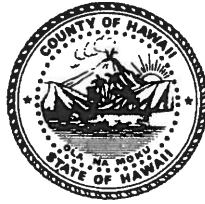


Mitchell D. Roth
Mayor

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

September 3, 2021

Peter H. Souza Jr. LPLS
Crossroads Land Surveying, LLC
P.O. Box 7303
Hilo, HI 96720

Dear Mr. Souza:

SUBJECT: Application: Variance from Zoning Code – VAR-21-000636
Applicant: PETER H. SOUZA JR. LPLS
CROSSROADS LAND SURVEYING, LLC
Owner: MARK R. HOLMES AND MICHELLE M. HOLMES
Request: Variance from Chapter 25, Zoning, Article 5 Division 1,
Section 25-5-7 Minimum Yards (Encroachment into Front
(Eastern) Yard Setback)
Tax Map Key: (3) 7-6-027:141

The Planning Director certifies the **approval** of Variance Permit No. 21-000636, subject to the variance conditions stated herein. The variance will allow a portion of the existing single-family dwelling to remain "AS-BUILT" with a 19.00-foot setback within the front (eastern) yard setback. This will allow the northeast corner of the existing dwelling to encroach up to 1.00 feet into the front yard setback area, as shown on the attached site survey map dated April 4, 2021 (**Exhibit A-Site Plan**). These exceptions are in lieu of the required minimum 20-foot front yard setback, as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-7, Minimum Yards. There are no encroachments identified within the southern front yard setback area, nor within the side yard setback areas.

BACKGROUND AND FINDINGS

- 1. Location.** The subject property is approximately 16,695 square feet in size and is located within the Kona Vista Subdivision at Holualoa 1 and 2, North Kona, Island of Hawai'i, Hawai'i. The subject property's street address is 73-4301 Liholiho Place.
- 2. County Zoning.** Single-Family Residential (RS-15).
- 3. State Land Use Designation.** Urban.

4. **Required Yards (Setbacks).** 20-foot front yards; 10-foot side yards.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, and filing fee on June 28, 2021. Subsequently, a request for time extension was received on August 27, 2021. The variance application included a scale-drawn site survey map that was prepared by Peter H. Souza, Jr. of Crossroads Land Surveying LLC and is dated April 4, 2021 (See **Exhibit A**).

The site plan identifies an encroachment up to 1.00 feet into the front (eastern) yard setback area along the northeast corner of the existing dwelling, resulting in a minimum 19.00-foot front yard setback, in lieu of the minimum 20-foot front yard setback requirement.

6. **County Building Records.** The Hawai'i County Real Property Tax office records indicate the following building permits were issued:
 - a. Building Permit no. BK2016-00713, issued on May 16, 2016, for the construction of a new CRM wall, with final inspection completed on April 2, 2019.
 - b. Building Permit no. BK2016-01703, issued on October 31, 2016, for the construction of a new dwelling, with final inspection completed on December 18, 2017.
 - c. Building Permit no. BK2016-01702, issued on October 31, 2016, for the construction of a new in-ground pool, with final inspection completed on March 15, 2018.

7. **Agency Comments and Requirements.**

- a. The Department of Public Works, Building Division Notice dated July 19, 2021:

“Description of dwelling in the variance does not match permitted records. See permit BK2016-01703 for full description.” (See **Exhibit B**)
- b. The State Department of Health (DOH) email dated August 12, 2021:

“The Department of Health does not have any comment regarding the above-noted variance request.” (See **Exhibit C**)

8. **Public Notice.** The applicant filed transmittal letters with copies of the first and second notices and Notarized Affidavits 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. According to the Notarized Affidavits, the first and second notices were mailed on or about May 13, 2021. Notice of this Variance application was also published in the West Hawai'i Today and Hawai'i Tribune Herald on July 27, 2021

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

ANALYSIS OF GROUNDS FOR VARIANCE

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:

The owner/applicant has submitted the variance application to address or resolve the encroachment of the single-family dwelling into the minimum 20-foot (eastern) front yard setback.

The application indicates that the present owner(s) only became aware of the encroachments as a result of a certified survey being conducted on the subject property, and that there was a siting discrepancy during the construction process that was not caught. The application also indicates that both the current owner and the former owner (who had the dwelling built) felt that the dwelling was constructed accurately since the construction was completed by a licensed contractor and under approved building, electrical and plumbing permits that received final approvals.

Therefore, based on the above, special and unusual circumstances do exist to an extent that they deprive the owner of substantial property rights that would otherwise be available, or which unreasonably interfere with the best use or manner of development of the subject property.

