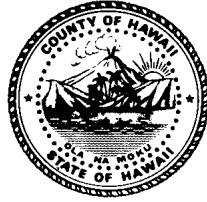


Mitchell D. Roth  
Mayor

Lee E. Lord  
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

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

June 15, 2023

Kevin Wilde  
FFKR Architects  
730 Pacific Avenue  
Salt Lake City, Utah 84104  
Via Email: [kwilde@ffkr.com](mailto:kwilde@ffkr.com)

Dear Mr. Wilde:

**Application:** VARIANCE – PL-ZVAR-2023-000040  
**Applicant:** KEVIN WILDE, FFKR ARCHITECTS  
**Owners:** THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS  
**Request:** Variance from Chapter 25, Zoning, Article 5, Division 2,  
Section 25-4-22(a), Exemptions from Height Limitations  
**(3) 7-5-003:022-0002**

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The variance does not allow the requested increase in height to 87 feet 8 inches for the proposed new steeple from the approved Variance No. 959 for 73 in lieu of the maximum height limit of 55 inches, whereby the variance request is **denied**.

### **BACKGROUND AND FINDINGS**

1. **Location.** The subject property, Lot 2, contains approximately 7.056 acres, is comprised of two CPR Units, and is situated within Por. Lanihau 1<sup>st</sup> & Honuaula, North Kona, Hawai'i. The subject property's street address is 75-232 Kalani Street, Kailua-Kona, HI 96740.
2. **County Zoning.** Agricultural District (A-5a).
3. **State Land Use Designation.** Agricultural.
4. **Setback Requirements.** 30-foot front and 20 feet for sides.
5. **Variance Application.** The applicant/owner submitted the variance application, attachments, filing fee, and associated materials on March 29, 2023. The variance application's site plan

submitted March 29, 2023, with elevations shows the requested increase in allowed height from 73 feet to requested height of 87 feet 8 inches **(See Exhibit A-Site Plan)**

The requested height for the steeple is in lieu of the required 55 feet allowed per Zoning Code Section 25-4-22(a) for Exemptions from height Limitations, and the approved height of 73 feet for the current steeple by Variance No. 959.

6. **County Building Records.** Hawai‘i County Real Property Tax (RPT) Office records indicate that a building permit (#791830) was issued on July 17, 1979, for a new church.
8. **Agency Comments and Requirements.**
  - a. State Department of Health (DOH) –See Memo dated April 17, 2023.  
**(See Exhibit “B”).**
  - b. Department of Public Works - Building Division – See Memo dated May 16, 2023.  
**(See Exhibit “C”).**
9. **Public Notice.** The applicant filed a transmittal letter with copy of the notices sent to surrounding property owners via USPS. According to USPS Certified Mailing Receipts and affixed postal receipts, the first and second notices were mailed on April 18, 2023, and April 24, 2023, respectively. Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on April 27, 2023
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 May 25, 2023.

## **GROUNDS 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 does not meet criterion (a) for the following reasons:**

There are no special or unusual circumstance applying to the subject property which interferes with the best use of the property. The owner/applicant submitted the variance application to increase the height of the steeple from the approved variance of 73 feet to 87 feet 8 inches to achieve an overall balance in the aesthetics of the building and to proclaim the intended religious message, thereby being constitutionally protected by form of speck U.S. Constitution Amend. 1: Hawaii Constitution, Art. 1 & 4.

The applicant compares the requested height to that of other churches in the area of Kailua Village such as the historic Moku'aikaua Church with a steeple at approximately 112 feet. Since this church was built circa 1926 and is listed on the State and National Register of Historic Places for its significance, it was also built prior to the adoption of the Zoning Code in 1966 and does not require a Variance, and therefore the building is considered non-conforming. Another church of reasonable comparison and is referenced in the application is St. Michael's Church at TMK 7-5-008:006 with Variance No. 10-021, approved on October 18, 2010. VAR No. 10-021 allows the St. Michael's church steeple to be 73 feet tall, in lieu of the maximum 45 feet for the proposed church bell tower, similar to the existing variance for this site, which was been determined to be an allowable exception from the zoning code for height for a steeple for a church based on the size and height of the church.

According to at least two internet sources that included recommendations for steeple height for churches, it is stated that a rule of thumb is to have the steeple height match the height of the building and the width should be 10% of the building width. For this project, the building height is 26 feet and the steeple width is greater than 10%, and therefore the steeple height could be 26 feet for a total height of 52 feet and match the massing of the building and could then utilize the existing Variance allowing 73 feet for the maximum height for the steeple.

