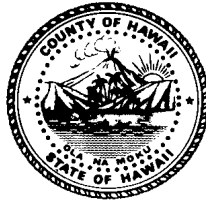


C. Kimo Alameda, Ph.D.  
*Mayor*

William V. Brilhante, Jr.  
*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

Jeffrey W. Darrow  
*Director*

Michelle S. Ahn  
*Deputy Director*

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

February 12, 2025

Kim Chiodo  
Land Planning Hawaii LLC  
194 Wiwoole Street  
Hilo, HI 96720  
Via Email: [kim@landplanninghawaii.com](mailto:kim@landplanninghawaii.com)

Dear Ms. Chiodo:

**Application:** VARIANCE – PL-ZVAR-2024-000073  
**Applicant:** Kim Chiodo, Land Planning Hawaii LLC  
**Owners:** Thomas E. Bailey and Jeanne J. Oshima Trust Dated April 27, 2016  
**Request:** Variance from Chapter 25, Zoning, Article 5, Division 1, Section 25-5-76(A), Minimum Yards (Encroachment into Northeast Side Yard)  
**Tax Map Key:** (3) 6-5-010:026 CPR Unit 1

The Planning Director certifies the **approval** of Variance No. PL-ZVAR-2024-000073, subject to variance conditions. The variance will allow portions of the dwelling walls to remain with a minimum 9.2-foot and 8.1-foot side (northeast) yard setback and 10.0-foot and 11.7-foot side (south) open space requirement. This exception is in lieu of the required 10.0-foot side (northeast) yard setback and 5.00-foot side (northeast) open space requirement, as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-76(a), Minimum yards requirements and Section 25-4-44(a) Permitted Projections into Yards and Open Spaces.

### **BACKGROUND AND FINDINGS**

1. **Location.** The subject property, CPR Unit 1, is a portion of a 14,061 square foot parcel, lot 26, situated within Por. Waimea Homesteads, South Kohala, Hawai'i. The subject property's street address is 65-1237 Puuiki Place 1, Kamuela, , HI 96743.
2. **County Zoning.** Agricultural (A-1a).
3. **State Land Use Designation.** Agricultural.

4. **Setback Requirements.** 20-feet front and 10-feet for sides.

5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on April 17, 2023. The variance application's survey map dated January 9, 2023, was prepared by Daniel Berg, LPLS and denotes that portion of the one-story single-family dwelling walls and detached laundry and storage structure are built into the side (south) yard setback and side (south) yard open space requirement. **(See Exhibit "A"-Site Plan)**

The survey map dated October 17, 2024, shows portions of the one-story attached single-family dwelling (duplex) walls are built into the side (northeast) yard setback, encroaching 0.8-feet and 1.9-feet into the 10.0-foot side (northeast) yard, in lieu of the required 10.00-foot side yard requirement.

The encroachment leaves a minimum 9.20-foot and 8.10-foot side (northeast) yard setback, in lieu of the required 10.0-foot side (northeast) yard setback in lieu of the required 10.0-foot side (northeast) yard setback as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-76(a), Minimum yards requirements.

6. **County Building Records.** Hawai'i County Real Property Tax (RPT) Office records indicate that a building permit (#48146) was issued on April 28, 1971, for a new dwelling, and the following permits (#'s 0915583) in 1991, permit # (B2006-1853K) in 2006, for additions, solar water heater, alterations, respectively.

7. **Planning Department Permits.** An Ohana Dwelling Permit No. 88-0099 was approved on May 20, 1988 for a second dwelling, constructed as a duplex dwelling per RPT Records, comprised of CPR Nos. 1 and 2.

8. **Agency Comments and Requirements.**

- a. State Department of Health (DOH) – No comments received as of this date.
- b. Department of Public Works - Building Division –  
See Memo Dated February 12, 2025 (Exhibit #B)

9. **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 25, 2024, and November 29, 2024, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on December 10, 2024.

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.

11. **Time Extension.** A time extension request was granted on January 20, 2025.

### **GROUND 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 attached one-story dwelling walls eaves into the 10.0-foot front (northeast) yard setback, as required by the Zoning Code.