- (b) There are no other reasonable alternatives that would resolve the difficulty.*

The variance application meets criteria (b) for the following reasons:

Alternatives available to the current owners to correct and/or address the single-family dwelling encroachments constructed into the affected front yard setback areas of the subject property include the following actions:

Relocate or remove the encroachment denoted on the site plan to conform to the minimum 20-foot front yard setback requirement and fit within the correct building envelope as prescribed by the Zoning Code. Per the applicant, this alternative would

require extensive alterations which would affect the structural integrity of the single-family dwelling. The application further states that the relocation of the single-family dwelling would be impracticable and too costly as an alternative to undertake, since the lot is sloped and a number of CRM retaining walls have been built, resulting in limited building pad and no room to move the building.

Consolidate the subject property with the adjacent parcels and re-subdivide the property to modify the property lines and adjust the minimum yard setback areas accordingly. This alternative would not be a viable option as the adjacent property fronting the affected front yard setback with the encroachment is a roadway.

Therefore, the above alternatives are not practical and offers no reasonable alternative to resolve the difficulty.

- (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 criteria (c) for the following reasons:

The intent and purpose of requiring structural setbacks within a building site are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines.

Pursuant to Section 25-5-96 of Hawai'i County Code Chapter 25 (Zoning), the minimum yard setback requirements for the subject property are 20-foot front yards and 10-foot side yards. The application indicates that since the encroachment into the 20-foot front yard setback area is minor in nature, there is still air, light and physical circulation available between the existing single-family dwelling and the adjacent properties.

The application also indicates there was no evidence that the encroachment occurred as a result of any malicious or intentional purposes, and that there have been similar variances previously granted from minimum yard requirements, that have not adversely changed or affected the single-family residential character of the neighborhood.

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. 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 site survey map, the existing single-family dwelling constructed on the subject property does not meet the minimum front yard setback 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(s), their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. **Within one (1) year from the date of this permit, on or before September 3, 2022, the applicant/owner(s), their assigns or successors shall verify that the existing single-family dwelling has been issued the proper building permits for the existing single-family dwelling, as required by the Department of Public Works, Building Division, and shall comply with any building permit requirements that may be deemed necessary for the existing dwelling (see Exhibit B – DPW, Building Division Comments).**
3. 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.
4. Should the single-family dwelling 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.
5. An "Ohana" Dwelling permit 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.

Peter H. Souza Jr. LPLS
Crossroads Land Surveying, LLC
September 3, 2021
Page 6 of 6

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare the subject Variance, 21-000636, null and void.

Sincerely,

A handwritten signature in black ink, appearing to be 'ZENDO KERN', written over a horizontal line.

ZENDO KERN
Planning Director

MMH:mmh
\\coh141v\planning\Staff\Marie\VARIANCE\TMK 760271410000 Holmes\Var Decision Ltr, Holmes TMK 760271410000.doc

Encl: Exhibits A - C

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

VARIANCE MAP
 LOT 18
 OF KONA VISTA SUBDIVISION - UNIT 4
 AT HOLAUA 1 AND 2,
 NORTH KONA, ISLAND OF HAWAII, HAWAII
 Tax Map Key (3rd. Division): 7-6-27: 141



