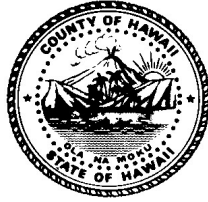


Mitchell D. Roth
Mayor

Lee E. Lord
Managing Director

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County of Hawai'i

PLANNING DEPARTMENT

Zendo Kern
Director

Jeffrey W. Darrow
Deputy Director

East Hawai'i Office
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Hilo, Hawai'i 96720
Phone (808) 961-8288
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November 28, 2022

Ms. Kim Chiodo
Land Planning Hawai'i LLC
194 Wiwo'ole Street
Hilo, HI 96720

e-mail: kim@landplanninghawaii.com

Dear Ms. Chiodo:

SUBJECT: Application: Zoning Variance | PL-ZVAR-2022-000031
Applicant: LAND PLANNING HAWAII LLC | KIM CHIODO
Owner: DAVID MALLEN, LORA MALLEN & CHARLES STEWART
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 Southwest Rear Yard Setback)
Tax Map Key: (3) 1-5-031:048 (Lot 78)

The Planning Director certifies the **approval** of Variance PL-ZVAR-2022-000031, subject to conditions. The variance will allow for the "as-built" bedroom/bath addition to remain with a 13.3 foot rear (southwest) yard setback and associated roof eave projection of 9 feet rear (northwest) yard open space in lieu of the minimum 20-foot side yard setback and 14-foot side open space requirement. This variance is from the subject property's minimum rear yard setback pursuant to the Hawai'i County Code, Chapter 25, (Zoning), Article 5, Division 1, Section 25-5-7, Minimum yards and Article 4, Division 4, Section 25-4-44(a), Permitted Projections into Yards and Open Space requirements.

The potable shed reflected on the survey map encroaching into the rear yard setback is excluded from this variance approval and will be relocated to an area outside of the required setback.

BACKGROUND AND FINDINGS

1. **Location.** The subject property contains approximately 12,632 square feet and is in the Hawaiian Paradise Park Subdivision, situated in Pahoia, Puna, Hawai'i. The subject property's street address is 15-1096 Ala Heiau Road.
2. **County Zoning.** Agricultural – 1 acre (A-1a).
3. **State Land Use Designation.** Agricultural
4. **Required Setback.** 20 feet for front and rear; 10 feet for sides.
5. **Special Management Area.** The subject property is located within the Special Management Area (SMA).
6. **Variance Application.** The applicant/owner submitted the Variance Application, attachments, filing fee, and associated materials on March 28, 2022. The Variance Application site map was prepared by Daniel Berg (DLB & Associates). **(See Exhibit A-Site Plan)**

The site plan shows the "as-built" bedroom/bath addition, encroaches 6.7 feet into the 20-foot rear (southwest) yard setback and the associated roof encroaches 5 feet into the 14-foot rear (southwest) yard open space.

The encroachment leaves the "as-built" bedroom/bath addition with a minimum 13.3 feet rear (southwest) yard setback, in lieu of the required 20-foot rear yard setback and the associated roof eave with a 9-foot rear yard open space, in lieu of the required 14-foot rear yard open space.

7. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that the following building permits were issued.
 - a. Building Permit B2005-3039H was issued on November 8, 2005, for the construction of a two (2) bedroom, one (1) bath dwelling with water tank. Permit finalized on May 30, 2006.
 - b. Building Permit B2008-0714H issued on April 11, 2008, for the construction of a detached in ground swimming pool.

8. Agency Comments and Requirements.

- a. State Department of Health (DOH) memorandum dated August 8, 2022: "The Health Department found no environmental health concerns with regulatory implications in the submittals."
- b. The Department of Public Works-Building Division e-mail dated October 28, 2022: "BLD has no objection to the requested setback variance but will require an As-Built Permit for the unpermitted addition (and subject for the setback variance) after PLN concerns have been addressed."
- c. The Department of Public Works-Engineering Division memorandum dated October 28, 2022: "We have no comments since the existing dwelling is not encroaching into a drainage easement or located within a special hazard flood zone and there are no open violations associated with this property."