The above findings determine that there are no special and unusual circumstances that would interfere with best use and development of the subject property by not allowing an additional variance request of up to 87 feet 8 inches for the new steeple.

### **Alternatives**

***(b) There are no other reasonable alternatives that would resolve the difficulty.***

**The Variance application does not meet criterion (b) for the following reasons:**

Alternatives are available to the current owners to address the building design that includes a proposed new steeple with a height that exceeds that allowed height of 73 feet, in lieu of the maximum height allowed by Zoning Code Section 25-4-22(a) by including the following actions:

Redesign the new steeple as recommended to the Planning Director by the Kailua Village Design Commission in their letter dated December 15, 2022, following the meeting held on December 13, 2022. The Commission opines that the tower as it exists is already noticeable, therefore another variance to allow further increase in height is unwarranted. Additionally, as stated above, it is recommended in resources online that a steeple be the same height of the building at 26 feet overall, which would have a maximum height of 52 feet, as opposed to the requested height of 87 feet 8 inches, to create a balanced look of the building.

### **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:**

The intent and purpose of requiring height limits 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.

Based on the foregoing findings and unusual circumstances, the applicant's request for variance would not 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 not be consistent with the general purpose of the zoning district and would be materially detrimental to the public's welfare or cause substantial adverse impact to the area's character or to adjoining properties, since it is in the entry way to Kailua Kona and would be easily seen.

### **PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS**

Based on the variance application's survey map, the proposed steeple on the subject property ("LOT 2") will not meet the height requirement or Exemptions from Height requirement pursuant to Hawai'i County Code, Chapter 25, (Zoning Code).

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

1. The applicant/owner, their assigns or successors shall be responsible for complying with all stated conditions of denial.

Kevin Wilde  
FFKR Architects  
June 15, 2023  
Page 5

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, relating to or connected with the denial of this variance.
3. Should the new steeple be 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. 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-2023-000040.

Sincerely,

*Zendo Kern*

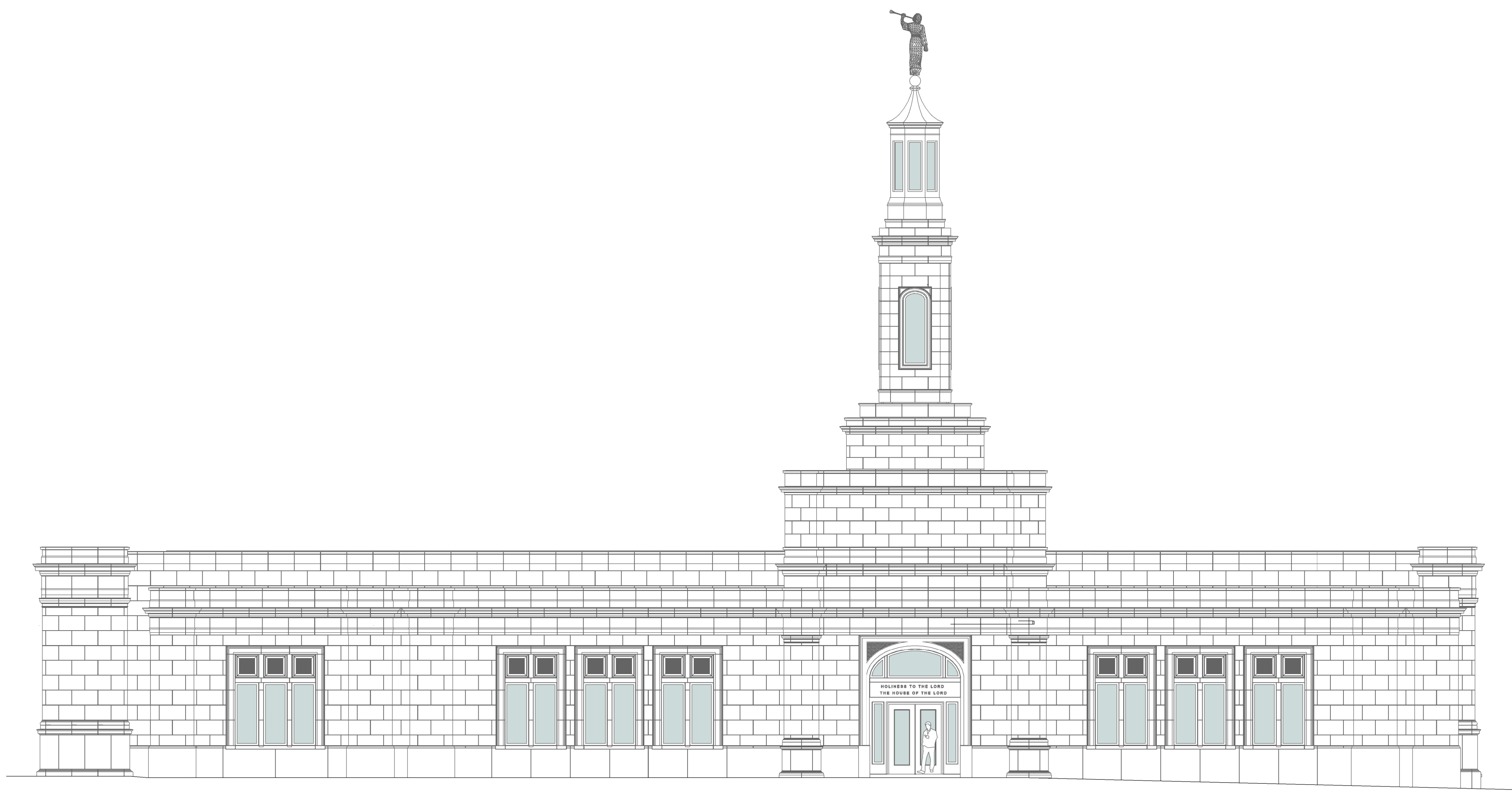
[Zendo Kern \(Jun 19, 2023 13:38 HST\)](#)

