



A BILL FOR AN ORDINANCE

TO REZONE LANDS SITUATED AT HALEIWA, NORTH SHORE, OAHU, HAWAII.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Zoning Map No. 17, Mokuleia-Waialua-Haleiwa, Ordinance 86-134, is hereby amended as follows: Land situated at Haleiwa, North Shore, Oahu, Hawaii, hereinafter described, is hereby rezoned from R-5 Residential District to B-1 Neighborhood Business District. The boundaries and area of said District shall be described as shown on the map attached hereto, marked Exhibit "A" and made a part hereof, and further identified as Tax Map Key 6-6-009: 027.

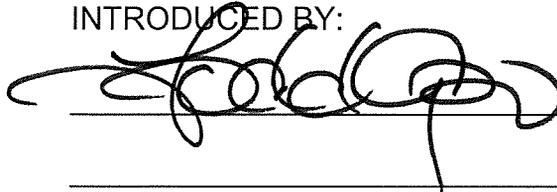
SECTION 2. A Unilateral Agreement marked "Exhibit B" is by reference incorporated herein and made a part hereof.



A BILL FOR AN ORDINANCE

SECTION 2. This ordinance shall take effect upon its approval.

INTRODUCED BY:



(br)

DATE OF INTRODUCTION:

JUN 26 2009

Honolulu, Hawaii

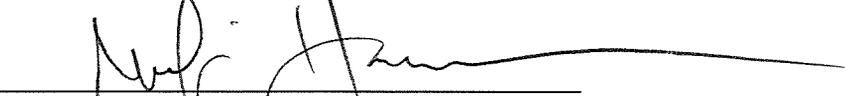
Councilmembers

APPROVED AS TO FORM AND LEGALITY:

