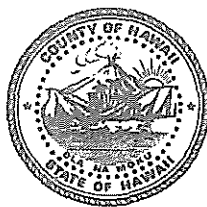


William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

County of Hawai'i

PLANNING DEPARTMENT

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

June 19, 2009

Mr. Guido Giacometti
PO Box 7121
Kamuela HI 96743

Dear Mr. Giacometti:

Subject: Special Management Area Use Permit Assessment Application
(SAA 09-000458)
Special Management Area Minor Permit No. 09-000116 (SMM 09-00116)
Notice of Violation and Order (ZCV 2008-149W) and Special Management
Area Violation (SMA/V 08-149W)

Applicant: Guido Giacometti

Land Owner: Eugene Gregory Trust and Anekona LLC

Request: Demolition of unpermitted improvements and permitting for safety
guardrail

Tax Map Key: 7-5-009:027, Hienaloli 6th and Puaa 2nd, North Kona, Hawai'i

This is in response to the Special Management Area (SMA) Use Permit Assessment Application received in our office on May 21, 2009 for the demolition of various unpermitted improvements and permitting for various minor improvements on the subject parcel.

The 0.578 acre property is zoned Resort-Hotel District (V-.75) by the County and designated Urban by the State Land Use Commission. The Hawaii County General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the parcel as Open, Resort Node, and Medium Density Urban.

According to Chapter 205A-22, Hawai'i Revised Statutes (HRS), and Planning Commission Rule No. 9-4(10)(A)(i and v) relating to Special Management Area, the definition of "development" includes the "Placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste," and "Construction, reconstruction, demolition, or alteration of the size of any structure."

Therefore, a Special Management Area Minor Permit is required. For this reason and pursuant to Planning Commission Rule Section 9-10(E), Special Management Area

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Mr. Guido Giacometti
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Minor Permit No. 09-000116 is hereby issued to allow for the demolition of unpermitted improvements and as an after-the-fact permit allowing the 42-inch high guardrail at the edge of the existing concrete deck fronting Bongo Bens Café where there is approximately a 24-inch grade change from the deck to the sidewalk. The permit is subject to the applicant's compliance with the conditions of approval as specified in the permit.

This permit does not allow for the wood steps and hand rails at the Ali'i Drive entry to Bongo Ben's Café, nor the 8-foot high screen wall on the south side of the building on the first floor, as these two improvements may be encroaching on a neighboring parcel. A survey is required for these areas as part of Notice of Violation and Order ZCV 2008-149W and Special Management Area Violation SMA/V 08-149W. Once this survey is submitted, you will need to submit an additional SMA Assessment Application for either the removal of the improvements or to acquire permits for their retention, depending on whether or not the improvements are on the subject property.

Finally, all other applicable federal, state, and county requirements must also be satisfied.

Should you have questions, please feel free to contact Dana Okano of this department at 961-8134.

Sincerely,



BJ LEITHEAD TODD
Planning Director

DO:cs

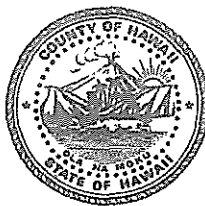
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Enclosures - SMM No. 09-000116
Department of Public Works June 15, 2009 Memo

xc w/encls: Long Range Planning ✓
Planning, Kona Office

xc ltr only: Mr. Abbey S. Mayer, Director – Office of Planning, DBED&T
Amy Self, Esq.

William P. Kenoi
Mayor



BJ Leithead Todd
Director

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Special Management Area Minor Permit No. 09-000116

Project: Demolition of unpermitted improvements and permitting for safety guardrail
Applicant: Guido Giacometti
Land Owner: Eugene Gregory Trust and Anekona LLC
Location: Hienaloli 6th to Puaa 2nd, North Kona, Hawai'i
TMK: 7-5-009:027

Applicant's Request

1. Project Description:

The applicant proposes the demolition of various unpermitted improvements including removal of a portion of roof awning that covers the concrete deck of Bongo Ben's Café; removal of a bar/countertop along the concrete deck; removal of walls that cross the property line along the west and east side of the concrete deck; removal of plastic roofing between the open deck and ADA ramp; and the removal of a storage room and electrical work next to the existing stairs on the east side of the building. The applicant also seeks to obtain after-the-fact permits for a 42-inch high guardrail at the edge of the concrete deck; wood steps and hand rails at the Ali'i Drive entry to the Café; and an 8-foot high wood screen wall on the first floor south side of the building.

