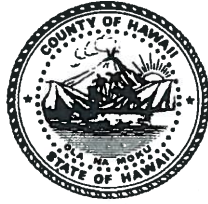


Mitchell D. Roth
Mayor

Lee E. Lord
Managing Director

West Hawai'i Office
74-5044 Ane Keohokālole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563



County of Hawai'i

PLANNING DEPARTMENT

Zendo Kern
Director

Jeffrey W. Darrow
Deputy Director

East Hawai'i Office
101 Pauahi Street, Suite 3
Hilo, Hawai'i 96720
Phone (808) 961-8288
Fax (808) 961-8742

July 20, 2021

Todd & Rebecca Hashimoto
75-5773 Kaila Place
Kailua-Kona, Hawaii 96740

Dear Todd Hashimoto & Rebecca A. Gavin Hashimoto

SUBJECT: Application: Variance from Zoning Code – VAR-21-000625
Applicant: Todd I. Hashimoto
Applicant: Rebecca A. Gavin-Hashimoto
Owner: Todd I. Hashimoto
Owner: Rebecca A. Gavin-Hashimoto
**Request: Variance from Chapter 25, Zoning, Article 5 Division 7,
Section 25-5-76 Minimum Yards, Article 4, Division 4
Section 25-4-44(a) Permitted Projections in Yards and
Open Space Requirements (Encroachment into
East Rear Yard Setback)**
Tax Map Key: (3) 7-5-028:030 (Lot 23), COR-21-141052)

The Planning Director certifies the **approval** of Variance Permit No. 21-000625, subject to the variance conditions stated herein. The variance will allow an existing Guest house structure, previously built without a Building Permit to exist within the following setbacks, as shown on the attached site plan, by Crossroads Land Surveying, dated November 2, 2019. (See Exhibit A Site Plan). The approved setbacks are as follows:

1. A minimum of rear yard setback 5.7 feet along the East Rear yard of the lot in lieu of the minimum 15 feet Rear yard setback requirement. The proposed variance for existing accessory structure encroaches into the 15 feet Rear yard setback approximately 9.3 feet, in lieu of the minimum 15 feet Rear yard setback requirement.
2. These exceptions are in lieu of the required 15 feet Rear yard setback Hawaii County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards requirements and Section 25-4-44(a), Permitted Projections into Yards and Open Space requirements.

BACKGROUND AND FINDINGS

1. **Location** – The subject property is approximately 7,590 square feet in size and is identified as “Lot 23” in Por. Kona Heights Sub’d – Increment II, F.P. 1077, Hinealoli 5th & 6th, North Kona, Hawaii (formerly por. 7-5-10).
2. **Location:** North Kona, Hawaii.
3. **Owners** –Todd I. Hashimoto and Rebecca A. Gavin-Hashimoto
4. **County Zoning.** Agricultural – 7,590 sq. ft. (A-5a).
5. **State Land Use Designation.** Urban
6. **Required Yards (Setbacks).** 15-foot front and rear yards & 8-foot side yards.
7. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee (check # 2005), and associated materials on April 9, 2021. The variance application included a site plan that was prepared by Crossroads Land Surveying LLC, Inc. and is dated November 2, 2019. **(See Exhibit A-Site Plan).**

The site plan identifies the following encroachments and setbacks:

- a) An encroachment of 9.3 feet into the East Rear yard, resulting in a 5.7 foot rear yard in lieu of the minimum 15 feet South East Rear yard setback requirements.
8. **County Building Records.** The Hawai‘i County Real Property Tax office records indicate the following building permits were issued:
 - a) Building Permit no.1062 Dated January 1, 1975, for the main house.
 - b) No Building Permit found for structure encroaching into east rear yard.
 8. **County Planning Department Records.**
 - a) An Application for Variance by owner Todd I. Hashimoto and Rebecca A. Gavin-Hashimoto was submitted in our Kona Planning office on April 9, 2021.
 9. **Agency Comments and Requirements.**
 - a) The Department of Public Works, Building Division Notice stated:

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- i) “Work without a Permit Application and Permit for “Ohana” Structure is required, as no permits are on record. Should you have any questions regarding matters contained herein, please feel free to contact us.” (See Exhibit B)

10. Public Notice.

- a) The applicant filed transmittal letters with copies of the first and second notices and USPS Certified Mail Receipts as proof of service to surrounding property owners and/or lessees within three hundred feet of the subject building site affected by the Variance application. This confirms that pursuant to Section 25-2-4 of the Hawaii County Code, letters serving as second notification to the attached list of surrounding property owners within 300 feet of all boundaries of the parcel of land identified by TMK: (3) 7-5-028:030 in conjunction with the landowner’s application for a Variance, were mailed on May 17, 2021. Notice of this Variance application was also published in the West Hawai‘i Today and Hawai‘i Tribune Herald on May 9, 2021 & June 8, 2021.

11. Comments from Surrounding Property Owners or Public.

- a) No comments were received from Surrounding Property Owners or Public.