9. **Public Notice.** The applicant filed a transmittal letter with copies 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 October 12, 2022, and October 13, 2022, respectfully. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on October 11, 2022.

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 "as-built" bedroom/bath into the 20-foot (Southwest) rear yard setback and associated roof eave into the 14-foot rear yard open space requirement.

The current owners were not involved with the permitting and construction aspects associated with the area requiring the variance and building permit requirements were never addressed by the previous owners in conjunction with the initial expansion of the building.

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.

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 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 of the subject property include the following actions:

Removal of the "As-Built" bedroom and bath addition, denoted on the site plan to fit within the correct building envelope as prescribed by the Zoning Code.

Any structural or design correction of the single-family dwelling to meet setback requirement would leave unattractive reconstruction scars.

Another alternative is to consolidate the subject property with the adjoining rear property which is owned by someone else and to resubdivide the property to modify property lines and adjust minimum yard setbacks. Both of these alternatives are not practical; therefore, there are no other reasonable alternatives to resolve these encroachment issues.

(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.

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 encroachment of 6.7 feet into the rear yard setback still allows for adequate air circulation.

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 survey map, the single-family dwelling and associated roof eave built upon the subject property ("LOT 78") will not meet the minimum rear 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), 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.
2. 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.
3. An "Ohana" or Farm 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.
4. The potable shed encroaching into the rear yard setback shall be relocated to an area outside of the required setback within six months of the date of this variance approval letter. The

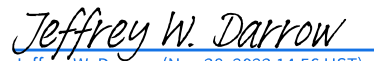
Ms. Kim Chiodo
Land Planning Hawai'i, Inc.
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Zoning Variance Approval Letter
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owner/applicant shall allow the Planning Department to conduct a site inspection once the relocation of the shed has been completed.

5. The owner/applicant shall secure a Special Management Area (SMA) use Permit Assessment For the after-the-fact construction of the as-built bedroom and bath addition, a gazebo and a detached wooden deck.
6. The applicant shall secure an As-Built Permit from the Department of Public Department – Building Division for the unpermitted Bathroom/Bath addition within six (6) months from the date of this Variance approval letter.
7. 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.
8. The applicant/owner(s), their assigns or successors shall be responsible for complying with all stated conditions of approval.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject PL-ZVAR-2022-000031 null and void.

Sincerely,


Jeffrey W. Darrow (Nov 28, 2022 14:56 HST)

JEFFREY W. DARROW
Deputy Planning Director

LHN:ta

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Mallen.docx

Encl: Exhibit A - Site Plan

cc: Real Property Tax Office (Hilo)
Julann Sonomura, P.E., Building Chief, DPW-Building Division (e-mail)
Alex Gerken, GIS (via email)
Mark Iwamoto, Zoning Inspector (via email)

Boundary and Improvement Survey

Of Lot 78, Block 11,
Hawaiian Paradise Park Subdivision,
Keaau, Puna,
Island and County of Hawaii.

TMK(3) 1-5-031: 048

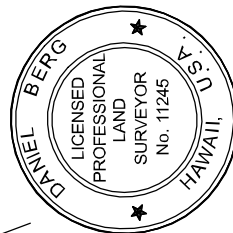
NOTES:

1. This K-2 field survey completed June 21, 2022.
2. (F) indicates Field measured dimensions. Basis of Azimuths is a "best-fit" of found (FD.) property monuments to record positions. Std. Error = 0.26 ft. (n=15)
3. (R) indicates Record dimensions per Hawaiian Paradise Parks Subdivision, Land Court Award 1053, Map 66.
4. This Map and attached report were prepared for the transaction indicated, and should not be used for any other purpose.
5. Intrusions and/or protrusions across boundaries or into zoning setbacks, if any, denoted as "ITEM", and described in the attached report.



This work was prepared by me or under my direct supervision.

