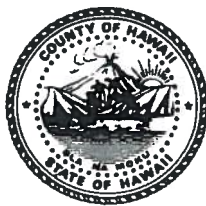


Mitchell D. Roth
Mayor

Lee E. Lord
Managing Director

West Hawai'i Office
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County of Hawai'i

PLANNING DEPARTMENT

Zendo Kern
Director

Jeffrey W. Darrow
Deputy Director

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December 21, 2021

Mark Krzyzanowski
MK Planning
88-1491 Awapuhi Place
Captain Cook, HI 96704
Via Email: mark@mkplanninghawaii.com

Dear Mr. Krzyzanowski:

Application: VARIANCE NO. PL-ZVAR-2021-000004
Applicant: MARK KRZYZANOWSKI
Owners: THE JOANN NEWTON FAMILY TRUST
RICHARD J. NEWTON, TRUSTEE
Request: Variance from Chapter 25, Zoning, Article 5,
Division 1, Section 25-5-7 Minimum yards requirements (Encroachments
into North Front Yard Setback)
Tax Map Key: (3) 7-6-024:004 Lot 4

The Planning Director certifies the **approval** of Variance No. PL-ZVAR-2021-000004, subject to variance conditions. The variance will allow portions of the dwelling walls to remain with a minimum 18.71-foot front (northwest) yard setback, in lieu of the required 20.0-foot front yard setback. This exception is in lieu of the required 20.0-foot front (northwest) yard setback, as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards requirements.

BACKGROUND AND FINDINGS

1. **Location.** The subject property, Lot 4, contains approximately 10,000 square feet and is situated within Por. Of "Kalani Makai" Unit 1 Subdivision of Lot 1 into Lots 1 to 25, Inclusive, at Holualoa, N. Kona, Hawai'i. The subject property's street address is 76-226 Royal Poinciana Drive, Kailua-Kona, HI 96740.
2. **County Zoning.** Single-Family Residential District (RS-10).
3. **State Land Use Designation.** Urban.

4. **Setback Requirements.** 20-foot front and 10-feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on October 20, 2021. The variance application's survey map dated September 21, 2021, was prepared by Thomas G. Pattison, LPLS and denotes that portion of the one-story single-family dwelling walls are built into the front (northwest) yard setback. (See Exhibit A-Site Plan)

The survey map dated September 21, 2021, shows sections of the one-story single-family dwelling walls are built into the front (northwest) yard setback, encroaching 1.29-feet into the 20.0-foot front yard with a minimum 18.71-foot front (northwest) yard setback, in lieu of the required 20-foot side yard setback.

The encroachment leaves a minimum 18.71-foot front (northwest) yard setback, in lieu of the required 20.0-foot front (northwest) yard setback, as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards requirements.

6. **County Building Records.** Hawai'i County Real Property Tax (RPT) Office records indicate that a building permit (#896385) was issued on September 29, 1989, for a new dwelling.
7. **Agency Comments and Requirements.**
 - a. State Department of Health (DOH) – No comments received as of this date.
 - b. Department of Finance – Real Property Tax – No comments received as of this date.
 - c. Department of Public Works - Building Division – No comments received as of this date.
8. **Public Notice.** The applicant filed a transmittal letter with copy of the notices sent to surrounding property owners via USPS. According to USPS certificate of mailing receipts and affixed postal receipts, the first and second notices were mailed on November 10, 2021, and November 30, 2021, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on November 26, 2021.
9. **Comments from Surrounding Property Owners or Public.** No further written agency comments were received. No written comments or objections from surrounding property owners or the general public were received.

GROUNDS FOR APPROVING VARIANCES

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 criterion (a) for the following reasons:

The owner/applicant submitted the variance application to address or resolve the encroachment of portions of the one-story dwelling walls into the 20.0-foot front (northwest) yard setback, as required by the Zoning Code.

The survey map dated September 21, 2021, shows sections of the one-story single-family dwelling walls are built into the front (northwest) yard setback, encroaching 1.29-feet into the 20.0-foot front yard with a minimum 18.71-foot front (northwest) yard setback, in lieu of the required 20-foot side yard setback.

The encroachment leaves a minimum 18.71-foot front (northwest) yard setback, in lieu of the required 20.0-foot front (northwest) yard setback, as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards requirements.