ANALYSIS OF GROUNDS FOR VARIANCES

Special and Unusual Circumstances

No Variance will be granted unless it is found that:

- (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:

- a) The guest house structure existed on the property when Todd and Rebecca Hashimoto purchased it in November, 2019. They want to have the structure permitted and to be compliant with the Department of Public Works Building requirements as well as the County of Hawaii Zoning Code requirements.
- b) There is insufficient space to move the structure to another location on the property without obstructing the house. Therefore, not having the variance would present a hardship and difficulty in making use of the structure.

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- c) The house is the fourth house on the left in the cul-de-sac on Kaila Place. It is a dark blue house with white trim and a gold/yellow front door. On the right front of the house are stairs leading up to the front door and lanai. There is a cement walkway on the left side of the house that leads to the backyard/back of the house. There is a rock wall with a vinyl white fence along the cement walkway leading to the back of the property. There are rock walls on the west, north and south sides of house, and a driveway. Moving the house would mean tearing down all the walls that are in the front and sides of the guest house structure. It would be very difficult to remove 46.5 square feet of the building structure encroaching into the rear yard setback. A project to demolish a portion of the existing structure will impose a burden of expense.

Alternatives

(b) There are no other reasonable alternatives that would resolve the existing setback encroachment.

- a) The main dwelling is approximately 2,269 square feet in size and the existing guest house structure is two-story has a foot print of approximately 200 square feet and total floor space of about 400 sq. ft. It is a single bedroom with bathroom toilet, shower, sleeping area and a bar sink. The guest house has a height of 13 feet.
- b) There are concrete walkways surrounding front west and north sides of single family dwelling and a driveway leading to a carport. There are no other alternatives to relocate the guest house structure outside of the required setbacks.

(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.

- a) The proposed variance incorrectly identifies the existing structure to be an Ohana dwelling on the site plan provided. The structure identified as an ohana on the site plan (Exhibit A) is incorrect. Per County of Hawaii Planning Department Rules of Practice and Procedure: 12-8 (b) – Minimum building size area (lot size). A lot on which an ohana dwelling unit is proposed shall have a minimum building site area (lot size) of 10,000 square feet; the subject parcel is approximately 7,590 sq. ft.; 12-10 (b) – “No Variance from the requirements of Chapter 23 and Chapter 25, Hawaii County Code, as amended, shall be granted to permit the construction or placement of an ohana dwelling unit. The applicant can request a variance for a guest house.

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- b) Hawaii County Code Section 25-4-9 – “Only one guest house may be established on a building site that is at least 7,500 sq. ft. in area. A guest house shall not exceed 500 sq. ft. in gross floor area, shall not be more than 20 feet in height, and shall not have a kitchen.”

PLANNING DIRECTOR’S DECISION AND VARIANCE CONDITIONS

Based on the variance application’s site plan, the guest house on the subject property (“Lot 36”) **will not meet** the minimum side yard requirements pursuant to Hawai‘i County Code, Chapter 25 (Zoning Code).

This variance application is approved subject to the following conditions:

1. The applicant/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 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 applicant/owner(s), 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 guest house 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. The bar sink in the guest house shall not be used as a kitchen.
5. An “Ohana” shall not be approved for the subject property, subject to the provisions of the Hawai‘i County Code, Chapter 25 (Zoning), or State law, which may change from time to time.
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.

VAR- 21-000625, TMK: (3) 7-5-028:030\COR-21-141052
Todd & Rebecca Hashimoto

July 20, 2021
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Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare the subject Variance, 21-000625, null and void.

Sincerely,

A handwritten signature in blue ink, appearing to read 'ZENDO KERN', with a long horizontal flourish extending to the right.

ZENDO KERN
Planning Director

TLN: tln

\\coh141v\planning\Staff\Terri\Originals\PD Letterhead\Variance Approval.doc\VAR-21-000625\TMK: (3) 7-5-028:030\COR-21-141052\Todd & Rebecca Hashimoto

Encl: Exhibits A & B

Cc: Real Property Tax Office (Kona)
Gilbert Bailado, GIS (via Email)

**PLAN SHOWING
LOT 23
OF KONA HEIGHTS - INCREMENT II
(FILE PLAN 1077)**

AT HEINALOLI 5TH AND 6TH,
NORTH KONA, ISLAND OF HAWAII, HAWAII
Tax Map Key (3rd. Division): 7-5-28: 30



SURVEYOR'S CERTIFICATION:

