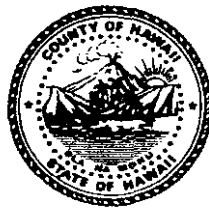


William P. Kenoi
Mayor



Duane Kanuha
Director

Bobby Command
Deputy Director

West Hawai'i Office
74-5044 Ane Keohokalole Hwy
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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 15, 2013

Mr. Joseph A. Gomes
P. O. Box 379
Pa'auilo, HI 96776

Dear Mr. Gomes:

SUBJECT: VARIANCE APPLICATION – VAR-12-000079

Applicant: JOSEPH A. GOMES

Owners: CARLOTTA L. GOMES, TRUST

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 (Entry Stairs in East Front Yard)

TMK: 7-5-018:070, Lot A

After reviewing your variance application, the Planning Director certifies the **approval** of VAR-12-000079, subject to variance conditions. The variance allows for the entry stairs to the single family dwelling with a 6.17 foot front yard setback and front yard open space. This allowance is in lieu of the required 15-foot front yard setback and 10-foot front yard open space requirement. The variance is from the subject property's minimum front yard setback and open space requirement pursuant to the Hawaii County Code, Chapter 25, Zoning, Section 25-5-7, Minimum yards and Article 4, Division 4, Section 25-4-44(a), Permitted projections into yards and open space requirements.

BACKGROUND AND FINDINGS

1. **Location.** The subject property consists of approximately 8,276 square feet of land and is situated at Waiaha 1st, North Kona, Hawai'i. The subject property's street address is 75-5910 Ali'i Drive.
2. **Subject Property.** Proposed 2 bedroom and 2 bath single-family dwelling consisting of 1,472 square feet.

3. **Zoning.** Single-Family Residence–10,000 sq. ft. (RS-10)
4. **State Land Use.** Urban (U)
5. **Required Setback.** 15-feet for front and 20-feet shoreline setback along ocean (makai) side; 8 feet for sides.
6. **Special Management Area.** The subject property is located within the Special Management Area (SMA). According to the acknowledgement letter dated May 30, 2012, Special Management Area Minor Use Permit Assessment No. 12-000223 (SAA 12-000223) was issued on May 30, 2012 to allow the existing single-family dwelling, which sustained substantial damage from the March 11, 2011 tsunami, to be relocated to the original location. A SMA Minor Use Permit was issued to exempt the single-family dwelling construction of a new foundation is above base flood elevation and to build a replacement deck on the makai side, with entry stairs on the mauka side of the existing dwelling.
7. **Variance application-Site Plan.** The applicant submitted the variance application, Attachments, and filing fee on July 18, 2012, and other submittals related to the variance request and variance application. The variance application's site plan map is drawn to scale and prepared by the owner and denotes the position of the single-family dwelling.
8. **Time Extension.** The applicant's variance application was acknowledged by letter dated August 2, 2012 and additional time to review the application was required. The applicant granted the Planning Director an extension of time for decision on the Variance Application to July 15, 2013.
9. **County Building Records.** Hawaii County Real Property Tax Division records indicate that an original building permit (31040) was issued on May 10, 1965, for the construction of a 2-bedroom and 2-bath single-family dwelling. However, due to the severe damage sustained from the March 11, 2011 tsunami, the owner is in the process of seeking a building permit to repair and elevate the existing single-family dwelling to a height of 24 feet.
10. **Agency Comments and Requirements.**
 - a. The State Department of Health (DOH) memorandum, dated August 7, 2013. (See attached DOH memorandum.)
 - b. Department of Public Works – Engineering Division memorandum, dated May 26, 2012. (See attached DPW-Engineering Division memorandum.)
11. **Notice to Surrounding Property Owners.** The applicant submitted a copy of the notice

sent to surrounding property owners, including affidavits. Stating notices were mailed to surrounding property owners by U.S.P.S. According to these submittals, the first and second notice(s) were mailed on August 1, 2012 and August 20, 2012, respectively.

Notice of this application was published in the Hawaii Tribune Herald and West Hawaii Today on August 8, 2012.

12. **Comments from Surrounding Property Owners or Public.** One hundred eight (108) objection letters were received from surrounding property owners whose major concern was the height of the single-family dwelling and the obstruction of view. Pursuant to Hawai'i County Code, Chapter 25, (Zoning Code) the height limit for a single-family dwelling in the Single-Family Residential – 10,000 square feet (RS-10) zoning district is thirty-five (35) feet which would allow for the dwelling to be constructed.

GROUNDS 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:

Hawaii County Real Property Tax Division records indicate that a building permit (31040) was issued on May 10, 1965 for a single-story dwelling consisting of 1,576 square feet, prior to the adoption of the zoning code, which makes this a non-conforming building. The owner wishes to repair and reconstruct the single-family dwelling which was severely damaged by the March 11, 2011 tsunami in its original location. The elevation of the single-family dwelling required stairs for entry into the dwelling.

The subject property is zoned Single Family Residential – 10,000 square feet (RS-10) and the current maximum height limit for the subject property is 35 feet. The subject two-story dwelling is approximately 24 feet in height.

