

William P. Kenoi  
Mayor



Duane Kanuha  
Director

Bobby Command  
Deputy Director

West Hawai'i Office  
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**County of Hawai'i**  
PLANNING DEPARTMENT

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

July 30, 2014

Mr. Bill Moore, President  
William L. Moore Planning, Inc.  
159 Halai Street  
Hilo, Hawai'i 96720

Dear Mr. Moore:

**SUBJECT: Application: VARIANCE – VAR-14-000223**  
**Applicant: WILLIAM L. MOORE PLANNING, INC. /**  
**BILL MOORE, PRESIDENT**  
**Owners: PAULA ELARIONOFF**  
**Request: Variance from 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 (Encroachment into Southeast**  
**Side Yard Setback)**

**Tax Map Key: 6-5-009:104; Lot 3-A**

The Planning Director certifies the **approval** of Variance No. 14-000223 (VAR 14-000223), subject to variance conditions. The variance is to allow portions of the garage to remain with a side (southeast) yard setback of 7.13 feet. The variance is from the subject property's minimum 8-foot side yard setback requirements pursuant to the Hawai'i County Code, Chapter 25, Zoning, Article 5, Division 1, Section 25-5-7, Minimum yards.

The variance application also requested to allow the portions of the garage to be approved under Section 25-4-66, De Minimis Regulation Structural Position Discrepancy and to remain "as built" with a 7.93-foot to 7.98-foot side (east) yard setback and encroaching 0.02 feet (0.24 inch) to 0.07 feet (0.84 inch) into the side (south) yard setback. This will be addressed as a separate request.

**BACKGROUND AND FINDINGS**

1. **Location.** The subject property consists of approximately 0.627 acre (27,312.12 square

feet) of land and is situated at Waimea Homesteads, South Kohala, Hawai'i. The subject property's street address is 65- 1196 Kahawai Street.

2. **County Zoning.** Single-Family Residence – 7,500 square feet (RS-7.5).
3. **State Land Use.** Urban.
4. **Setback Requirements.** 15 feet for front and rear; 8 feet for sides.
5. **Variance Application-Site Plan.** The owner submitted the variance application, attachments, and filing fee on April 2, 2014 and other submittals related to the variance request and variance application. The variance application's site plan map is drawn to scale and denotes that portions.

The survey map shows that a portion of the garage encroaches 0.87 feet (10.44 inches) into the 8-foot side (southeast) setback.

6. **County Building Records.** Hawai'i County Real Property Tax Office records indicate that a building permit (#802584) was issued on October 10, 1980, for the construction of a 1,872 square feet garage.
7. **Agency Comments and Requirements.**
  - a. The State Department of Health (DOH) memorandum dated June 12, 2014. (See attached).
  - b. No comments were received from the Department of Public Works Department – Building Division.
8. **Subdivision.** The subject property was created as part of a consolidation and resubdivision (SUB-14-001286) which received Final Subdivision Approval on November 12, 2013.
9. **Notice to Surrounding Property Owners.** The applicant submitted a copy of notice mailed to surrounding property owners (including affidavits) by U.S.P.S. According to these submittals, the first notices were mailed on May 23, 2014, and the second notices were mailed on June 4, 2014. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on June 22, 2014.
10. **Time Extension.** The applicant's variance application was received on August 8, 2013 and additional time to review the application was required. The applicant granted the Planning Director an extension of time to issue a decision on the Variance Application until July 30, 2014.

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

### **GROUND FOR APPROVING VARIANCE**

#### **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 criteria (a) for the following reasons:**

The owner/applicant submitted the variance application to address or resolve the encroachment of the garage into the 8-foot side yard setback as required by the Zoning Code.

The survey map shows that portion of the garage encroaches 0.87 feet (10.44 inches) into the 8-foot side (southeast) setback.

No evidence has been found to allow indifference or premeditation by the owners or builders to deliberately create or intentionally allow the building encroachment problems to occur.