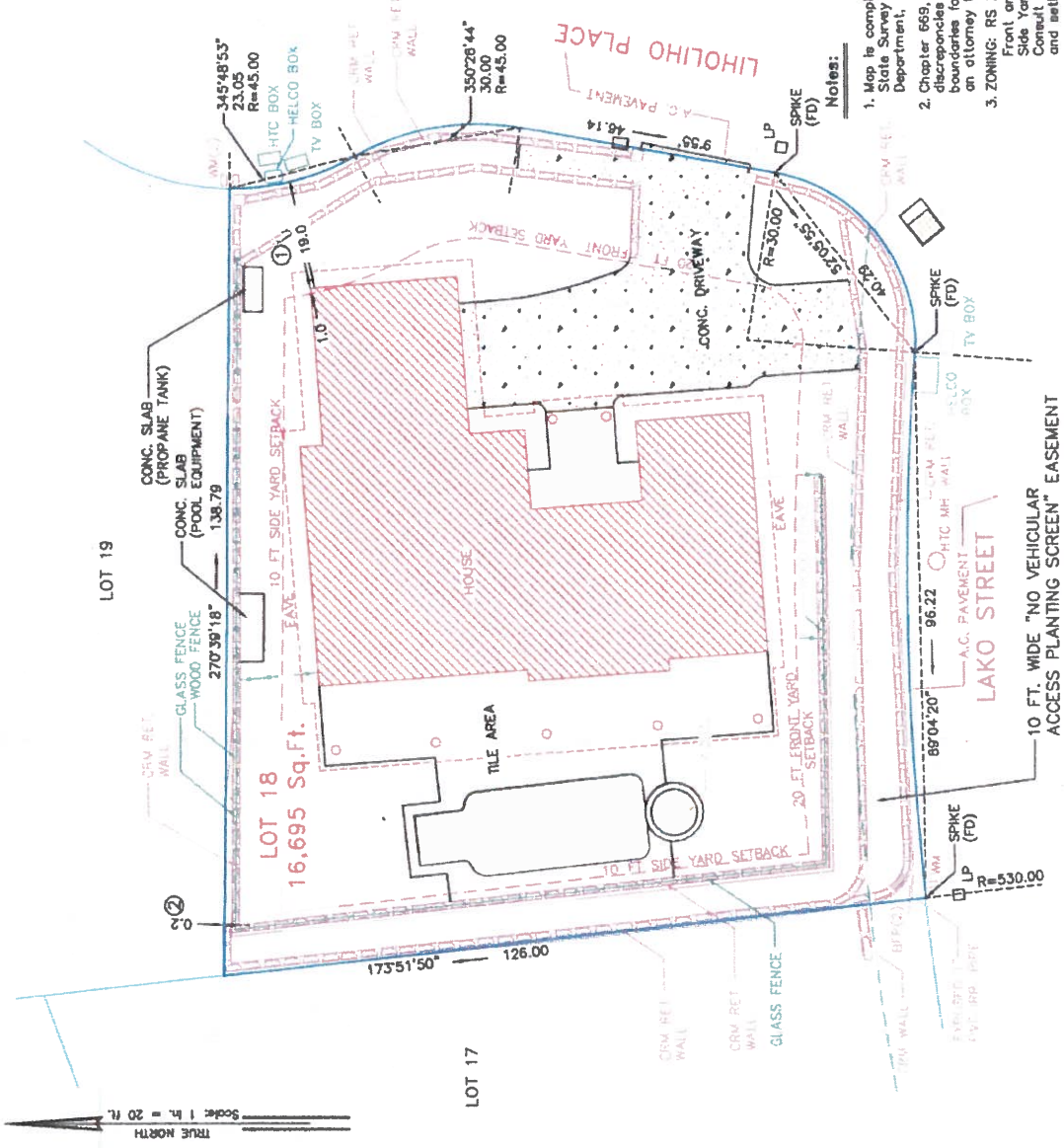
SURVEYOR'S CERTIFICATION:

The undersigned hereby certifies that on February 24, 2021, 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:

- Map is compiled from records found at the State Survey Office, County of Hawaii Planning Department, State of Hawaii Bureau of Conveyances.
- Chapter 659, Hawaii Revised Statutes, sets forth acceptable tolerances for discrepancies in structures or improvements relative to private property boundaries for various classes of property, consult your Title Company or an attorney to see what applies and how it applies to this survey.
- ZONING: RS 20
 Front and Rear Yard Setback = 20 feet (Projection Limits = 6 feet.)
 Side Yard Setback = 10 feet (Projection Limits = 5 feet.)
 Consult the County of Hawaii Planning Department to verify the above zoning and setbacks and how it applies to the structures, etc. on your property.

Exhibit A



BUILDING DIVISION – DPW

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

July 19, 2021

TO:

Marie Hong
County of Hawaii – Planning Dept.
West Hawaii Office
74-5044 Ane Keohokalole Hwy
Kailua Kona, HI. 96740

SUBJECT:

Variance VAR 21-000636
Mark & Michelle Holmes
76-4301 Liholiho Place
Kailua Kona, HI. 96740

TMK: (3) 7-6-027:141

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

- No Building 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 code regulations that were in effect.
- Variance from any building regulation (Building, Electrical, Plumbing, or Sign) was/was not granted.
- The following violations(s) still outstanding:
 - Building
 - Electrical
 - Plumbing
 - Sign
- Others: Description of dwelling in the variance does not match permitted records. See permit BK2016-01703 for full description

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 Chris Domino at phone no. (808) 323-4720

Hong, Marie

From: Okoji, Steven K J M <Steven.Okoji@doh.hawaii.gov>
Sent: Thursday, August 12, 2021 12:25 PM
To: Hong, Marie
Subject: Variance - VAR-21-000636: Mark and Michelle Holmes, (3) 7-6-027:141

Follow Up Flag: Follow up
Flag Status: Flagged

Aloha Ms. Hong,

The Department of Health does not have any comment regarding the above-noted variance request.

Mahalo,

Steven

Steven K. Okoji
Supervising Sanitarian
Hawaii District Health Office - West Hi
79-1020 Haukapila St, Rm 115
Kelalakekua, Hi 96750
Steven.okoji@doh.hawaii.gov

