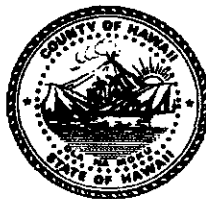


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Special Management Area Minor Permit No. 13-000260

Project: Consolidation of Two Lots, Removal of Existing Wall, Construction of New Wall, Landscaping and Leveling of Portion of Lot, Converting Existing Slab to Parking, New Driveway Location and Tree Removal

Applicant: Klaus D. Conventz

Landowner: Elizabeth Marshall

Location: Kahalu'u, North Kona, Hawai'i

Tax Map Key(s): (3) 7-8-014:050, 097 **Land Area:** 9,050 square feet

Applicant's Request

1. Project Description:

The proposed project is the consolidation of the two existing lots, the removal of an existing wall, the construction of a new wall, landscaping and leveling of a portion of the subject property, converting an existing concrete slab to parking, a new driveway location and tree removal on the subject lots.

2. Purpose of Project:

The applicant is proposing to consolidate the subject parcels and use the unimproved lot for parking and landscaping. In addition, the owner has removed the privacy wall that was encroaching onto the Ali'i Drive Right-of-Way and is now asking that a new wall be constructed along the property boundary.

3. Project Valuation: \$20,000.

4. Determination:

1. According to Chapter 205A-22, Hawai'i Revised Statutes (HRS), and Planning Commission (PC) Rule No. 9-4(e) (1) (C), "*Change in the density or intensity of use of land, including but not limited to the division or subdivision of land*" is not exempt from the definition of "development." Therefore, the proposed subdivision will require a review against the Special Management Area rules and regulations. Please note that this application was also reviewed under PC Rule No. 9-4(e) (2) (M) which states that, "development" does not include "*Subdivision of a parcel of land into four or fewer parcels when no associated construction activities are proposed, provided that any such land which is so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels.*" However, based on

submitted application, there will be associated construction activities, so the exemption stated above cannot be applied.

2. According to HRS Chapter 205A-22 and PC Rule No. 9-4(e) (1) (E), "*Construction, reconstruction, demolition, or alteration of the size of any structure*" is not exempt from the definition of "development." Therefore, the proposed removal of an existing wall and construction of a new privacy wall and the new parking and driveway connection are considered to be development and will require a review against the Special Management Area rules and regulations.
3. According to HRS Chapter 205A-22 and PC Rule No. 9-4(e) (1) (A) "development" includes the "*Placement or erection of any solid material or any gaseous, liquid, solid, or thermal waste*". Therefore the leveling of the grade with available lava rock, fill, and landscaping will require a review against the Special Management Area rules and regulations.
4. Finally, According to HRS Chapter 205A-22 and PC Rule No. 9-4 (e) (1) (B), "*Grading, removing, dredging, mining, or extraction of any materials,*" is not exempt from the definition of "development." Therefore, the proposed tree removal will require a review against the Special Management Area rules and regulations.

Therefore, proposed project requires an SMA Minor Permit.

State and County Plans

1. **State Land Use District:** The parcels are located in the State Land Use Urban District.
2. **General Plan:** The parcels are designated as Open by the Hawai'i County General Plan Land Use Pattern Allocation Guide (LUPAG) Map.
3. **County Zoning:** The parcels are zoned RS-7.5 (Single Family Residential) by the County of Hawai'i.
4. **Special Management Area:** The subject parcels are located entirely within the Special Management Area (SMA) with frontage along the shoreline
5. **Flood Zone:** AE and X.

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

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 Hawai'i 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 tsunamis, 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 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.

The proposed development is consistent with the Hawai'i County General Plan and Zoning Code.

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

The estimated project cost of \$20,000 is not in excess of \$500,000.

The enclosed Department of Public Works, Engineering Division memorandum dated March 5, 2013, states the following:

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

We have determined that the subject property is located partially within Flood Zone "AE" according to the effective Flood Insurance Rate Map (FIRM) by the Federal Emergency Management Agency (FEMA). All of the proposed improvements occur above the effective Base Flood Elevation of 12 feet above MSL (mean sea level) and mauka of the effective AE Flood Zone boundary and therefore are not subject to regulation under Chapter 27 of Hawai'i County Code.

For information only, we are advising applicants that new data has been made available from a hurricane study which indicates a higher Base Flood Elevation of 18 feet above MSL.

The existing drainage pattern along Ali'i Drive must be maintained. Storm runoff shall not be diverted to adjacent properties by the proposed improvements. The wall is of concern to us in that regard.

The proposal to convert the existing slab to provide additional parking is shown on the topography, however we could not confirm the applicants' claims of an improvement which will allow vehicles to turn and face Ali'i Drive when exiting the subject property. Apparently, those improvements are not illustrated."

Pursuant to Planning Commission Rule Section 9-10(e), **Special Management Area Minor Permit No. 13-000260** is hereby approved for the consolidation of the two existing lots, the removal of an existing wall, the construction of a new wall, landscaping and leveling of a portion of the subject property, converting an existing concrete slab to parking, a new driveway location and tree removal on the subject lots, 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. 13-000260, 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. Final consolidation approval shall be secured within two (2) years from the date of approval of this permit.
4. In order to prevent storm runoff from being diverted to adjacent properties, the proposed 5.9-foot high privacy wall shall be designed to allow water to pass through and shall be maintained, up to the recommended Base Flood Elevation of 18 feet above MSL.
5. Pursuant to Hawai'i County Code Chapter 25 (Zoning), Section 25-4-43 (a), the proposed privacy wall, shall not exceed six feet in height or shall be required to meet all front, side, and rear yard requirements.
6. No land alteration, grubbing, landscaping, or construction activities, including, but not limited to, the stockpiling of construction materials or equipment, shall occur in the shoreline setback area prior to securing a written determination of "minor structure or activity" pursuant to Rule 11-8 from the Planning Director, or approval of a Shoreline Setback Variance from the Planning Commission.
7. The shoreline setback area shall be kept clear of any rubbish or debris resulting from the construction activities at all times.
8. Any further development, including but not limited to the construction of structures of any type, shall require further review and approval as provided under Chapter 205A, HRS, and Rule 9, Planning Commission Rules of Practice and Procedure. This includes the determination of the shoreline setback area.
9. Artificial light from exterior lighting fixtures, including, but necessarily limited to floodlights, uplights or spotlights used for decorative or aesthetic purposes shall be prohibited if the light directly illuminates, or is directed to project across property boundaries toward the shoreline and ocean waters, except as may otherwise be permitted pursuant to Section 205A-71(b), Hawai'i Revised Statutes.
10. Discovery of any unidentified sites or remains, such as artifacts, shell, bone or charcoal deposits, human burials, rock or coral alignments, pavings or walls will require that all work in the immediate area shall cease. The Planning Director shall be immediately notified. Work may proceed with an archaeological clearance from the Planning Director. The archaeological clearance requires a finding that sufficient mitigative measures are taken for the discovery; with

written guidance from the State Historic Preservation Division of the Department of Land and Natural Resources.


11. 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).

12. 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.

If you have questions, please feel free to contact Bethany Morrison of this department at 961-8138.

APPROVED:


BJ LEITHEAD
Planning Director

MAR 14 2013

Date