The survey map dated October 17, 2024, shows portions of the one-story attached single-family dwelling (duplex) walls are built into the side (northeast) yard setback, encroaching 0.8-foot and 1.9-foot into the 10.0-foot side (northeast) yard, in lieu of the required 10.0-foot side yard requirement.

The encroachment leaves a minimum 9.20-foot and 8.10-foot side (northeast) yard setback, in lieu of the required 10.0-foot side (northeast) yard setback in lieu of the required 10.0-foot side (northeast) yard setback as required by the Hawai'i County Code, Chapter 25, Zoning, Section 25-5-76(a), Minimum yards requirements.

No evidence has been found to show indifference or premeditation by past owners or builders to deliberately create or intentionally allow the building encroachment problems to occur. It appears that the original dwelling improvements were constructed in 1971, approximately 54 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 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 side yard of the subject property include the following actions:

Remove the building encroachments and/or redesign the southwesterly portions of the second story of the dwelling 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 and laundry shed were 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.

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:**

Kim Chiodo  
Land Planning Hawaii LLC  
Variance from Zoning Code  
PL-ZVAR-2024-000073  
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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 39 years and was constructed under valid building permits issued by the County of Hawai'i. The encroachments were discovered when the applicant recently purchased the property, and the setback encroachments were revealed in a survey of the property prepared on October 17, 2024. Since the learning of the setback encroachments, the applicant has been working to resolve the issue by way of a Variance.

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 and detached laundry shed built on the subject property ("CPR Unit 1") will not meet the minimum side (south) yard and side (south) open space requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

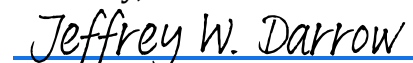
This variance application is approved subject to the following variance conditions:

Kim Chiodo  
Land Planning Hawaii LLC  
Variance from Zoning Code  
PL-ZVAR-2024-000073  
February 12, 2025  
Page 6

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. 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.
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 PL-ZVAR-2024-000073.

Sincerely,



Jeffrey W. Darrow (Feb 13, 2025 06:16 HST)

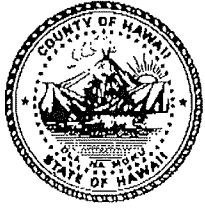
JEFFREY W. DARROW

Director

RJN:rjn

P:\planning\public\Admin Permits Division\Variance\2024\PL-ZVAR-2024-000073 - Oshima - Setback\PL-ZVAR-2024-000073 OSHIMA Approval 3.docx

xc: DPW Engineering Division (Kona)  
Real Property Tax Office (Kona)  
Alan Gunn, GIS



## 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

February 12, 2025

**TO:**

Rosalind Newlon County of Hawaii – Planning Dept.

WHCC

KONA HI. 96740

**SUBJECT:**

Variance – PL-ZVAR-2024-000073

Applicant: Thomas Baily

Owner Thomas E Baily and Jeanne J Oshima Trust

Request: Variance from Chapter 25, Zoning, Article 5, Division 10,  
Section 25-5-76, Minimum Yards and Article 4 (Encroachment into Rear Yard  
Setback)

TMK: (3) 6-5-010:026-0001

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 premises.
- ☐ No building permit was issued for the change of occupancy.
- ☐ At the time of completion, the subject complied with 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: Dwelling is permitted under permit number 48146 and was compliant at the time.

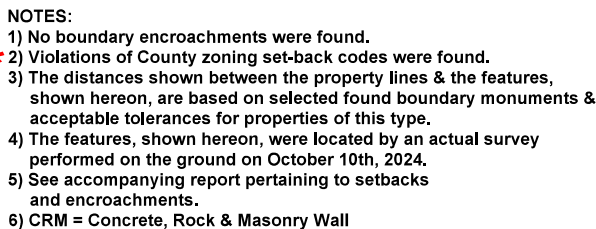
This status report reflects Building Division records only and does not include information from other agencies.

Should you have any questions regarding matters contained herein, please feel free to contact William Stewart at phone no. 808-323-4742

Being a Portion of Condominium Map 1649 at Waimea,  
South Kohala, County of Hawaii, State of Hawaii  
TMK (3) 6-5-010:026-0001  
TMK (3) 6-5-010:026-0002

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

SCALE ONE INCH  
EQUALS 20.00 FEET



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. 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.

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