file, relative to the status of the subject discloses that:

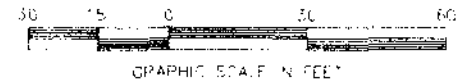
- No ____ permit was issued for work done on the premise.
- No building permit was issued for the change of occupancy.
- At the time of completion, the subject complied to all building regulations that were in effect.
- Variance from any building regulation (Building, Electrical, Plumbing, or Sign) was/was not granted.
- The following violation(s) still outstanding:
 - Building
 - Electrical
 - Plumbing
 - Sign
- Others:

This status report reflects Building Division records only and does not include information from other agencies.

Should you have any questions regarding matters contained herein, please feel free to contact Jai Ho Cheng at phone no. (808) 323-4720

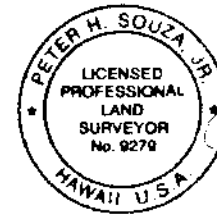
PLAN SHOWING
 LOT 38
 OF WAIKOLOA VILLAGE, UNIT 2-A-1
 (F.P. 1975)

AT WAIKOLOA,
 NORTH KONA, ISLAND OF HAWAII, HAWAII
 Tax Map Key (3rd. Division): 6-8-26: 38



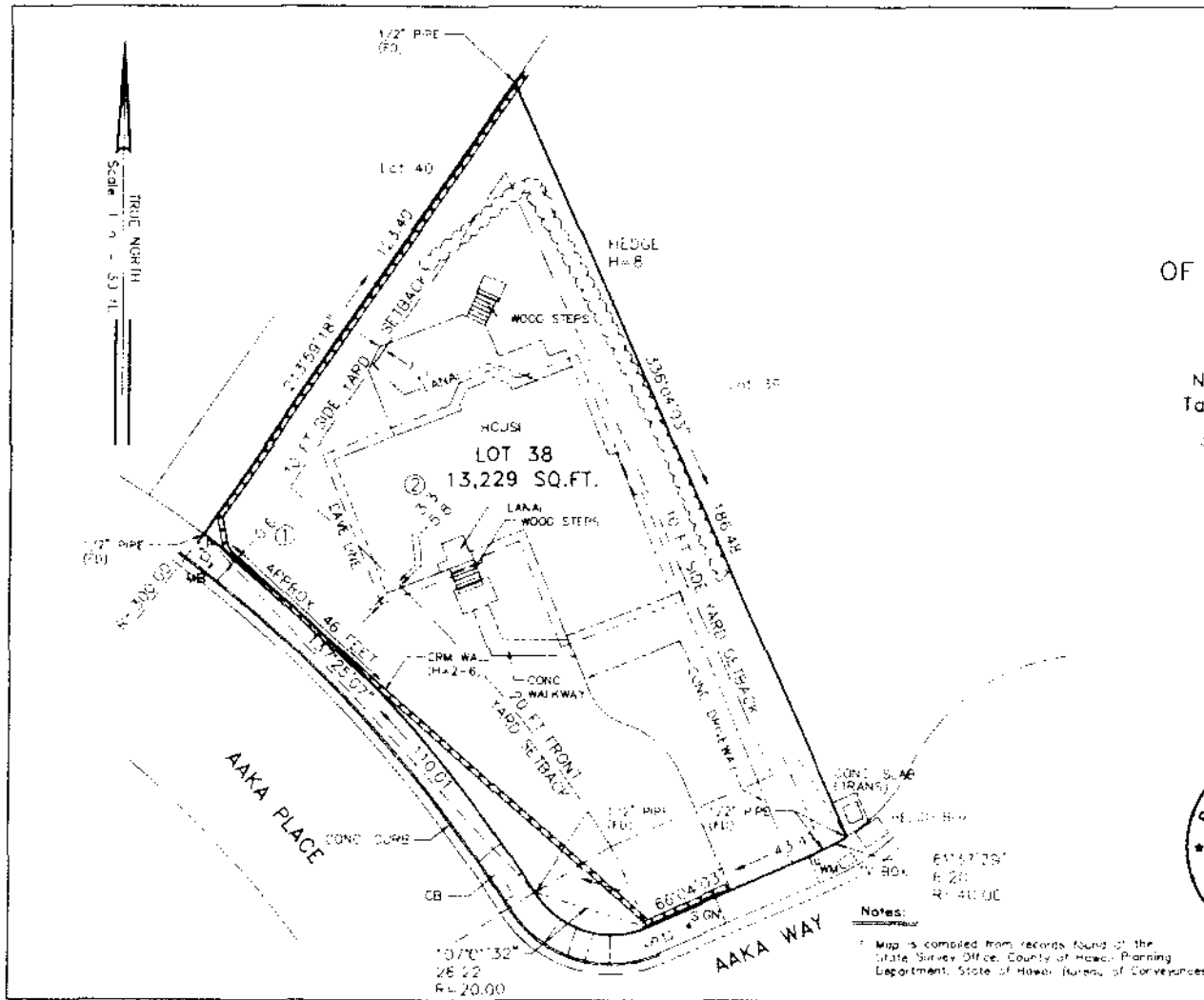
SURVEYOR'S CERTIFICATION:

The undersigned hereby certifies that on July 19, 2014, the subject lot was surveyed and corners marked on the ground. There are no overlaps or improvements crossing over boundary lines other than those shown on this map.



This work was prepared by me or under my direct supervision.
Peter H. Souza, Jr.

Peter H. Souza, Jr.
 Licensed Professional Surveyor
 Certificate Number 9279



Notes:
 1. Map is compiled from records found at the State Survey Office, County of Hawaii Planning Department, State of Hawaii, Bureau of Conveyances

Job Number: 2014-072
 July 19, 2014

CROSSROADS LAND SURVEYING
 Land Surveyors

P.O. Box 9017
 Kailua-Kona, Hawaii 96745