Daniel L. Berg
Daniel L. Berg
PLS 11245



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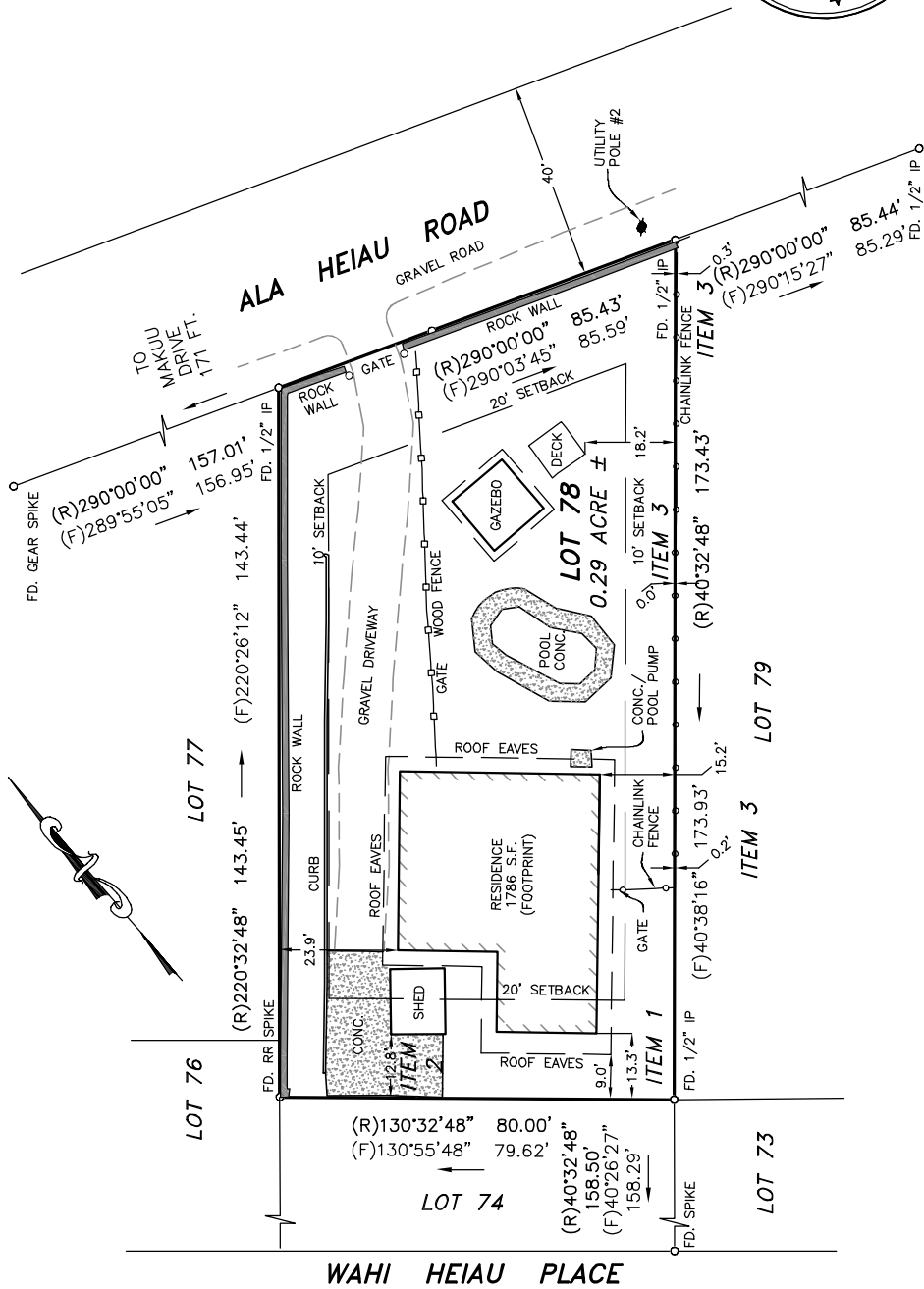


EXHIBIT A

Date: July 5, 2022
Escrow: n/a

Project: J2022-215
8X14L