2. Purpose of Project:

The project seeks to bring all improvements on the property into compliance with County Code by removing unpermitted improvements and by seeking permits for some improvements that provide safety features or customer comfort. This project is also to satisfy partial requirements of Notice of Violation and Order (NOV) and Special Management Area Violation (SMA/V) 2008-149W.

3. Project Valuation:

\$50,000.

4. Determination:

Chapter 205A-22, HRS and Planning Commission Rule 9-4(10)A(i and v) relating to the Special Management Area, states that "development" includes "Placement or erection of any solid material or any gaseous, liquid, solid or thermal waste" and "Construction,

reconstruction, demolition, or alteration of the size of any structure.” Therefore, the proposal to demolish various unpermitted improvements and retain a 42-inch guardrail requires a SMA Minor Permit.

State and County Plans

1. **State Land Use District:** Urban.
2. **General Plan:** Open, Resort Node, and Medium Density Urban.
3. **County Zoning:** Resort-Hotel District (V-.75).
4. **Special Management Area (SMA):** The parcel is located within the SMA, though is not along the shoreline.
5. **Flood Zone:** According to the Flood Insurance Rate Map (FIRM), the subject property is located within Flood Zone “X”.

Compliance with Objectives and Policies of Chapter 205A, Hawaii Revised Statutes (HRS), Regarding the Special Management Area

Since the proposed improvements are on the mauka (inland) side of a road right-of-way and are all structurally attached to an existing permitted structure, the requirement to obtain a certified shoreline survey is hereby waived.

Check all objectives and policies found to be consistent with proposed development. Issuance of SMA Minor Permit requires that activity be consistent with all objectives & policies.

The proposed development is consistent with the following objectives and policies:

- ☒ Development will not have any significant adverse environmental or ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interest. Such adverse effect shall include, but not be limited to, the potential cumulative impact of individual developments, each one of which taken in itself might not have a substantial adverse effect and the elimination of planning options.
- ☒ The proposed development is consistent with the Hawaii County General Plan and the Zoning Code.
- ☒ The proposed development does not conflict with the following objectives of Chapter 205A, HRS, to:
 - ☒ Provide coastal recreational opportunities accessible to the public.
 - ☒ Protect, preserve, and where desirable, restore those natural and man-made historic and pre-historic resources in the coastal zone management area that are significant in Hawaiian and American history and culture.
 - ☒ Protect, preserve, and where desirable, restore or improve the quality of coastal scenic and open space resources.
 - ☒ Protect valuable coastal ecosystems from disruption and minimize adverse impacts on all coastal ecosystems.

- ☒ Provide public or private facilities and improvements important to the State's economy in suitable locations.
- ☒ Reduce hazard to life and property from tsunامي, storm waves, stream flooding, erosion, subsidence and pollution.
- ☒ Improve the development review process, communication, and public participation in the management of coastal resources and hazards.
- ☒ Stimulate public awareness, education, and participation in coastal management.
- ☒ Protect beaches for public use and recreation.
- ☒ Promote the protection, use, and development of marine and coastal resources to assure their sustainability.
- ☒ The proposed development is consistent with the following policies of Chapter 205A, HRS, relating to:
 - ☒ Recreational Resources
 - ☒ Historic Resources
 - ☒ Scenic and Open Space Resources
 - ☒ Coastal Ecosystems
 - ☒ Economic Uses
 - ☒ Coastal Hazards
 - ☒ Managing Development
 - ☒ Public Participation
 - ☒ Beach Protection
 - ☒ Marine Resources
 - ☒ The proposed development conforms to the requirements of Chapter 343, HRS, regarding Environmental Impact Statements.