It appears that the garage constructed nearly 34 years ago, was constructed under valid building permits and other construction permits issued by the County. It also appears that past building permit inspections of the premises by the agencies during construction of the detached garage 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 the 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 open space of the subject property include the following actions:

Remove the building encroachments and/or redesign or relocate the garage constructed upon the subject property to fit within the correct building envelope denoted on the recent survey map as prescribed by the Zoning Code. Any structural or design corrections of the barn to meet setback requirement would leave unattractive reconstruction scars. Due to the miniscule encroachment of the garage, relocating the garage wouldn't be practical.

Because the encroachment is within the side yard setback, to consolidate the subject property which is owned by someone else and to re-subdivide the property to modify property lines and adjust minimum side yard setback and open space are not viable options; therefore, 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's 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 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.

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 garage has been in existence for approximately 34 years and was constructed under valid building permits and other construction permits issued by the County of Hawai'i. As such, it is felt that the issuance of this variance will not depreciate or detract from the character of the surrounding 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.

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 barn built upon the subject property ("LOT 3-A") does not meet the minimum side yard setback requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

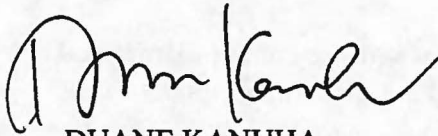
This variance request is **approved** subject to the following conditions.

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. Subject to provisions of the Zoning Code or State law, which may be changed from time to time, no permit shall be granted to allow an ohana or farm dwelling upon the subject property.
4. Should the garage 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 subject to provisions of the Zoning Code 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.

Bill Moore  
William L. Moore Planning, Inc.  
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Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance-VAR 14-000223 null and void.

Sincerely,



DUANE KANUHA  
Planning Director

LHN:nci

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xc: Kona Office

Real Property Tax Office (Kona)

✓ Planning GIS, Gilbert Bailado (via email)

Bill Moore  
William L. Moore Planning, Inc.  
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NEIL ABERCROMBIE  
GOVERNOR