ZENDO KERN  
Planning Director

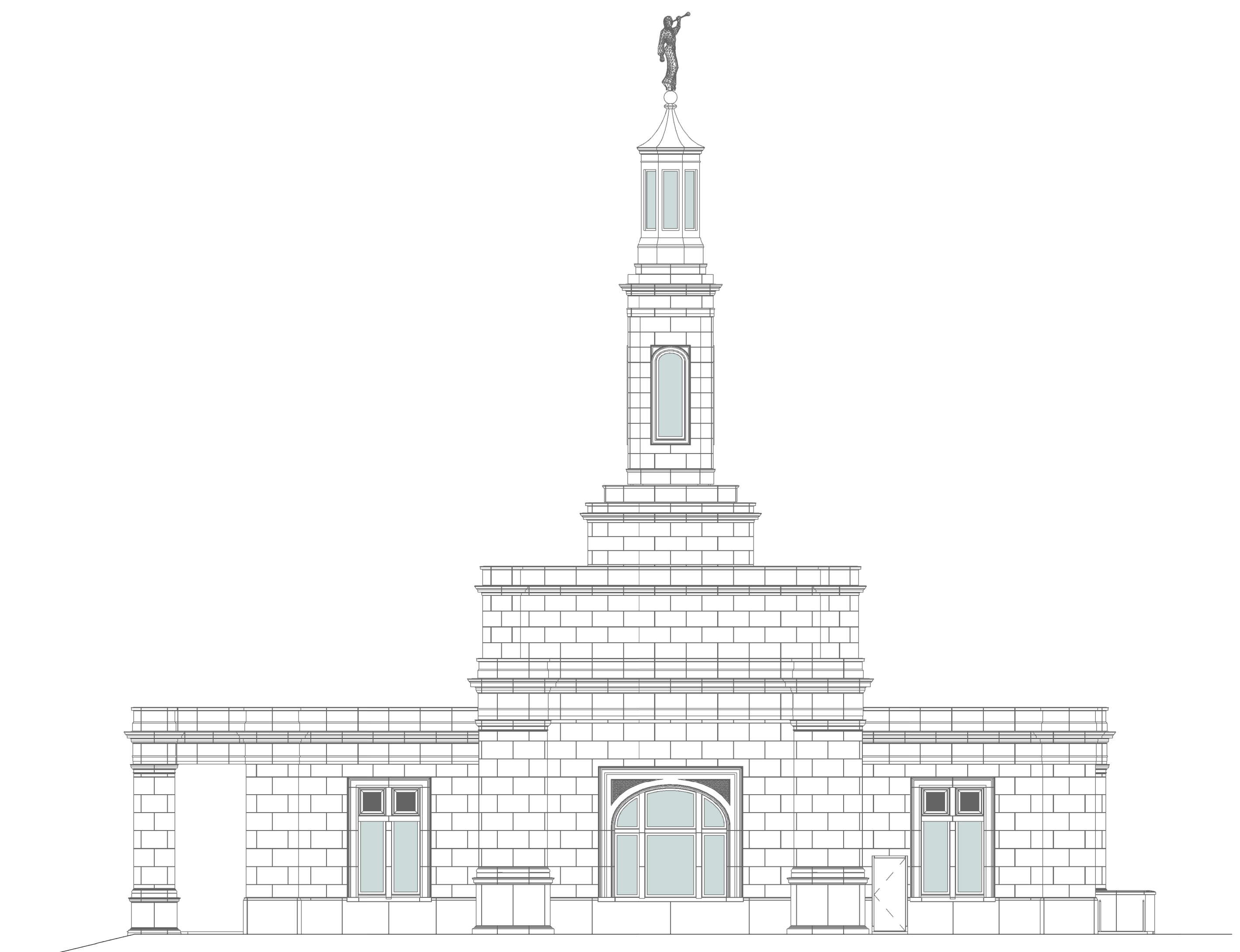
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\\COH01\planning\public\Admin Permits Division\Variance\2023\PL-ZVAR-2023-000040-Wilde - Height\Denial\_2.docx