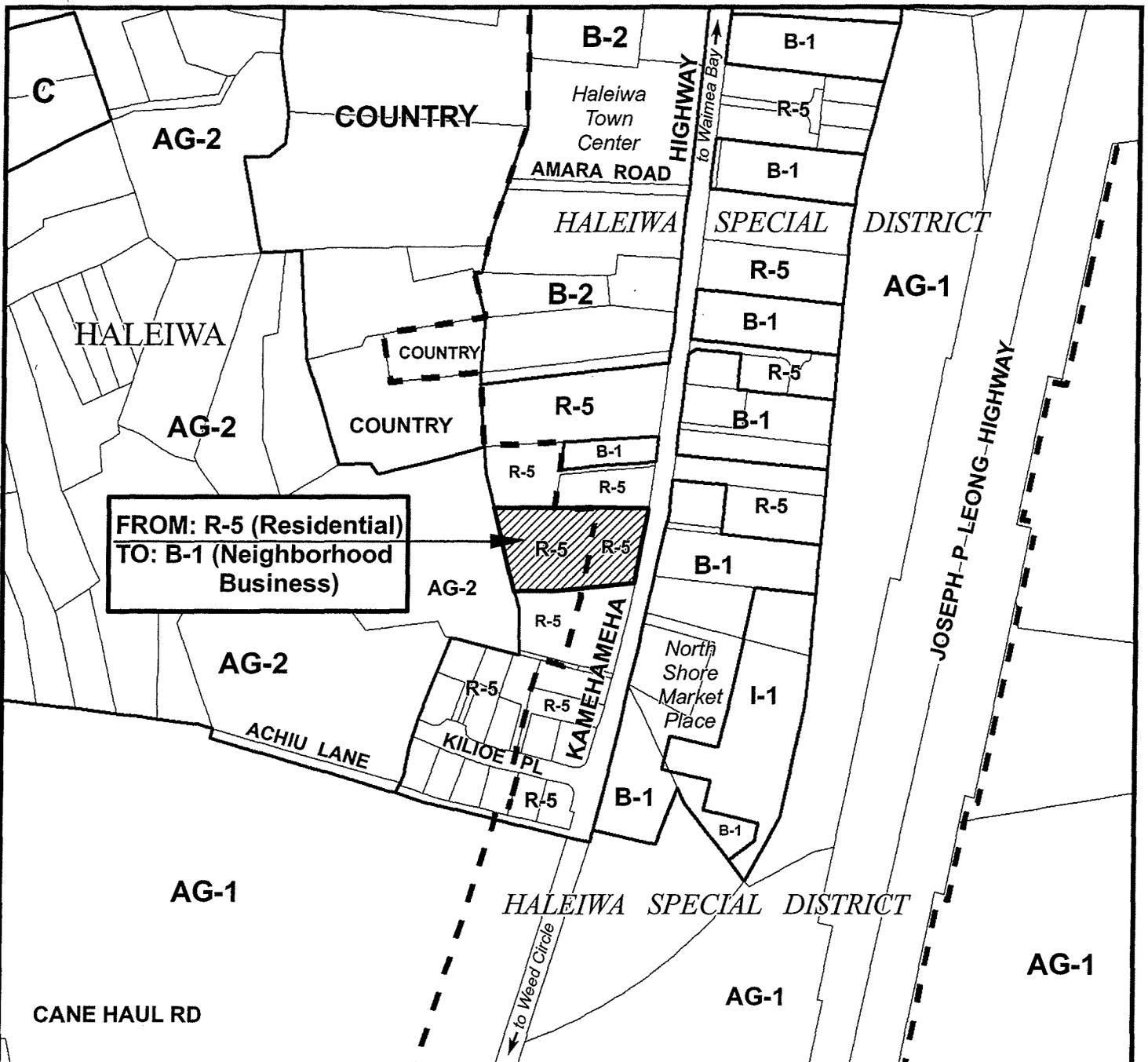


Deputy Corporation Counsel

APPROVED this 31st day of December, 20 09.



MUFU HANNEMANN, Mayor
City and County of Honolulu



**PORTION OF
ZONING MAP NO. 17
(MOKULEIA - WAIALUA - HALEIWA)**



0 150 300
1 IN. = 300 FT.

Copyrights City & County of Honolulu
All Rights Reserved 2009

APPLICANT: SCOTT C. WALLACE

TAX MAP KEY(S): 6-6-009: 027

FOLDER NO. : 2008/Z-7

LAND AREA: 0.964 ACRES

PREPARED BY: DEPARTMENT OF PLANNING & PERMITTING
CITY AND COUNTY OF HONOLULU

PUBLIC HEARING: PLANNING COMMISSION

CITY COUNCIL

ORD. NO 9 - 3 4

MAY 0 9 2009

AUG 2 6 2009

2008/Z-6

EFF. DATE: DEC 3 1 2009.

EXHIBIT A

BILL 5 0 (2009)

I hereby certify that this is
a true copy from the records
of the Bureau of Conveyances,
as 2009-184545.


Registrar of Conveyances
Assistant Registrar, Land Court
State of Hawaii

Doc 2009-184545
DEC 03, 2009 03:00 PM

LAND COURT

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY MAIL () PICKUP () TO:

SCOTT C. WALLACE
3375 KOAPAKA ST. F238-6
HONOLULU, HAWAII 96819

TITLE OF DOCUMENT: Unilateral Agreement and Declaration for
Conditional Zoning

PARTY(IES) TO DOCUMENT: Scott C. Wallace

TAX MAP KEY NO. (1) 6-6-09:027

**UNILATERAL AGREEMENT AND
DECLARATION FOR CONDITIONAL ZONING**

THIS INDENTURE (hereinafter referred to as this "Unilateral Agreement" or this "Declaration"), made this 3rd day of December, 2009, by Mr. Scott C. Wallace, whose address is Wallace Theaters Management Corporation, 3375 Koapaka Street, Suite F238-6, Honolulu, HI 96819 (hereinafter referred to as the "Declarant"),

[Form: 3/09]

EXHIBIT B

D-931-09

WITNESSETH:

WHEREAS, the Declarant is the owner in fee simple of that certain parcel of land situated in Haleiwa, consisting of approximately 0.964 acres, described as Tax Map Key No. 6-6-009:027, and more particularly described in Exhibit A attached hereto and made a part hereof (the "Land"), and desires to make the Land subject to this Unilateral Agreement; and

WHEREAS, the Declarant plans to develop a retail building and three work/live units on the Land (the "Project"); and

WHEREAS, the City Council (the "Council") of the City and County of Honolulu (the "City"), pursuant to the provisions of the Land Use Ordinance ("LUO"), Revised Ordinances of Honolulu 1990 ("ROH") Section 21-2.80, as amended, relating to conditional zoning, is considering a change in zoning under the LUO of the Land from R-5 Residential District to B-1 Neighborhood Business District (the "zone change"); and

WHEREAS, a public hearing regarding the change in zoning, Bill 50 (2009), was held by the Council on August 26, 2009; and

WHEREAS, the Council recommended by its Zoning Committee Report No. _____ that the said zone change be approved, subject to the following conditions contained in this Declaration to be made pursuant to the provisions of ROH Section 21-2.80, as amended, relating to conditional zoning, and to become effective on the effective date of the zoning ordinance approving the change of zoning (the "Rezoning Ordinance");

NOW THEREFORE, the Declarant hereby covenants and declares as follows:

1. Transportation. The Declarant shall consult with the Department of Planning and Permitting and Department of Transportation Services prior to subdivision approval or building permit submittal, whichever is first, and shall fund, construct, or cause to be constructed necessary roadway improvements as required by the Department of Planning and Permitting and Department of Transportation Services.