Findings

As discussed above, the proposed development will not have any significant adverse ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interest. Therefore, we have determined that the proposed demolition of various improvements and the retention of a 42-inch high guardrail at the edge of the concrete deck fronting Bongo Ben's Cafe will not have a substantial adverse effect on the environment.

The proposed development is consistent with the Hawaii County General Plan, and Zoning Code.

The proposed development is consistent with the objectives, policies, and SMA guidelines of Chapter 205A, HRS.

By enclosed memorandum dated June 15, 2009, the Department of Public Works – Engineering Division submitted the following comments regarding the subject application:

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

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

The above information is based on the most recent FIRM for the County of Hawai‘i. This memo does not imply that the referenced property will or will not be free from flooding or flood damage. Zone ‘X’ is not a designated Special Flood Area. A property not in a Special Flood Hazard Area may be damaged by a greater flood than that predicted on the FIRM or from a local drainage problem not shown on the map. Should a watercourse affect the property, it shall not be altered without first obtaining approval from DPW and a grading permit. A flood study may be required under Chapter 27 of Hawai‘i County Code for watercourse alterations.

Buildings shall conform to all requirements of code and statutes pertaining to building construction.

Should there be any questions concerning this matter, please feel free to contact Kiran Emler of our Kona Engineering Division office at 327-3530.”

Pursuant to Planning Commission Rule Section 9-10(E), **Special Management Area Minor Permit No. 09-000116** is hereby approved to allow for the demolition of on the five unpermitted improvements described in the application, and for retaining the 42-inch high guardrail at the edge of the concrete deck fronting Bongo Ben’s Café on the subject parcel.

Please note that this approval does **not** include the proposals to retain the wood steps and hand rails at the entry from Ali‘i Drive, nor does it include the proposal to retain the 8-foot high wood screen wall on the first floor at the south side of the building. Both of these improvements are required by NOV and SMA/V 2008-149W to have a survey completed to determine whether or not the improvements are within the subject parcel. Until this survey is provided, permits for the improvements cannot be approved.

SMA Minor Permit No. 09-000116 is subject to the applicant’s compliance with the conditions of approval as specified below.

Conditions of Approval

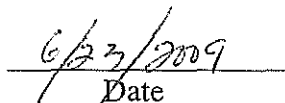
The Planning Director has approved SMA Minor Permit No. 09-000116 subject to the following conditions:

1. The applicant, its successors or assigns shall be responsible for complying with all stated conditions of approval.
2. The applicant shall secure all necessary approvals and permits from other affected federal, state, and county agencies as necessary to comply with all applicable laws and regulations.
3. All requisite permits and proposed activities must be obtained and completed within one (1) year from the approval date of this permit.

4. The applicant shall resubmit an SMA Assessment Application for any demolition or improvements of the wood steps and hand rails at the Ali'i Drive entry point to Bongo Ben's Café, and for the 8-foot high wood screen wall at the south side of the building on the first level within 30 days of receiving the survey delineating the parcel boundaries within which the improvements exist.
5. The applicant shall erect a construction barrier meeting with the approval of the Planning Department around the project site. The construction barrier shall be erected prior to the commencement of any construction, clearing, grading or other land altering activities and shall remain in place until the Department of Public Works has granted Final Approval for all Permits issued in connection with the subject project. The construction barrier must be shown and properly noted on the construction plans submitted with any permit required for any land altering or construction activity, and construction notes on the construction plans must include a statement that, "the construction barrier must be erected prior to any land altering or construction activities, and must remain in place until final inspection by Department of Public Works Building Division."
6. All construction debris must be removed from the SMA and disposed of at an appropriate waste disposal facility.
6. An extension of time for the performance of the conditions contained herein may be granted by the Planning Director upon the following circumstances:
 - a) The non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence;
 - b) Granting of the time extension would not be contrary to the original reasons for the granting of the permit; and
 - c) The time extension granted shall be for a period of not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended up to one additional year).
7. Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director shall initiate procedures to revoke the permit.

APPROVED:


BJ LEITHEAD TODD
Planning Director


Date