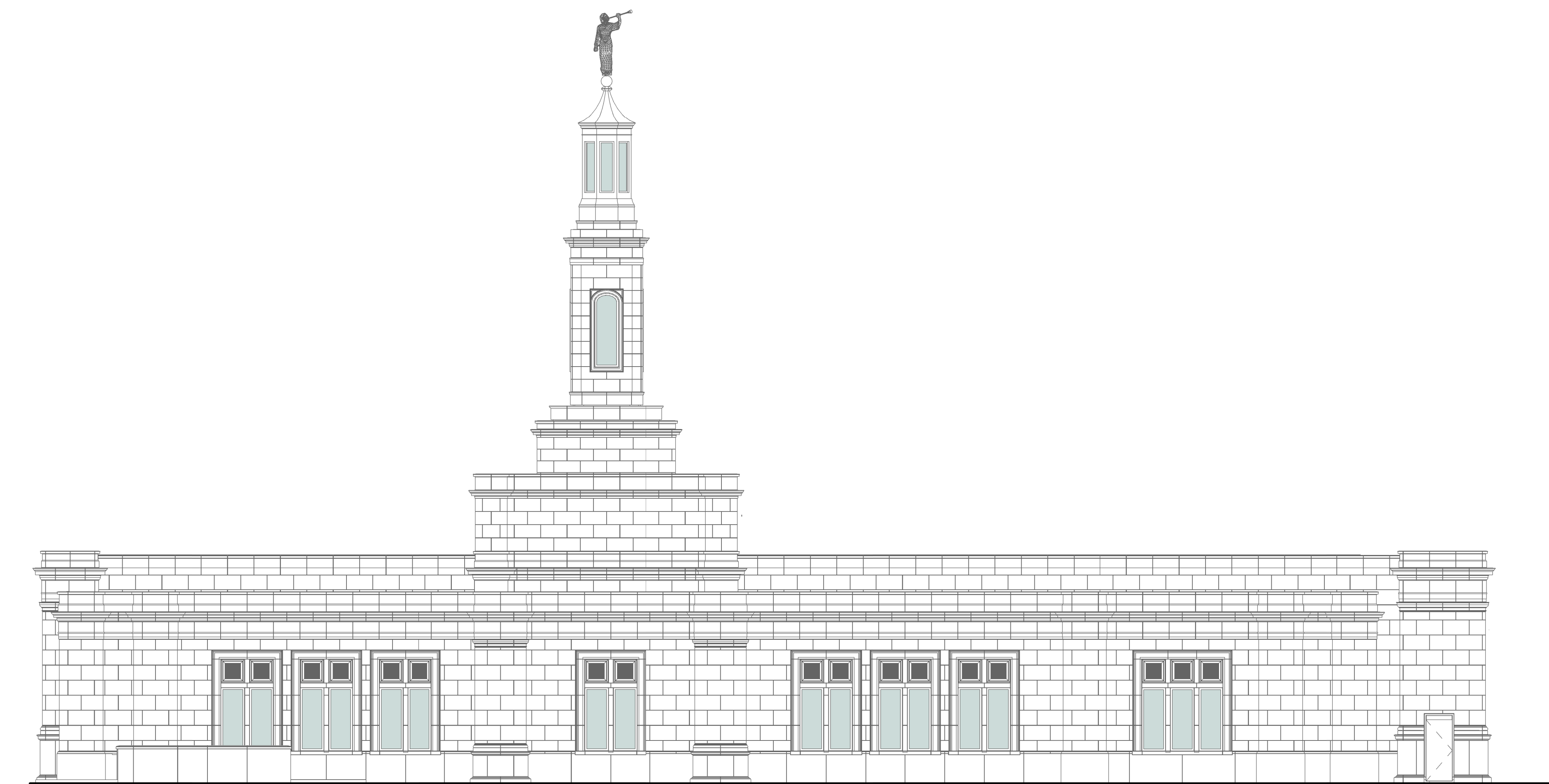
xc: DPW Engineering Division (Kona)  
Real Property Tax Office (Kona)  
Alan Gunn, GIS



