

Mitchell D. Roth
Mayor

Lee E. Lord
Managing Director

West Hawai'i Office
74-5044 Ane Kōhōkalohe 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

March 1, 2021

Kimberly Chiodo, Project Manager
Land Planning Hawai'i, LLC
194 Wiwoole Street
Hilo, Hawai'i 96720

Dear Ms. Chiodo:

SUBJECT: Application: Variance - VAR 20-000606
Applicant: KIMBERLY CHIODO – LAND PLANNING HAWAII'I, LLC
Owner: THE WETHERALD FAMILY TRUST
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 Northwest and Southwest Side Yard Setbacks)
Tax Map Key: (3) 1-5-009:039 (Lot 8)

After reviewing your variance application, the Deputy Planning Director certifies the **approval** of VAR-20-000606. The variance will allow portions of the detached garage to remain with a minimum 15.5-foot (northwest) side yard setback and associated roof eave projection resulting in a 11.7-foot side (northwest) yard open space in lieu of the minimum 20-foot side yard setback and 14-foot side yard open space requirement. It will also allow for the detached garage to remain with a minimum 17-foot (southwest) side yard setback and associated roof eave projection resulting in a 12.8-foot side (southwest) yard open space requirement in lieu of the minimum 20' side yard setback and 14' side yard open space requirement. These exceptions are in lieu of the required 20-foot side yard setback and 14-foot side yard open space as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-76, Minimum yards and Section 25-4-44 (a), Permitted projections into yards and open space requirements.

BACKGROUND

1. **Location.** The subject property contains approximately 2.62 acres and is situated at Keonepoko Iki, Puna, Hawai'i. The subject property address is 15-2678 Welea Street.
2. **Zoning.** Agricultural 1 acre (A-1a).

3. **State Land Use.** Agriculture (A).
4. **Special Management Area (SMA).** Yes; 40-foot shoreline setback.
5. **Required Setback.** 20-feet for sides. **Section 25-4-14. Flag lots. (4):** The minimum yards for a flag lot, excluding the access drive, shall be the minimum side yards required for a building site in the applicable zoning district.
6. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on December 22, 2020. The variance site plan is drawn to scale, prepared by Daniel Berg, LPLS (dlb & Associates), and denotes the position of the detached garage encroaching into the 20-foot side yard setback and 14-foot side yard open space requirement. **(See Attached Site Plan – Exhibit A)**

The survey map shows that a portion of the detached garage encroaches 4.5 feet into the side (northwest) yard setback and associated roof eave encroaches 2.3 feet into the 14-foot side yard open space requirement. It also shows a portion of the detached garage encroaches 3 feet into the 20-foot (southwest) side yard setback and associated roof eave encroaches 1.2 feet into the 14-foot side yard open space requirement.

The encroachment leaves the detached garage with a 15.5-foot side (northwest) yard setback, in lieu of the required 20-foot side yard setback and an associated roof eave projection resulting with a 11.7-foot side (northwest) yard open space in lieu of the required 14-foot open space requirement. It also shows a portion of the detached garage with a 17-foot side (southwest) yard setback in lieu of the required 20-foot side (southwest) yard setback and associated roof eave with a 12.8-foot side yard open space in lieu of the required 14-foot open space requirement.

7. **County Building Records.** Hawai'i County Real Property Tax office records indicate that Building Permit 832187 was issued December 28, 1983, for the construction of a single-family dwelling, consisting of 3 bedrooms, 3-1/2 baths, living area, kitchen, and detached garage. Permit finalized on October 29, 1984.
8. **Agency Comments and Requirements.**
 - a. No comments were received from the State Department of Health (DOH).
 - b. No comments were received from the Department of Public Works (DPW)– Building Division.
9. **Notice to Surrounding Property Owners.** A copy of the first and second notices were sent by the applicant via USPS to surrounding property owners and mailing certificates were submitted to the Planning Department. According to the submittals, the first and second notices were mailed on January 14, 2021, and January 21, 2021, respectively. Notice of this application was

published in the Hawai'i Tribune Herald and West Hawai'i Today newspapers on January 12, 2021.

10. **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.

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 submitted the variance application to address or resolve the encroachment of the detached garage into the 20-foot side yard setback and side yard open space as required by the Zoning Code.

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. The detached garage authorized under Building Permit 832187 was issued on December 28, 1983 and given final inspection approval on October 29, 1984. It appears that building permit inspections of the premises by the affected agencies during construction of the single-family dwelling and the detached garage did not disclose any building encroachment issues or building setback irregularities at that time.

Based on the above-mentioned information, 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 criterion *(b)* for the following reasons:

Alternatives available to the current owners to correct and/or address the building encroachments constructed into the affected south side yard setback and south side yard open space of the subject property include the following actions:

Relocate the detached garage denoted on the site plan 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 detached garage was in compliance with all County requirements.

Because the encroachment is within the side yard setback, to consolidate the subject property with the adjacent side yard property, which is owned by someone else, and re-subdivide the property to modify property lines and adjust minimum side yard setbacks is not a viable option. Therefore, both alternatives are not practical.

- (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 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 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.

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

Based on the above findings, granting of the variance would be consistent with the criteria and intent of approving a variance.

PLANNING DEPARTMENT DECISION AND VARIANCE CONDITIONS

Based on the variance application's survey map, the detached garage built upon the subject property ("LOT 8") 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 variance 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 applicants/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 detached garage 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 and building occupancy.
4. No 'Ohana or Additional Farm Dwelling permit shall 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.
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 Department may proceed to declare subject Variance-20-000606 null and void.