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 was constructed in 1989, approximately 32 years ago, and it also appears that past building permit inspections of the premises by the affected agencies during construction of the dwelling improvements did not disclose any building encroachment issues or building setback irregularities at that time. The setback encroachment was discovered during the process of selling the dwelling during the preparation the survey in September 2021. Due to the efforts of the owners to resolve the encroachment with the variance application, it is felt that the issuance of this variance will not depreciate or detract from the character of the surrounding properties.

According to the statements in the variance application, "An error must have occurred during the siting of the dwellings foundation during the initial construction. The furthest northeastern portion of the roof eave and building wall line meet the front yard setback and projection requirements but begin to encroach where the property line starts to jog inwards. The parcel has an inward curvature that is not necessarily visible on a smaller map but begins to be visible at a larger scale; It looks like a square. The lot itself is not very deep, only 105.5 feet deep (east to west) and 118.55 ft (north to south) respectively. Twenty (20) feet for front and rear setbacks

around the entire property, due to it being a corner lot, leaves only 85.5 feet and 98.55 feet respectively for the length and width of the house. In addition to the setbacks there is an established utility easement, "E3", with the house just fitting within the buildable area, except for the 1.29-foot front yard encroachment. Since there were no more building permits applied for since 1990, there were no other indicators that there was an encroachment issue to resolve until the survey was performed in September 2021. There was no intent to cause the encroachment and the inspection was completed for the building permit for the dwelling and no violations were observed the entire life of the home."

The above special and unusual circumstances determine the owner was not at fault in creating the encroachment violation and requiring them to fix the encroachments would interfere with best use and development of the subject property. The above special and unusual circumstances determine the owner was not at fault in creating the encroachment violation and requiring them to fix the encroachments would interfere with best use and 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 front yard of the subject property include the following actions:

Remove the building encroachments and/or redesign the entire front portion of the dwelling that encroaches 1.29-feet into the front (northwestern) yard setback as denoted on the survey map to fit within the correct building envelope as prescribed by the Zoning Code. This alternative would be deemed unreasonable, especially when the owners complied with the building permit process and were under the impression that the single-family dwelling was in compliance with all County requirements. Any structural or design correction of the single-family dwelling to meet setback requirement would leave unattractive reconstruction scars. The setback encroachment was discovered during the process of selling the single-family dwelling during the preparation the survey in September 2021. Due to the efforts of the owners to resolve the encroachment with the variance application, it is felt that the issuance of this variance will not depreciate or detract from the character of the surrounding properties.

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

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 for a lot are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines.

No evidence has been found to show indifference or premeditation by the owners or builders to deliberately create or intentionally allow the building encroachment problems to occur.

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. The original dwelling has been in existence for approximately 32 years and was constructed under valid building permits issued by the County of Hawai'i. The setback encroachment was discovered during the process of selling the single-family dwelling during the preparation the survey in September 2021. Due to the efforts of the owners to resolve the encroachment with the variance application, it is felt that the issuance of this variance will not depreciate or detract from the character of the surrounding properties.

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.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

Based on the variance application's survey map, the single-family dwelling built on the subject property ("LOT 4") will not meet the minimum front (northwest) requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

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. Should the dwelling walls and roof overhangs (eaves) built on the subject property be destroyed by fire or other natural causes, the replacement structure shall comply with the Hawai'i County Code, Chapter 25, (Zoning) and be subject to State law and County ordinances and regulations pertaining to building construction occupancy.
4. Since the Ohana Permit Dwelling Permit No. 89-0322 approved on September 26, 1989, was not utilized, it is now deemed null and void, because this Variance has been approved for the subject property, and an Ohana Dwelling permit shall not be approved subject to the provisions of the Hawai'i County Code, Chapter 25, (Zoning) 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 initiate proceedings to null and void Variance no. PL-ZVAR-2021-000004.