LINDA ROSEN, M.D., M.P.H.  
DIRECTOR OF HEALTH

RECEIVED  
HEALTH DEPARTMENT  
JUL 13 2014

2014 JUL 13 11 00:35

STATE OF HAWAII  
DEPARTMENT OF HEALTH  
P.O. BOX 916  
HILO, HAWAII 96721-0916

MEMORANDUM

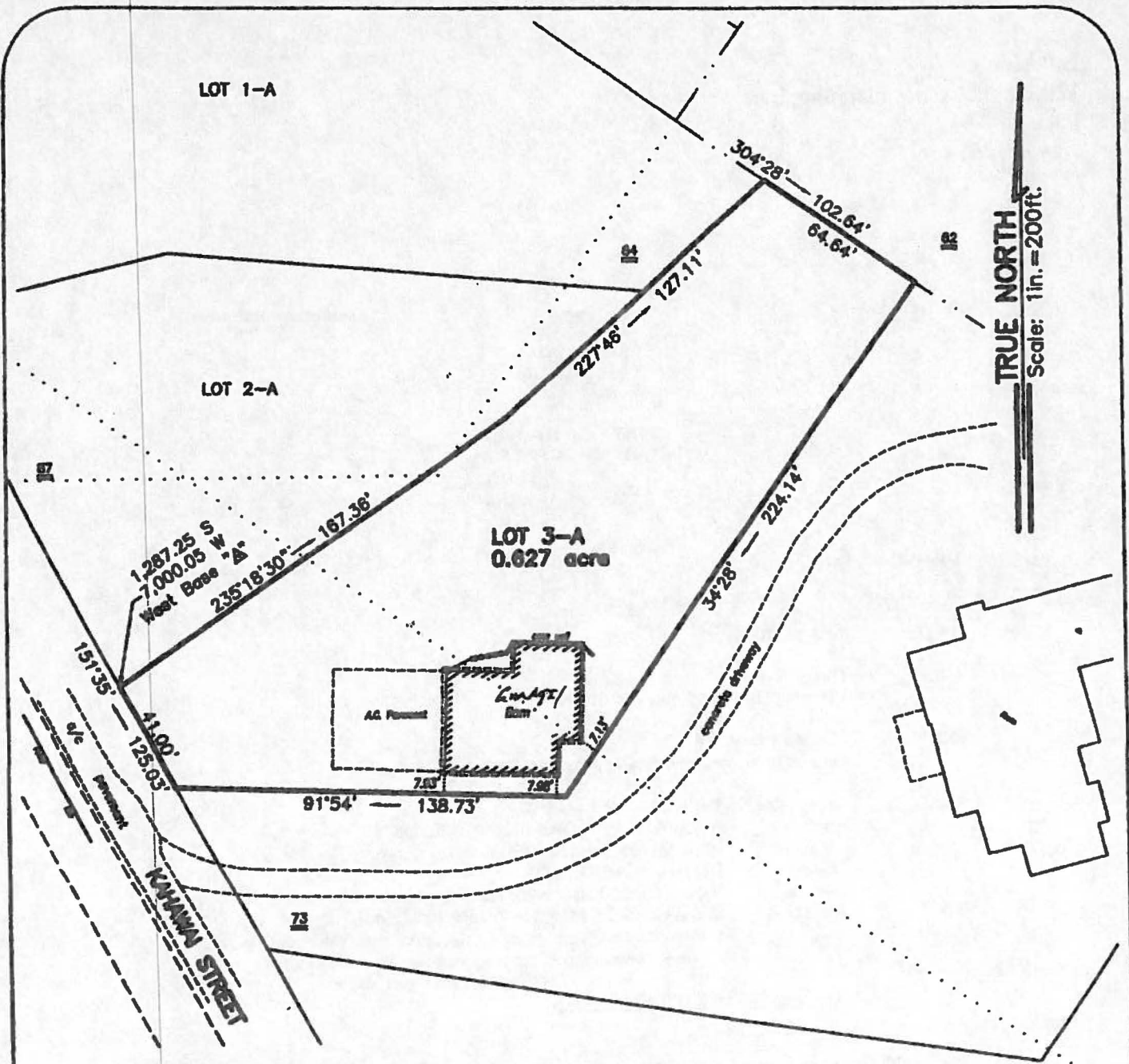
DATE: June 12, 2014

TO: Duane Kanuha  
Planning Director, County of Hawaii

FROM: Newton Inouye ↻  
District Environmental Health Program Chief

SUBJECT: Application: Variance-VAR 14-000223  
Applicant: WILLIAM L. MOORE PLANNING, INC./  
BILL MOORE, PRESIDENT  
Owner: PAULA ELARIONOFF  
Request: Variance from Chapter 25, Zoning, Article 5, Division 3,  
Section 25-5-36, Minimum Yards; Article 4, Division 4,  
Section 25-4-44(a), Permitted Projections into Yards and Open  
Space Requirements (Encroachment into the Side (North)  
Yard Setback and Side (North) Yard Open Space).  
Tax Map Key: 6-5-009:104: Lot 3-A

The Health Department found no environmental health concerns with regulatory implications in the submittals.



**SITE PLAN**

Plan showing existing structures on Lot 3-A, being a portion of Grant 10748 to Hartwell Carter, being also a portion of Grant 10749 to Alfred W. Carter. Situated at Waimea Homesteads, South Kohala, Hawaii. TMK 6-5-09:104 May 19, 2014

Drawn By:  
True North Surveys, Inc.  
P.O. Box 421  
Paoulo, Hawaii 96776

This work was prepared by me or under my direct supervision  
*[Signature]*  
Blaine W. Ito  
Licensed Professional Land Surveyor  
Certificate Number 5691



Elarionoff Application  
TMK: 6-5-009: 104  
Attachment No. 3