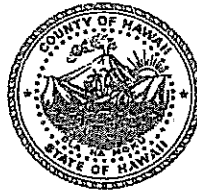


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii
PLANNING DEPARTMENT
101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • Fax (808) 961-8742

April 22, 2004

Mr. Victor M. Cappagli
65-1226 Laelae Road
Kamuela, HI 96743

Dear Mr. Cappagli:

VARIANCE APPLICATION WH (VAR 04-023)
VARIANCE FILE NO. 1426
Applicant: VICTOR M. CAPPAGLI
Owners: VICTOR M. CAPPAGLI, ET AL.
Request: Variance from Building Height Limit
Pursuant to Chapter 25, Zoning
Tax Map Key: 6-5-002:164, (Portion-Lot 2)

After reviewing your application and the information submitted, the Planning Director is **denying** your variance request to permit a dwelling addition to be built to approximately 42 feet +/- above the property's "Mean Grade Average (MGA)" according to plans submitted with subject variance application. The variance is from subject TMK's maximum 35 feet building height limit pursuant to the County Code, Zoning, Chapter 25, Article 5, Division 1, Section 25-5-4, Height limit.

BACKGROUND

1. **Location.** The subject property (Lot 2) is a portion of the subject TMK containing 14,629 square feet, portion of Grant 10799 and portion of Waimea Homesteads, and situated at Kaloko, North Kona, Hawaii.

The property is zoned Single-Family Residential (RS-7.5) by the County and designated Urban "U" by the Land Use Commission (LUC). Ohana Dwelling Permit (OD 89-51) was granted on or about March 17, 1989.

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Mr. Victor M. Cappagli
Page 2
April 22, 2004

As such there are two (2) dwelling on the subject TMK property. County records include and show a Condominium Public Report was received on August 28, 1998.

2. **Variance Application.** The applicant submitted the variance request and application to the Kona Planning Department on or about February 17, 2004.
3. **Variance Application-Plans.** The applicant's site plan and other drawings submitted with the variance application identify the location of the proposed dwelling addition. The site plan, renderings, and elevation drawing show the proposed addition will be approximately 41'-6 1/2" from "MGA". As such the applicant is requesting a variance from the maximum 35 feet building height limit and allow the addition to be constructed to approximately 41'-6 1/2".

A site inspection of the premises was conducted on April 16, 2004. Pursuant to a subsequent telephone conversation with the applicant, portions of the existing dwelling will be rebuilt or replaced in phases. The proposed "front facing entry" or circular stairwell would replace the stairway within the existing dwelling or integrated into proposed "future" phases of dwelling repairs or improvements.

4. **Agency Comments and Requirements:**

- a. The Department of Public Works (DPW) memorandum dated March 9, 2004, states in part:

"We have reviewed the subject application and our comments are as follows:

BUILDING

1. Buildings shall conform to all requirements of code and statutes pertaining to building construction, (see attached memorandum from our Building Division)."

The attached memorandum dated March 8, 2004 states in part the following:

Mr. Victor M. Cappagli
Page 3
April 22, 2004

“Approval of the application shall be conditioned on the comments as noted below.

All new building construction shall conform to current code requirements.

The minimum setbacks shall be maintained as follows:

Residential structures-3 ft. side, 3 ft. rear

Commercial structures-5 ft. side, 5 ft. rear”

- b. The State Department of Health (DOH) memorandum dated March 16, 2004, states:

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

5. **Notice to Surrounding Property Owners.** The applicant forwarded a copy of notice(s) sent to a list of surrounding property owners and proof of mailing. It appears that these notice(s) were mailed on February 21, 2004 February 28, 2004, and March 6, 2004, respectively, by the applicant.
6. **Comments from Surrounding Property Owners or Public.** No further written comments were received from the agencies. The following comments and following letter(s) relating to the applicant’s variance request were received:
- a. Telecon between neighbor “G. Boteilho” and Planning Department staff dated March 8, 2004. Neighbor’s comment-“objecting to request”.
- b. Support letter from David B. Gomes, Waimea Community Association dated was received on March 15, 2004.
- c. Support letter from Mel Pobre, Et al., dated March 9, 2004.

