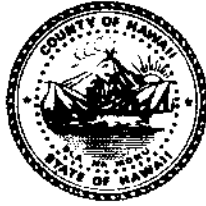


William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563

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

December 29, 2014

Bill Moore, President
William L. Moore, Planning, Inc.
159 Halai Street
Hilo, HI 96720

Dear Mr. Moore:

SUBJECT: VARIANCE APPLICATION – VAR-14-000250

**Applicant: WILLIAM L. MOORE PLANNING, INC &
KONA BUSINESS PARK PHASE II, LLC**

Owners: HULIKOA KONA STORAGE 18 (hi), LLC

**Request: Variance from Chapter 25, Zoning, Article 5, Division 14,
Section 25-5-146, Minimum Yards; Article 4, Division 4,
Section 25-4-44(a), Permitted Projections into Yards and Open
Space Requirements (Encroachment into the West Front Yard
Setback).**

TMK: 7-3-058:52; Lot 27

The Planning Director certifies the **approval** of VAR-14-000250, subject to variance conditions. The variance will allow the administrative/building/resident manager's quarters to remain with an 11-foot front (west) yard setback and associated roof cave with 9-foot front (west) yard open space in lieu of the minimum 15-foot front yard setback and associated 10-foot front yard open space as required under Chapter 25. These exceptions are in lieu of the required 15-foot front yard setback, 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 AND FINDINGS

1. **Location.** The subject property, consisting of approximately 9.079 acres of land, is located in the Kohanaiki Business Park, and is situated at Kohanaiki, North Kona, Hawai'i. The subject property's street address is 73-4281 Hulikoa Drive.
2. **Zoning.** Limited Industrial – 1 acre (ML-1a).

3. **State Land Use.** Urban.
4. **Required Setback.** 15 feet for Front; Side and Rear yards, none.
5. **Variance Application-Site Plan.** The applicant submitted the variance application, attachments, and filing fee on October 30, 2014, and other submittals related to the variance request and variance application. The variance application's site plan, drawn to scale and prepared by Chrystal Thomas Yamasaki, L.P.L.S., (Wes Thomas Associates), denotes the portions of the administrative building/resident manager's quarters built into the front (west) yard setback.

The survey map shows that the administrative building/resident manager's quarters encroaches 4 feet into the 15-foot side (west) yard setback and 1 foot into the 10-foot front yard open space.

6. **County Building Records.** Hawai'i County Real Property Tax Division records indicate that a building permit (B2004-0260K) was issued on February 12, 2004, for the construction of a warehouse and administrative building/resident manager's quarters.
7. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum, dated November 28, 2014. (See attached memorandum)
 - b. The Department of Public Works–Building Division (Kona) memorandum, dated November 12, 2014. (See attached memorandum)
8. **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 and second notice(s) were mailed on October 9, 2014 and November 18, 2014, respectively. Notice of this application was published in the Hawai'i Tribune Herald and West Hawai'i Today on November 12, 2014.
9. **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.

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 site plan prepared by Chrystal Thomas Yamasaki, L.P.L.S., (Wes Thomas & Associates), shows that portion of the administrative building/resident manager's quarters encroaches 4 feet into the 15-foot front (west) yard setback and 1 foot into the 10-foot side yard open space.

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

It appears that the administrative building/resident manager's quarters constructed nearly 10 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 warehouse and administrative building/resident manager's quarters did not disclose any building encroachment issues or building setback irregularities at that time.

The applicant has stated in part that *"The special and unusual circumstances relates to the configuration and steep slopes of the subject property and its location in relation to the Huliko'a Street cul-de-sac.*

The portions of Huliko'a Street right-of-way abutting the subject property ranged from 390 to 408 feet above sea level within a 150 length for an average slope of approximately 12%. In order to construct the street, the final grade at the top of the cul-de-sac was approximately 398 feet, requiring significant cuts and retaining walls in order to create a reasonable buildable area within the subject property.

As a result, the property immediately to the west (makai) of the subject area is approximately 8 to 12 feet lower than the self-storage driveway. In addition, the subject area had to be developed into a series of "step" to create the level building pads for the self-storage buildings. This required the construction of an approximately 8 foot high retaining wall immediately east (mauka) of Building A and perpendicular to Huliko'a Street. This retaining wall extends to the Huliko'a right-of-way fronting the cul-de-sac and continues for an addition 100 feet along the cul-de-sac frontage.

The elevation differences severely restricted the develop ability of the land fronting Huliko'a Street. At the same, there is an approximately 8-foot high retaining wall immediately to the west (mauka) of the administrative building/resident manager's quarters and along the cul-de-sac frontage which effectively minimizes the visual impacts of the building extension into the setback area".