Sincerely,

April Surprenant

April Surprenant (Dec 21, 2021 11:56 HST)

ZNEDO KERN
Planning Director

RJN:rjn

P:\public\Admin Permits Division\Variance\2021\PL-ZVAR-2021-000004-Newton- Setback\Newton- approval.doc

xc: DPW Engineering Division (Kona)
Real Property Tax Office (Kona)
Gilbert Bailado, GIS

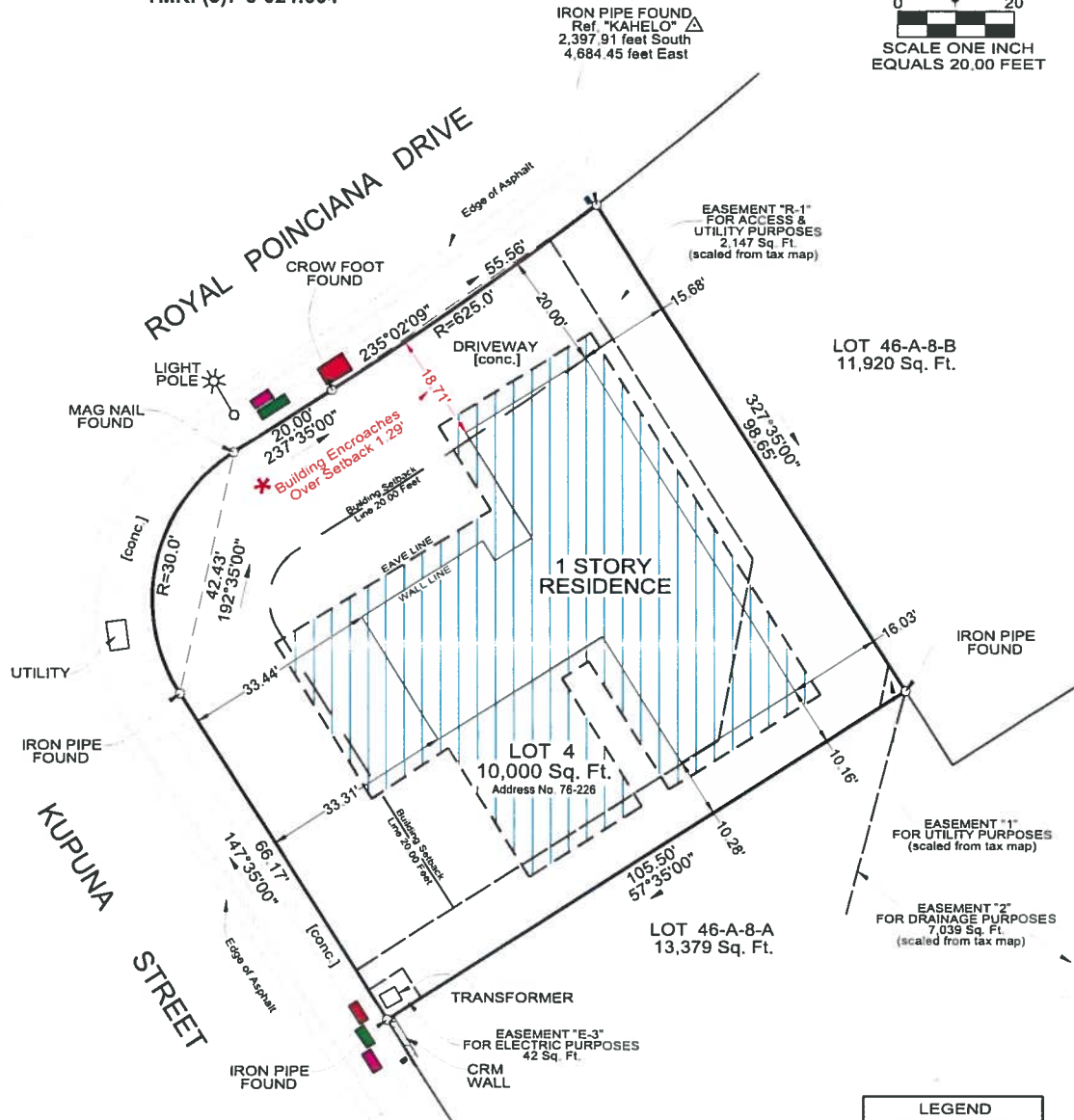
Mark Krzyzanowski
MK Planning
December 21, 2021
Page 7

Richard J. Newton, Trustee
Joann Newton Family Trust
5637 Sonoma Hwy.
Santa Rosa, CA 95409-5618