SPECIAL AND UNUSUAL CIRCUMSTANCES

The applicant submitted a variance application together with drawings denoting the location and position-height of the dwelling improvements, “AS BUILT” together with other renderings. The applicant is asking for a variance to permit a proposed circular stairway addition to exceed the maximum building height limit pursuant to the Hawaii County Zoning Code.

Mr. Victor M. Cappagli
Page 4
April 22, 2004

After considering the variance background, applicant's variance submittals, and other information concerning the status of the dwelling improvements or permitted development allowed on subject TMK property, there are no special or unusual circumstances applying to the current dwelling's position or subject property which exist either to a degree which deprive the applicant or owner(s) 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 subject property. The proposed circular stairway addition to the dwelling could be built within the maximum height limit. Variances from height limits should not be granted merely to fulfill design objectives of a property owner. Also, Chapter 25, Zoning, Article 6, Section 25-6-38, Variances prohibited, limits variances where an ohana dwelling unit will be placed on a lot. The variance would violate the spirit of Section 25-6-38, although not, strictly speaking, the exact terms of the Zoning Code.

ALTERNATIVES

Alternatives available to the applicant include the following actions:

1. Reconstructing or rebuilding the existing stairway improvements and correcting any existing building encroachments into the property's minimum 8 foot side yard(s) pursuant to Hawaii County Code.
2. Redesign the proposed "entry and stairwell" dwelling improvement to stay within the maximum building height limit identified by a "blue line" above the "MGA" green line denoted on the elevation drawing included with the variance application and/or other similar design alternatives, etc.

INTENT AND PURPOSE

The intent and purpose of limiting building height within a subdivision are to assure that adequate air circulation and exposure to light are available and/or views between structure(s) and/or vistas between adjoining property or a community are preserved.

The proposed stairwell's circular turret/roof or additional height above the "35 FT." limit or "blue line" above the "MGA", would further emphasize the dwelling's presence within the neighborhood and detract from the scale, perspective, and view between dwellings within and outside the neighborhood. Your request could be viewed as a precedent for future residential development in the area.

Mr. Victor M. Cappagli
Page 5
April 22, 2004

Based on the variance background, property development history, and recent inspection of the premises by the Planning Department, the approval of the variance request to allow or permit the proposed building height addition to this dwelling located within an established residential neighborhood within this residential area 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.

PLANNING DIRECTOR'S DECISION

The variance request to allow proposed dwelling improvements to exceed the maximum 35 feet building height limit identified on the applicant's elevation drawing (taken from the property's "MGA" determined by a surveyor) or maximum 35 feet height limit for this portion of subject TMK property is **denied**. Any future building or dwelling improvements and permitted uses on the subject TMK property shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

In accordance with a recent charter amendment and Ordinance No. 99-112, you may appeal the director's decision and request the following:

Any person aggrieved by the decision of the director in the administration or application of this chapter, may, within thirty days after the date of the director's written decision, appeal the decision to the board of appeals.

Pursuant to Board of Appeal (BOA) Rule, PART 8. APPEALS, 8-15A General Standards for Appeals (Zoning Code):

"In appeals of decisions of the director made under the Zoning chapter of the Code, the Board of Appeals may affirm the decision of the director or it may reverse or modify the decision or remand the decision with appropriate instructions if based upon the preponderance of evidence the board finds that:

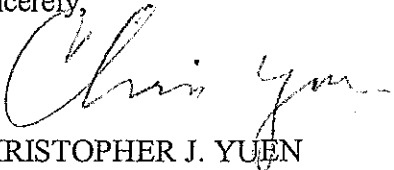
- (1) The director erred in its decision; or
- (2) The decision violated this chapter or other applicable law; or
- (3) The decision was arbitrary or capricious or characterized by and abuse of discretion or clearly unwarranted exercise of discretion."

Mr. Victor M. Cappagli
Page 6
April 22, 2004

In view of the above, we have enclosed **GENERAL PETITION FOR APPEAL OF DECISIONS BY PLANNING DIRECTOR.**

Should you have any questions on the variance decision or the appeal procedure, please feel free to contact our Hilo office at telephone (808) 961-8288.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

WRY/CJY:pak

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Enclosure

xc: Planning Dept. – Kona
Waimea Community Association