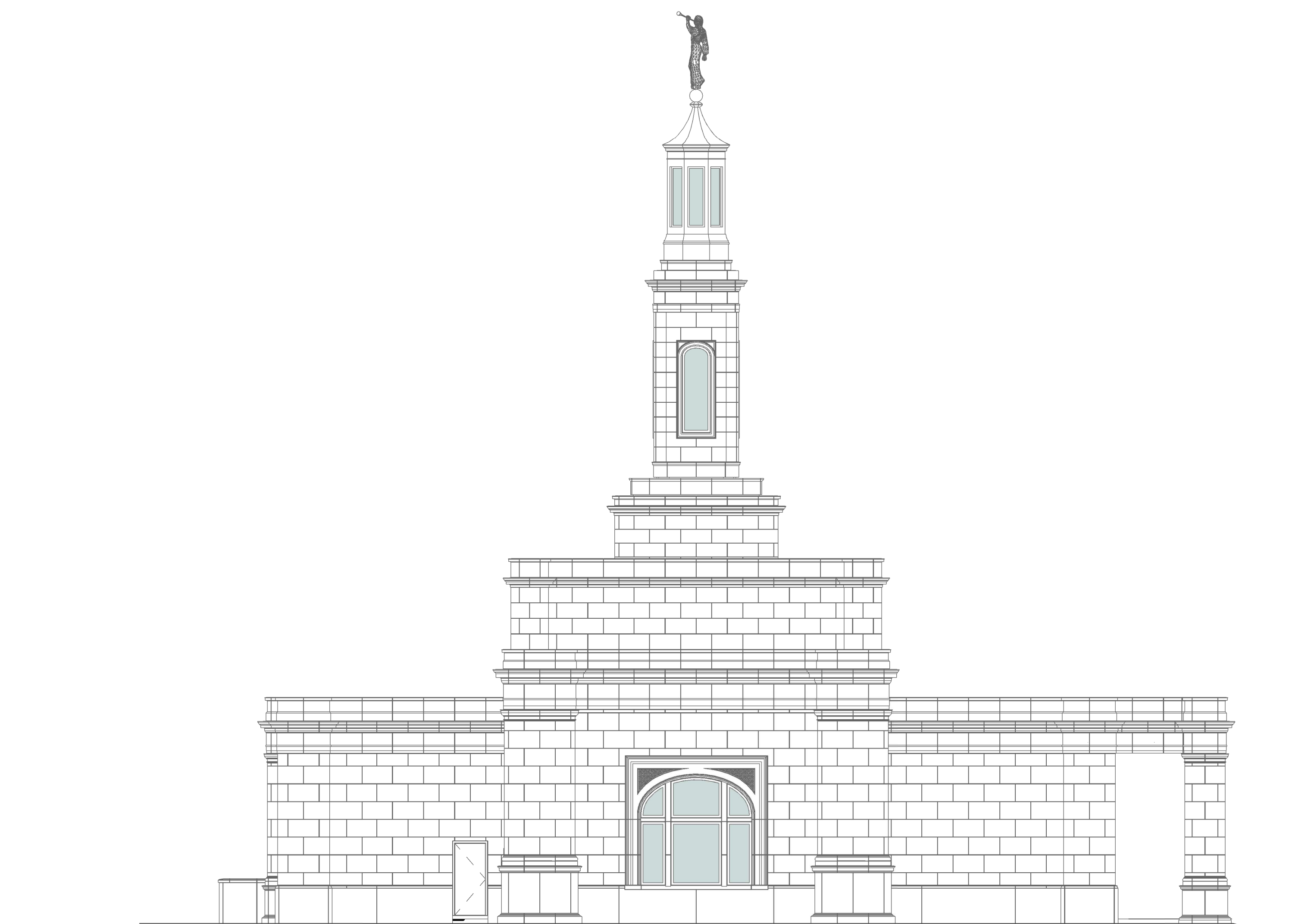
WEST ELEVATION - NEW



SOUTH ELEVATION - NEW



EAST ELEVATION - NEW



NORTH ELEVATION - NEW