**MAP SHOWING EXISTING CONDITIONS UPON
LOT 4**

of "KALANI MAKAI - UNIT 1"
Being a Portion of Subdivision Map 4965-Revised at Holualoa,
North Kona, County of Hawaii, State of Hawaii
TMK: (3)7-6-024:004

TRUE NORTH



NOTES:

- 1) No boundary encroachments were found.
- * 2) A violation of the County zoning set-back code was found.
- 3) The distances shown between the property lines & the features, shown hereon, are based on selected found boundary monuments & acceptable tolerances for properties of this type.
- 4) The features, shown hereon, were located by an actual survey performed on the ground on September 20th, 2021.
- 5) See accompanying report pertaining to setbacks and encroachments.
- 6) CRM = Concrete, Rock & Masonry Wall

NOTE: BASIS OF AZIMUTH
DERIVED USING HEMISPHERE
GPS RTK SYSTEM

NOTE: ALL AZIMUTHS &
DISTANCES ARE SHOWN
& MAPPED HEREON IN A
CLOCKWISE DIRECTION

I, Thomas G. Pattison, do hereby certify that this map is an accurate representation of a survey as made on the ground, by me, or under my direct supervision and that there are no apparent or visible encroachments or easements, known to me, except as shown and mapped hereon.

-COPY-

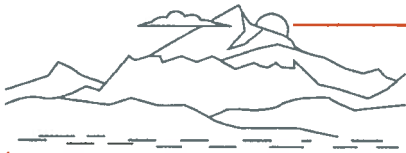
Setback Lines are shown from current data, but should be verified by builder. The description on this plat was provided to us by the client, and does not guarantee ownership, and should be compared to your Deed, Abstract or Certificate of Title. All building restrictions, building lines and easements may or may not be shown, check your Deed, Abstract, Title Report, and local ordinances, no responsibility is assumed by Surveyor. Compare all points before building by same and report any discrepancy at once. Dimensions are shown in feet and decimal parts thereof, no dimension is to be assumed by scaling.

Exhibit "A"

THOMAS G. PATTISON
September 21st, 2021
Hawaii License No. 10743

PATTISON LAND SURVEYING

P.O. Box 384569, Waikoloa, Hawaii 96738
Office 808.327.9439



THOMAS G. PATTISON
State of Hawaii License No. 10743

PATTISON LAND SURVEYING

P.O. Box 384569
Waikoloa, Hawaii 96738
Office Phone: 808.327.9439
E-mail: tom@surveyhawaii.com

SURVEY REPORT

Lot 4

of "Kalani Makai", Unit I

Being a portion of Royal Patent 4475, Land Commission award 7713, Apana 43 to V. Kamamalu.
situate on the Southerly side of Royal Poinciana drive extension of Holualoa, North Kona, Island and
County of Hawaii, State of Hawaii

TMK No. (3)7-6-024:004

Address: 76-226 Royal Poinciana Drive, Kailua Kona, HI 96740

I performed a K-2 survey of the subject property on September 20th, 2021 and found the existing improvements in the vicinity of the lot boundary lines and setback areas as shown and noted on the accompanying map. Please, note that the County setback codes are as follows:

Front Setbacks.....Twenty [20.00] feet
Side Setbacks.....Ten [10.00] feet

According to County code, roof overhangs may protrude into the setback up to five [5.00] feet on the sides and up to six [6.00] feet on the front and rear yards.

Upon study of the survey, I found one County setback violation. As the accompanying map shows, **the West corner of the garage is 18.71 feet from the Northwest (front) boundary line.** The East residence corner is 10.16 feet from the Southeast (side) boundary line and 16.03 feet from the Northeast (side) boundary line. All the remaining building corners and building overhangs (eaves) are within code. Please refer to the accompanying map for more information, not mentioned in this report.

No boundary encroachments were found.

Please refer to the accompanying map for more information, not mentioned in this report.

The features and distances shown between lot lines are based on selected found boundary monuments and acceptable tolerances for properties in this area and age of the original survey. Please note that six [6] of the six [6] recognized original boundary corners were found as shown and noted on the accompanying map.



Exhibit "A"

Thomas G. Pattison, LPLS #10743
September 21st, 2021