The elevation of the single-family dwelling will assist in preventing any similar-type damages that resulted from the March 11, 2011 tsunami that might occur through high surf wave action or another tsunami disaster in the future.

According to Section 25-4-60(a)-Nonconforming buildings; maintenance and repair of the Zoning Code, *“Any nonconforming building, except as otherwise regulated, may be repaired,*

maintained, or enlarged provided that any enlargement or addition shall conform in every respect to the regulations for the district in which it is located."

The enlargement and placement of the proposed stairs into the front yard set back do not meet the minimum front yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code). Therefore, a variance is required to allow for the entry stairs to be constructed 4 feet into the front yard setback.

Based on the severe damage and hardship caused by the tsunami to the single-family dwelling, there are special and unusual circumstances which merit granting of this variance.

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 stairway encroachment to be constructed into the affected front yard setback and open space of the subject property include the following actions:

One alternative would be to move the stairway to the northern side of the building; this would require the owner to do major modifications to the existing "as-built" two-story single-family dwelling.

A no-action alternative will diminish the overall functionality of the single-family dwelling and deny the owner highest and best use of his property.

Because the encroachment is within the front yard setback, to consolidate the subject property with the roadway and to re-subdivide the property to modify property lines and adjust minimum front yard setbacks 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 on a lot are to assure that adequate air circulation and exposure to light are available between permitted structure(s)/uses and boundary/property lines.

Granting of the request would be consistent with the general purpose of the zoning district and the intent and purposes of the Zoning Code, Subdivision Code and the County General Plan. An SMA review was conducted and SMM 12-000223 was issued for the single-family dwelling on May 30, 2013. 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.

Although there was substantial number (108) of comments, primary concerns focused on the dwelling blocking view of the ocean. However, the 24-foot height of the dwelling is within the required 35-foot height limit. Further the raising of the dwelling would protect from future tsunami indentation.

Based on the above findings, granting of the variance would be consistent with the criteria and intent of approving a variance.

PLANNING DIRECTOR'S DECISION AND VARIANCE CONDITIONS

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 Hawaii 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. No permit shall be granted to allow an ohana or second single-family or farm dwelling upon the subject property, subject to provisions of the Zoning Code or State law which may be changed from time to time.
4. The proposed stairs to be constructed upon the subject property ("LOT A") will not meet the minimum side yard requirements pursuant to Hawai'i County Code, Chapter 25, (Zoning Code), in accordance to the site map submitted on July 18, 2012.
5. All new building improvements and existing structures shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

Mr. Joseph A. Gomes
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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-12-000079 null and void.

Sincerely,



for
DUANE KANUHA
Planning Director

LHN:nci

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

Mr. Joseph A. Gomes
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PLANNING DEPARTMENT
COUNTY OF HAWAII
2012 MAY 27 AM 9: 53

DEPARTMENT OF PUBLIC WORKS
COUNTY OF HAWAII
HILO, HAWAII

DATE: May 23, 2012

Memorandum

TO : B. J. Leithead-Todd, Planning Director
Planning Department

FROM : Ben Ishii, Division Chief 
Engineering Division

SUBJECT : Special Management Area Use Permit
Assessment Application (SAA 12-000797)
Applicant: Joseph Gomes
Request: Repairs to Existing Single Family Dwelling and
Property from Tsunami Damage
Location: Waiaha 1st, North Kona, Hawaii
TMK: 3 / 7-5-018:070

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

We have determined that the subject property is located within Flood Zone "VE and X" according to the Flood Insurance Rate Map (FIRM) by the Federal Emergency Management Agency (FEMA).

Alteration of, or any new construction, improvements to repetitive loss structures or substantial improvements of structures within the VE Zone will be subject to the requirements of Chapter 27 – Flood Plain Management, of the Hawaii County Code.

It appears the proposed project is located in Zone X according to the effective FIRM Panel 713D dated May 16, 1994, however we can not be certain without an as-built site plan. An as-built site plan should be submitted with the required building permit application.

With regard to exemption from HRS 343, we believe Exemption Class 3 is more appropriate.

Should there be any questions concerning this matter, please feel free to contact Kiran Emler of our Kona Engineering Division office at 323-4851.

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copy: ENG-HILO/KONA

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Mr. Joseph A. Gomes
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NEIL ABERCROMBIE
GOVERNOR



LORETTA J. FUDDY, A.C.S.W., M.P.H.
Director of Health

2013 JUN 15 10:50

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

MEMORANDUM

DATE: August 7, 2012

TO: Bobby Jean Leithead Todd
Planning Director, County of Hawaii

FROM: Newton Inouye *NI*
District Environmental Health Program Chief

SUBJECT: VARIANCE APPLICATION-VAR 12-000079
Applicant: JOSEPH A. GOMES
Owner: CARLOTTA L. GOMES TRUST
Request: Variance from Chapter 25, Zoning, Article 5, Division 1,
Section 25-5-6, Minimum Yards, Section 25-5-7 and Section
25-4-44(a), Permitted Projections into Yards and Open
Space Requirements
Tax Map Key: 7-5-018:070, Lot A

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

WORD:VAR 12-000079.my

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