Exhibit "A"

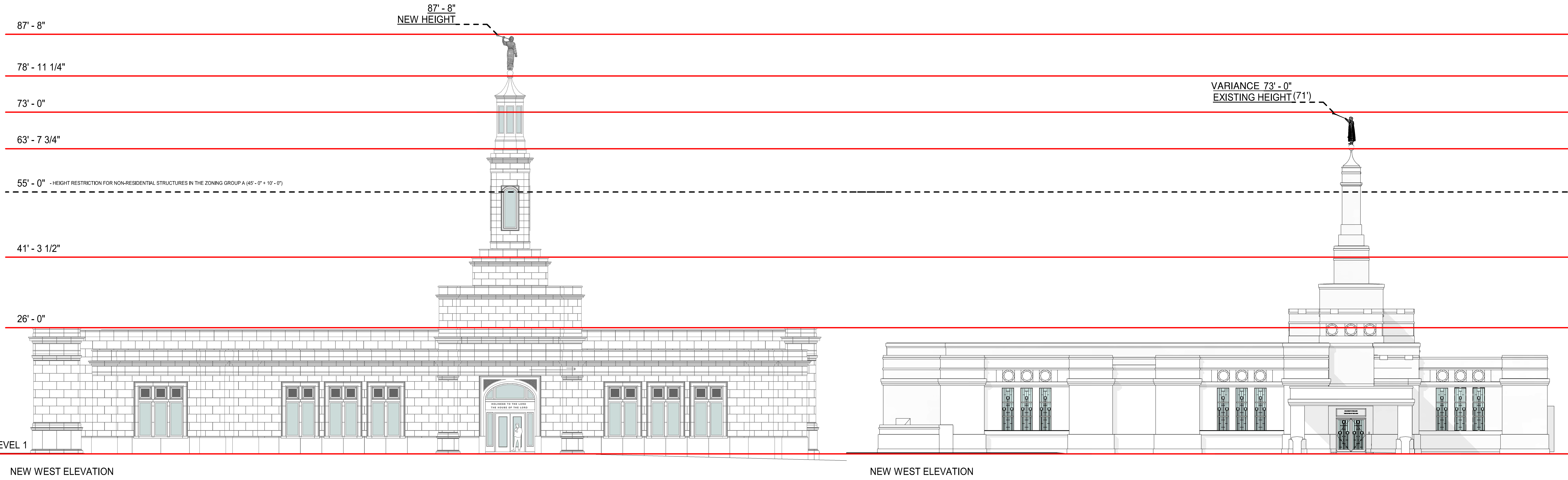
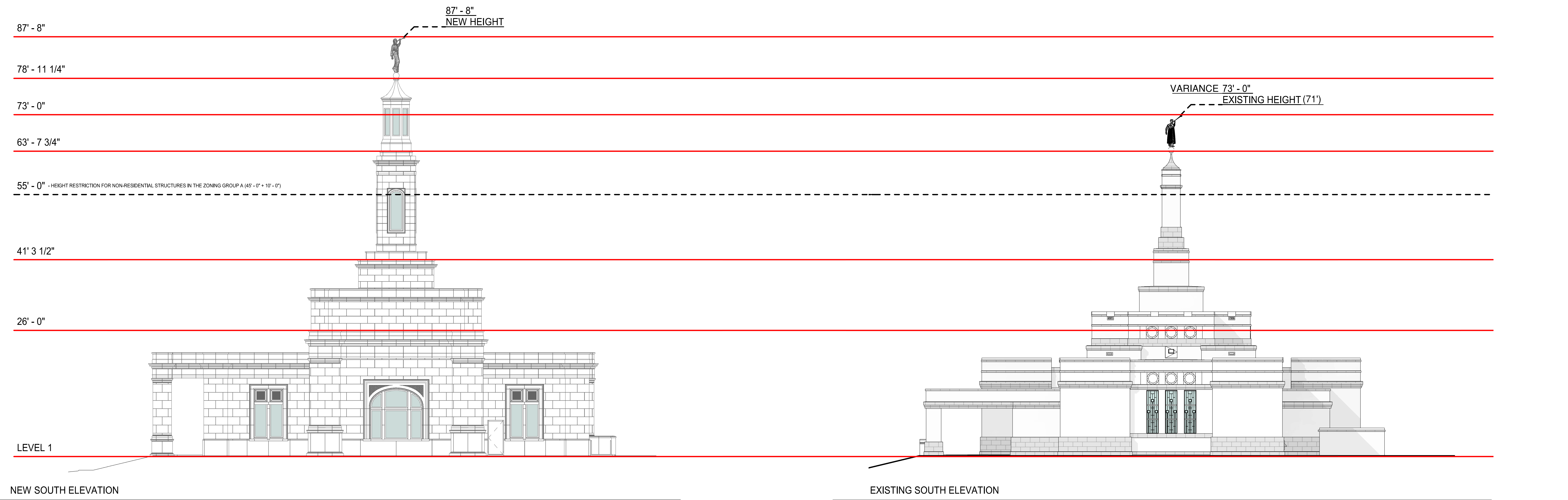
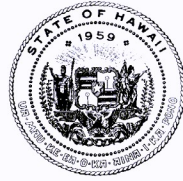