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 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 west front yard setback of the subject property include the following actions:

Remove the building encroachments and/or redesign or relocate the administrative building/resident manager's quarters constructed upon the subject property to fit within the correct building envelope denoted on the recent survey map as prescribed by the Zoning Code.

Because the encroachment is on the second story improvements, any structural or design correction of the administrative building/resident manager's quarters to meet setback requirement would not only leave unattractive reconstruction scars, but would diminish the overall functionality of the second floor.

Because the encroachment is within the front yard setback, to consolidate the subject property with the roadway and re-subdivide the property to modify property lines and adjust minimum front yard setbacks are not viable options; there are no reasonable alternatives to resolve the encroachment issue.

(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.

The encroachment of 4 feet into the 15-foot front (west) yard setback and associated roof eave encroaching 1 foot into the front yard open space still allows for adequate air circulation, as the affected area is within the front setback adjacent to roadway frontage.

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 warehouse

and administrative building/resident manager's quarters have been in existence for approximately 10 years and were 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.

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 foregoing findings and unusual circumstances, the applicant's request for variance would be consistent with the general purpose of the zoning district and the intent and purpose 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.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

Based on the variance application's survey map, the utility meter shed built upon the subject property ("LOT 27") will not meet the minimum front yard setback and open space requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

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

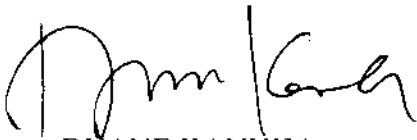
1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicant/owner(s), successors or assigns shall indemnify and hold the County of Hawai'i harmless from and against any loss, liability, claim, or demand for the property 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 administrative building/resident manager's quarters 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. Future or new building improvements and permitted uses shall be subject to State law

Bill Moore, President
William L. Moore Planning, Inc.
Page 6
December 29, 2014

and County ordinances and regulations pertaining to building construction and occupancy.

Should any of the foregoing variance conditions not be complied with, the Planning Director may proceed to declare subject Variance VAR-14-000250 null and void.

Sincerely,

A handwritten signature in black ink, appearing to read 'Duane Kanuha', written in a cursive style.

DUANE KANUHA
Planning Director

LHN:nci

P:\Admin Permits Division\Variances From CofH02\Zone7\VAR14-000250\TMK7-3-028-052HulikoaKonaStorage18.doc.rtf

xc: Planning Department (Kona)
Real Property Tax Division (Kona)
Gilbert Bailado, Planning GIS

Bill Moore, President
William L. Moore Planning, Inc.
Page 7
December 29, 2014

NEIL ABERCROMBIE
GOVERNOR



LINDA ROSEN, M.D., M.P.H.
PLANNING DEPARTMENT
COUNTY OF HAWAII

2014 DEC -1 AM 10:55

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

MEMORANDUM

DATE: November 28, 2014

TO: Duane Kanuha
Planning Director, County of Hawaii

FROM: Newton Inouye ✉
District Environmental Health Program Chief

SUBJECT: Application: Variance – VAR 14-000250
Applicant: WILLIAM L. MOORE PLANNING, INC. &
KONA BUSINESS PARK PHASE II, LLC
Owner: HULIKOA KONA STORAGE 18 (III), LLC
Request: Variance from Chapter 25, Zoning, Article 5 Division 14,
Section 25 5-146 Minimum Yards and Article 4, Division
4, Section 25-4-44(a), Permitted Projections into Yards and
Open Space Requirements (Encroachment into West
Front Yard Setback)
Tax Map Key: 7-3-058:052, CPR-003

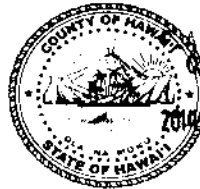
Wastewater Branch is unable to make comments to the proposed project at this time. Before we can offer any comments, the applicant needs to address the following:

- a. The location of all existing wastewater systems.