[Form: 3/09]

2. The Declarant acknowledges that approval of the zone change does not constitute compliance with other LUO or other governmental requirements. They are subject to separate review and approval. The Declarant shall be responsible for ensuring that the final plans for the Project comply with all applicable LUO and other governmental provisions and requirements.
3. Annual Reports. On an annual basis, the Declarant shall submit a written status report to the DPP documenting its satisfaction of and/or describing its progress toward complying with each condition of approval for this zone change. The status report shall be submitted to the DPP by December 31 of each year until such time as the DPP has determined that all conditions of approval have been satisfied. If a status report is not submitted within the time specified, the DPP may defer the processing of permits until a status report is submitted.
4. In the event of noncompliance with any of the conditions set forth herein, the Director of Planning and Permitting shall inform the Council and may seek civil enforcement or take appropriate action to terminate or stop the Project until applicable conditions are met, including but not limited to revoking any permits issued under this zoning and withholding issuance of other permits related to the Project. Noncompliance also may be grounds for the enactment of ordinances making further zone changes, including revocation of the underlying zoning, upon initiation by the proper parties in accordance with the Revised City Charter.

NOW, THEREFORE, the Declarant hereby makes the following additional Declarations:

As used herein, references to a specific City department or agency shall be deemed to include a reference to any successor department or agency.

That the conditions imposed herein are reasonably conceived to fulfill public service demands created by the requested change in zoning and are rationally related to the objective of preserving the public health, safety and general welfare and the further implementation of the General Plan of the City and County of Honolulu.

That the development of the Land shall conform to the aforesaid conditions with the understanding that, at the request of the Declarant and upon the satisfaction of the conditions set forth in this Unilateral Agreement, the Department of Planning

[Form: 3/09]

and Permitting may fully or partially release, as applicable, any of the foregoing conditions that have been fulfilled.

That if there are any conflicts between this Unilateral Agreement and any previous unilateral agreement(s) applicable to the Land, the terms and conditions of this Unilateral Agreement shall apply.

AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that the conditions imposed in this Declaration shall run with the Land and shall bind and constitute notice to all the parties hereto and subsequent lessees, grantees, assignees, mortgagees, lienors, successors, and any other persons who have or claim to have an interest in the Land, and the City and County of Honolulu shall have the right to enforce this Declaration by rezoning, appropriate action at law or suit in equity against all such persons, provided that the Declarant or its successors and assigns may file a petition with the Department of Planning and Permitting for amendment or removal of any conditions or termination of this Declaration, such petition to be processed in the same manner as petitions for zone changes.

IN WITNESS WHEREOF, the parties hereto have executed this Unilateral Agreement and Declaration for Conditional Zoning on the day and year first above written.

DECLARANT:

Scott C. Wallace

SCOTT C. WALLACE

STATE OF HAWAII)
) SS:
CITY AND COUNTY OF HONOLULU)

On this 3rd day of December, 2009, before me personally appeared SCOTT C. WALLACE, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Corinna K. Bayley

Type or print name: CORINNA K. BAYLEY

Notary Public in and for said State and County

My commission expires: 9/30/2013

NOTARY CERTIFICATION

(Hawaii Administrative Rule § 5-11-8)

Document Identification or Description : Unilateral Agreement
and Declaration for Conditional Zoning

Date of Document: 12/31/2009 No. of Pages: 6

First Circuit
(Jurisdiction of notarial act)

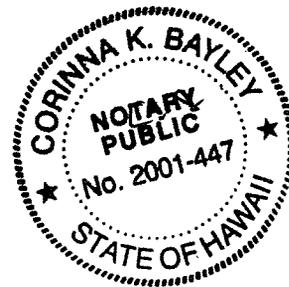
Corinna K. Bayley

Signature of Notary

Type or Print Name of Notary

12/3/2009

Date of Notary Certificate



(Official Stamp or Seal)

EXHIBIT A

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent 4475, Land Commission Award Number 7713, Apana 34 to V. Kamamalu) situate, lying and being on the west side of Kamehameha Highway, at Paalaa, Waialua, City and County of Honolulu, State of Hawaii, and thus bounded and described as per survey dated February 28, 2007, to-wit:

Beginning at the southeast corner of this parcel of land, on the west side of Kamehameha Highway and the northeast corner of Parcel 1, the coordinates of which referred to Government Survey Triangulation Station "PUAENA" being 5,921.07 feet south and 1,024.31 feet east and running by azimuths measured clockwise from true South:

1. 84° 46' 30" 157.80 feet along remainder of R.P. 4475, L.C. Aw. 7713, Ap. 1 to V. Kamamalu;
2. 88° 58' 78.10 feet along remainder of R.P. 4475, L.C. Aw. 7713, Ap. 1 to V. Kamamalu;
3. 166° 08' 30" 172.00 feet along R.P. 7958, L.C. Aw. 2726, Ap. 1 to Puakalikali;
4. 271° 14' 297.00 feet along remainder of R.P. 4475, L.C. Aw. 7713, Ap. 1 to V. Kamamalu;
5. 08° 03' 30" 146.27 feet along the west side of Kamehameha Highway, to the point of beginning and containing an area of 0.964 acres, more or less.