Exhibit "A"





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

MEMORANDUM

DATE: April 17, 2023

TO: Mr. Zendo Kern  
Planning Director, County of Hawaii

FROM: Eric Honda  
District Environmental Health Program Chief

SUBJECT: Application: VARIANCE- PL-ZVAR-2023-000040  
Applicant: KEVIN WILDE, FFKR ARCHITECTS  
Owners: THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS  
Request: Variance from Chapter 25, Zoning, Article 5, Division 2  
Section 25-4-22 (a), Exemptions from Height Requirements  
TMK: 7-5-003:022-0002

In most cases, the District Health Office will no longer provide individual comments to agencies or project owners to expedite the land use review and process.

Agencies, project owners, and their agents should apply Department of Health "Standard Comments" regarding land use to their standard project comments in their submittal. Standard comments can be found on the Land Use Planning Review section of the Department of Health website: <https://health.hawaii.gov/epo/landuse/>. Contact information for each Branch/Office is available on that website.

**Note: Agencies and project owners are responsible for adhering to all applicable standard comments and obtaining proper and necessary permits before the commencement of any work.**

General summary comments have been included for your convenience. However, these comments are not all-inclusive and do not substitute for review of and compliance with all applicable standard comments for the various DOH individual programs.

**Clean Air Branch**

1. All project activities shall comply with the Hawaii Administrative Rules (HAR),

Exhibit "B"



Chapters 11-59 and 11-60.1.

2. Control of Fugitive Dust: You must reasonably control the generation of all airborne, visible fugitive dust and comply with the fugitive dust provisions of HAR §11-60.1-33. Note that activities that occur near existing residences, businesses, public areas, and major thoroughfares exacerbate potential dust concerns. It is recommended that a dust control management plan be developed which identifies and mitigates all activities that may generate airborne and visible fugitive dust and that buffer zones be established wherever possible.
3. Standard comments for the Clean Air Branch are at: <https://health.hawaii.gov/epo/landuse/>

### **Clean Water Branch**

1. All project activities shall comply with the HAR, Chapters 11-53, 11-54, and 11-55.
  1. The following Clean Water Branch website contains information for agencies and/or project owners who are seeking comments regarding environmental compliance for their projects with HAR, Chapters 11-53, 11-54, and 11-55: <https://health.hawaii.gov/cwb/clean-water-branch-home-page/cwb-standard-comments/>.

### **Hazard Evaluation & Emergency Response Office**

1. A Phase I Environmental Site Assessment (ESA) and Phase II Site Investigation should be conducted for projects wherever current or former activities on site may have resulted in releases of hazardous substances, including oil or chemicals. Areas of concern include current and former industrial areas, harbors, airports, and formerly and currently zoned agricultural lands used for growing sugar, pineapple or other agricultural products.
2. Standard comments for the Hazard Evaluation & Emergency Response Office are at: <https://health.hawaii.gov/epo/landuse/>.