Sincerely,



JEFFREY W. DARROW
Deputy Planning Director

LHN:jaa

P:\Admin Permits Division\Variances From CoH02\Zone I\VAR20-000606 TMK 150090390000 Wetherald.doc

Encl.: Exhibit A

Cc: Gilbert Bailado, Planning GIS (via email)
Mark Iwamoto, Zoning Inspector
Tracie Camero, Planner

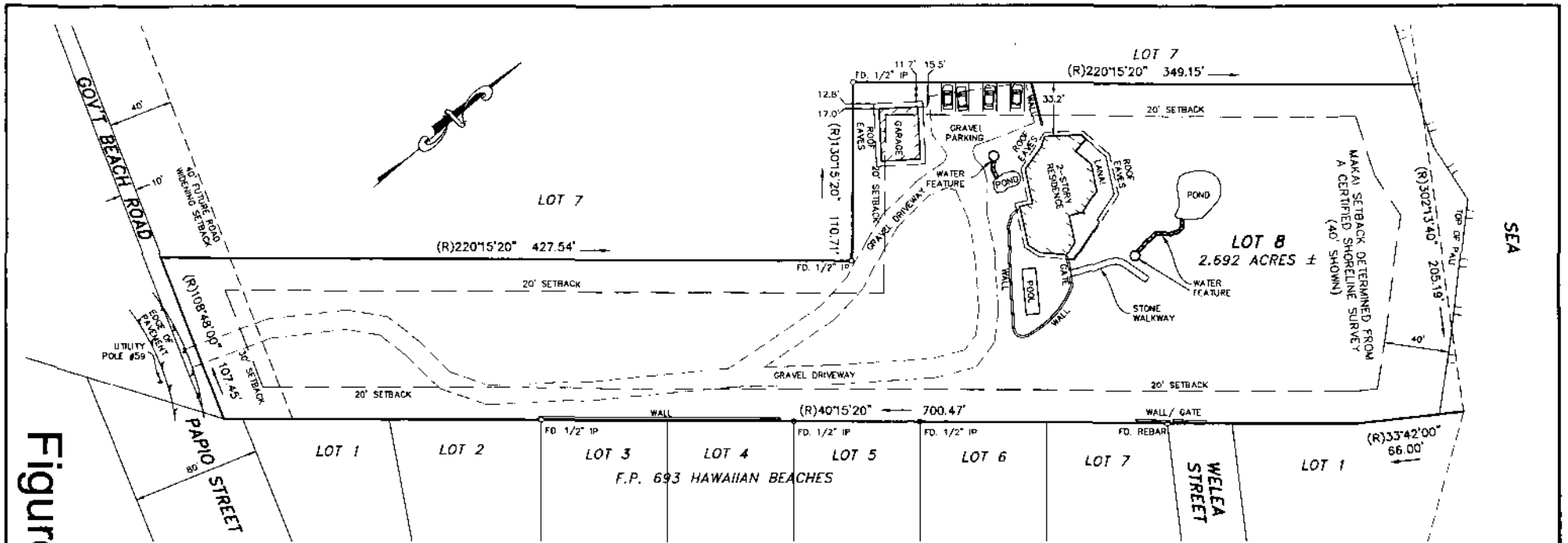
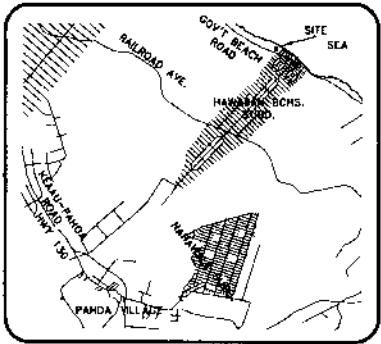


Figure 2

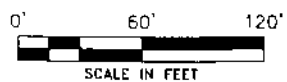


VICINITY MAP
NOT TO SCALE

EXHIBIT

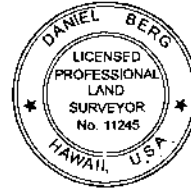
A

Site Plan
of Lot 8, Puua-Keonepoko Iki,
Portion of Grant 1533 to Kekoa,
L.C. Aw. 8518-B, Apana 1 to Kanehoa
Situated at Keonepoko Iki, Puna
Island and County of Hawaii, Hawaii
TMK(3) 1-5-009: 039



NOTES:

- Owner:
Wetherald, Family Tr.
P.O. Box 1976
Fallbrook, CA. 92088-1976
- Situs:
15-2678 Walea Street
Tax Map Key (3) 1-5-009-039
- Land Use Zone:
AG-1a
- STRUCTURE AREAS
(EXTERIOR FOOTPRINT)
2-Story residence: 3675 S.F.
Garage : 368 S.F.
- PARKING:
Six standard 18'x8.5' spaces.
- Field survey completed September 14, 2020.
- Courses are Record dimensions per HCPD Subd. No. 1797, Approved May 1962.
- This Map was prepared for a Short Term Vacation Rental application. Use for any other purpose is prohibited.



This work was prepared by me or under my direct supervision.
Daniel L. Berg
Daniel L. Berg
PLS 11245



dlb & Associates
LAND SURVEYING • MAPPING • CONSULTING
P.O. Box 49-2281 Keaau, HI. 96749
Ph. 966-4206 Fx. 82-6830
www.dibandassoc.com