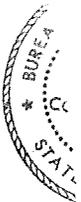
BEING THE PREMISES ACQUIRED BY WARRANTY DEED

GRANTOR : MARILYN MCKAY, as Trustee of that certain unrecorded Trust instrument known as the Marilyn McKay Revocable Living Trust dated January 18, 2006, of which a Short Form is recorded as Document No. 2006-018798

GRANTEE : SCOTT C. WALLACE, as Trustee of that certain unrecorded Scott C. Wallace Amended 1995 Trust dated December 5, 2000, with full powers to sell, mortgage, lease or otherwise deal with the land

DATED : March 13, 2007

RECORDED : Document No. 2007-051011

**END OF EXHIBIT A**

[Form: 3/09]

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
C E R T I F I C A T E

ORDINANCE **09-34**

BILL 50 (2009)

Introduced: 06/26/09 By: TODD APO (BR)

Committee: ZONING

Title: A BILL FOR AN ORDINANCE TO REZONE LANDS SITUATED AT HALEIWA, NORTH SHORE, OAHU, HAWAII.

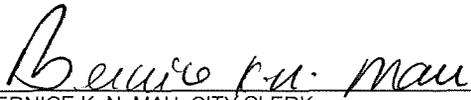
Links: [BILL 50\(2009\)](#)
[CR-280](#)
[CR-288](#)
[CR-380](#)

NOTE: COUNCILMEMBER DUKE BAINUM PASSED AWAY ON TUESDAY, JUNE 9, 2009. ALTHOUGH THERE IS A VACANCY, THE COUNCIL CONTINUES TO OPERATE IN ACCORDANCE WITH THE 9 MEMBERS IT IS ENTITLED TO PURSUANT TO SECTION 3-102, REVISED CHARTER OF THE CITY AND COUNTY OF HONOLULU 1973, AS AMENDED. HOWEVER, THE CERTIFICATE WILL NOT REFLECT THE VACANCY ON THE VOTE RECORDED FOR THIS ITEM.

COUNCIL	07/15/09	BILL PASSED FIRST READING AND REFERRED TO ZONING COMMITTEE.
ANDERSON	Y	APO Y CACHOLA Y DELA CRUZ Y DJOU Y
GARCIA	Y	OKINO Y TAM Y
PUBLISH	08/15/09	PUBLIC HEARING NOTICE PUBLISHED IN THE HONOLULU STAR BULLETIN.
ZONING	08/18/09	CR-280 – BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON SECOND READING AND SCHEDULING OF A PUBLIC HEARING.
COUNCIL/PUBLIC HEARING	08/26/09	CR-280 ADOPTED AND BILL 50 (2009) PASSED SECOND READING; PUBLIC HEARING CLOSED AND REFERRED TO ZONING COMMITTEE.
ANDERSON	Y	APO Y CACHOLA Y DELA CRUZ Y DJOU Y
GARCIA	Y	OKINO Y TAM Y
		NOTE: ANN KOBAYASHI WAS SWORN IN AND TOOK OFFICE AS A MEMBER OF THE HONOLULU CITY COUNCIL ON FRIDAY, AUGUST 28, 2009 REPRESENTING DISTRICT V.
ZONING	09/01/09	CR-288 – 90-DAY EXTENSION OF TIME REPORTED OUT OF COMMITTEE FOR APPROVAL. (CURRENT DEADLINE: 09/24/09 NEW DEADLINE: 12/23/09) AND BILL DEFERRED.
PUBLISH	09/02/09	SECOND READING NOTICE PUBLISHED IN THE HONOLULU STAR BULLETIN.
COUNCIL	09/16/09	CR-288 ADOPTED (DEADLINE: 12/23/09)
ANDERSON	Y	APO Y CACHOLA Y DELA CRUZ Y DJOU Y
GARCIA	Y	KOBAYASHI Y OKINO Y TAM Y
ZONING	11/03/09	BILL DEFERRED IN COMMITTEE.
ZONING	12/01/09	CR-380 – BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON THIRD READING. (CURRENT DEADLINE: 12/23/09)

COUNCIL	12/16/09	CR-380 ADOPTED AND BILL 50 (2009) PASSED THIRD READING.							
ANDERSON	Y	APO	Y	CACHOLA	A	DELA CRUZ	N	DJOU	Y
GARCIA	Y	KOBAYASHI	Y	OKINO	Y	TAM	Y		

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this BILL.


BERNICE K. N. MAU, CITY CLERK


TODD K. APO, CHAIR AND PRESIDING OFFICER