### **Indoor and Radiological Health Branch**

1. Project activities shall comply with HAR Chapters 11-39, 11-45, 11-46, 11-501, 11-502, 11-503, and 11-504.
2. Construction/Demolition Involving Asbestos: If the proposed project includes renovation/demolition activities that may involve asbestos, the applicant should contact the Asbestos and Lead Section of the Branch at <https://health.hawaii.gov/irhb/asbestos/>.

### **Safe Drinking Water Branch**

1. Agencies and/or project owners are responsible for ensuring environmental compliance for their projects in the areas of 1) Public Water Systems; 2) Underground Injection Control; and 3) Groundwater and Source Water Protection

in accordance with HAR Chapters 11-19, 11-20, 11-21, 11-23, 11-23A, and 11-25. They may be responsible for fulfilling additional requirements related to the Safe Drinking Water program: <https://health.hawaii.gov/sdwb/>.

2. Standard comments for the Safe Drinking Water Branch can be found at: <https://health.hawaii.gov/epo/landuse/>.

### **Solid & Hazardous Waste Branch**

1. Hazardous Waste Program - The state regulations for hazardous waste and used oil are in HAR Chapters 11-260.1 to 11-279.1. These rules apply to the identification, handling, transportation, storage, and disposal of regulated hazardous waste and used oil.
2. Solid Waste Programs - The laws and regulations are contained in HRS Chapters 339D, 342G, 342H, and 342I, and HAR Chapters 11-58.1 and 11-282. Generators and handlers of solid waste shall ensure proper recycling or disposal at DOH-permitted solid waste management facilities. If possible, waste prevention, reuse, and recycling are preferred options over disposal. The Office of Solid Waste Management also oversees the electronic device recycling and recovery law, the glass advanced disposal fee program, and the deposit beverage container program.
3. Underground Storage Tank Program – The state regulations for underground storage tanks are in HAR Chapter 11-280.1. These rules apply to the design, operation, closure, and release response requirements for underground storage tank systems, including unknown underground tanks identified during construction.
4. Standard comments for the Solid & Hazardous Waste Branch can be found at: <https://health.hawaii.gov/epo/landuse/>.

### **Wastewater Branch**

For comments, please email the Wastewater Branch at [doh.wwb@doh.hawaii.gov](mailto:doh.wwb@doh.hawaii.gov).

### **Sanitation / Local DOH Comments:**

1. Noise may be generated during demolition and/or construction. The applicable maximum permissible sound levels, as stated in Title 11, HAR, Chapter 11-46, “Community Noise Control,” shall not be exceeded unless a noise permit is obtained from the Department of Health.
2. According to HAR §11-26-35, No person, firm, or corporation shall demolish or clear any structure, place, or vacant lot without first ascertaining the presence or absence of rodents that may endanger public health by dispersal from such premises. Should any such inspection reveal the presence of rodents, the rodents shall be eradicated before demolishing or clearing the structure, site, or vacant lot. A demolition or land clearing permit is required prior to demolition or clearing.

**Other**

1. [CDC - Healthy Places - Healthy Community Design Checklist Toolkit](#) recommends that state and county planning departments, developers, planners, engineers, and other interested parties apply these principles when planning or reviewing new developments or redevelopment projects.
2. If new information is found or changes are made to your submittal, DOH reserves the right to implement appropriate environmental health restrictions as required. Should there be any questions on this matter, please contact the Department of Health, Hawaii District Health Office, at (808) 933-0917.



## BUILDING DIVISION – DPW

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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

May 16, 2023

**TO:**

Rosalind Newton County of Hawaii – Planning Dept.  
West Hawaii Office  
74-5044 Ane Keohokalole Hwy.  
Kailua Kona, HI. 96740

**SUBJECT:**

Variance – PL-ZVAR-2023-000040  
Applicant: Kevin Wilde, FFKR Architects  
Request: Variance from Chapter 25, Zoning, Article 5, Division 2, Section 25-4-22(2) Exemption of height requirements  
TMK: (3) 7-5-003:022

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 violation(s) still outstanding:
  - Building       Electrical       Plumbing       Sign
- Others: All new construction shall conform to current Building codes at the time of construction commences.

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 Chris Domino at phone no. (808) 323-4720