Bill Moore, President
William L. Moore Planning, Inc.
Page 8
December 29, 2014

William P. Kenoi
Mayor

Walter K. M. Lau
Managing Director



PLANNING DEPARTMENT
COUNTY OF HAWAII

NOV 14 PM 2:12

Warren H. W. Lee
Director

Brandon A. K. Gonzalez
Deputy Director

County of Hawai'i
DEPARTMENT OF PUBLIC WORKS
Aupuni Center
101 Pauahi Street, Suite 7 - Hilo, Hawai'i 96720-4224
(808) 961-8321 - Fax (808) 961-8630
www.co.hawaii.hi.us

November 12, 2014,

From: Kelly Wilson Non-Residential Plan Examiner
Building Division Kona Office
County of Hawaii

Subject: Variance – VAR 14-000250
Applicant: William L. Moore Planning Inc. & Kona Business Park
Phase II LLC
Owner: Hulikoa Kona Storage 18 (HI), LLC
Request: Variance from Chapter 25, Zoning Article 5 Division 14, Section
25-5-146 Minimum Yards and Article 4, Division 4, section 25-4-44(a),
Permitted Projections into Yards and Open Space Requirements
(Encroachment into West Front Yard Setback)
Tax Map Key: 7-3-058:052, CPR-003

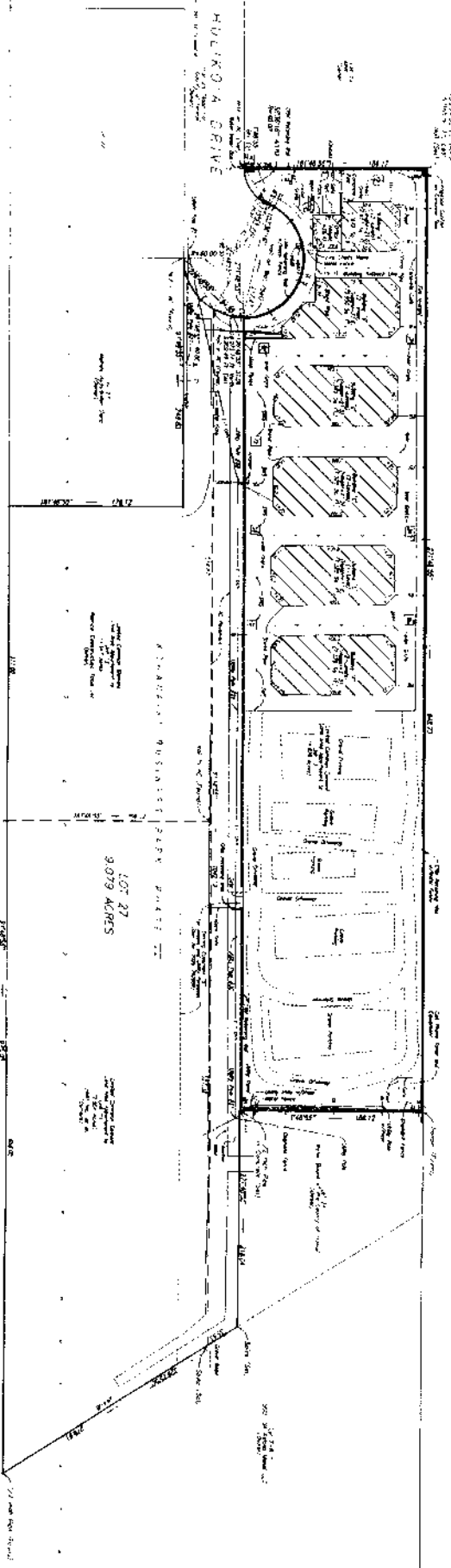
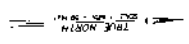
In review of the submitted TMK, the structure in question has Building Permits completed September 6, 2005. Thus is in compliance with the Building Division.

The other five storage buildings also have completed Building Permits.

There are active permits for five additional storage buildings that have had no inspections. These permits will expire March 28, 2015 and will be required to be re-permitted.

Any questions please contact me at 808-323-4731 or kwilson@hawaiicounty.gov

K O N A I A N A I K I



ALTA/ACSM LAND TITLE SURVEY

**MAP SHOWING
LIMITED COMMON ELEMENT LAND APPURTENANT TO UNIT "J"
OF KOHANA'IKI CONDOMINIUM PROJECT
OF LOT 27
OF KOHANA'IKI BUSINESS PARK, PHASE II**

**Being a Portion of Grant 2942 to Hulikoa
At Kohana'iki, North Kona
Island and County of Hawaii, State of Hawaii**

OWNER:
KOHANA'IKI BUSINESS PARK, LLC (KBP)

**OWNER OF
WEB PLOANS & ENCUMBRANCES**

**PROJECT NO. 1585
DATE OF SURVEY: SEPTEMBER 2, 2014
BY: [Signature]**



[Signature]
Surveyor

- NOTES:**
1. All dimensions are in feet and inches.
 2. The boundary lines shown on this map are based on the survey conducted by the Surveyor General of Hawaii, State of Hawaii, on or about the date of the survey.
 3. The boundary lines shown on this map are based on the survey conducted by the Surveyor General of Hawaii, State of Hawaii, on or about the date of the survey.
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