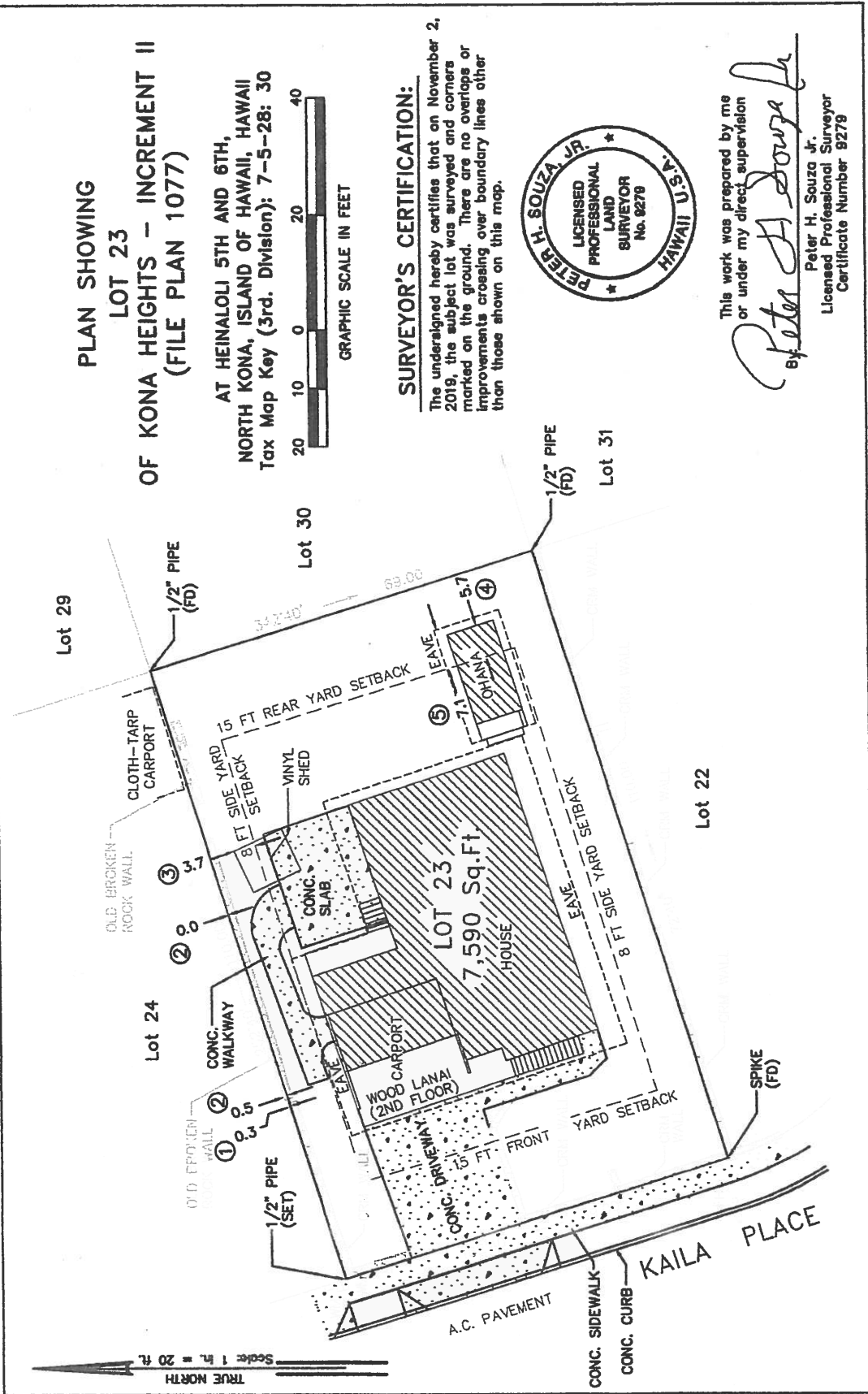
The undersigned hereby certifies that on November 2, 2019, the subject lot was surveyed and corners marked on the ground. There are no overlaps or improvements crossing over boundary lines other than those shown on this map.



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

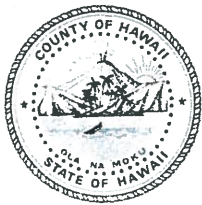
P.O. Box 9017
Kailua-Kona, Hawaii 96740



CROSSROADS LAND SURVEYING LLC
Land Surveyors

Job Number: 2019-117
November 2, 2019

"Exhibit A"



BUILDING DIVISION – DPW

COUNTY OF HAWAII – 74-5044 Ane Keohokalole HWY. BLDG E 1st Floor KAILUA-KONA, HI 96740
Hilo Office (808) 961-8331 * Fax (808) 961-8410 Kona Office (808) 323-4720 * Fax (808) 327-3509

Date of Notice: April 26, 2021

Owner: Todd Hasimoto & Rebecca Gavin-Hashimoto

Mailing address: 75-5773 Kaila Pl Kailua-Kona, Hawaii 967401956

Address location of property: 75-5773 Kaila Pl

SUBJECT: Variance – VAR-21-000625

Request - Variance from Chapter 25, Zoning, Article 5 Division 7, Section 25-5-76 Minimum Yards, Article 4, Division 4, Section 25-4-44(a) Permitted Projections into Yards and Open Space Requirements (Encroachment into SouthEast Side Yard Setback and East Rear Yard Setback)

T.M.K.: (3) 7-5-028:030

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

- No Building, Electrical and Plumbing 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: Fences & Accessory Structures, Projections into Building Setbacks

Work Without a Permit Application and Permit for "Ohana" Structure is required, as no permits are on record. Should you have any questions regarding matters contained herein, please feel free to contact us.

Kelly Wilson, Architect II

County of Hawaii Department of Public Works Building Division



VAR-21-000625

“Exhibit B”