



GOVERNMENT OF THE VIRGIN ISLANDS OF THE UNITED STATES

DEPARTMENT OF PLANNING AND NATURAL RESOURCES

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Honorable Milton E. Potter
President
36th Legislature of the United States Virgin Islands
Capitol Building
St. Thomas, Virgin Islands

Re: Testimony on Bill No. 36-0304

Good day Senate President Milton E. Potter, members of the 36th Legislature, legislative staff, and members of the public. My name is Leia LaPlace-Matthew, Territorial Planner with the Division of Comprehensive and Coastal Zone Planning (CCZP) within the Department of Planning and Natural Resources (DPNR). I am here to provide DPNR's testimony on an act granting zoning use variances to permit continued residential occupancy of residential properties participating in the Envision Tomorrow Homeowner and Rental Reconstruction and Rehabilitation Program that are located within zoning districts in which residential use is deemed nonconforming.

Today's testimony focuses on the feasibility and practicality of using use variances as a mechanism to permit or regularize continued residential occupancy in zoning districts where residential uses are not permitted under current law.

The Virgin Islands Zoning Code already provides a clear and purposeful mechanism for addressing the very issue under consideration; namely, the continuation of residential uses that no longer conform to zoning designations.

Specifically, Title 29, Section 234 establishes that any lawful use of land or a building that existed prior to the adoption or amendment of zoning regulations, but is no longer permitted under current zoning, is deemed a nonconforming use. Such uses are explicitly recognized as legal and are not considered zoning violations, provided they comply with applicable conditions.

From a legal and planning standpoint, a use variance to permit continued residential occupancy is redundant with the existing Nonconforming Use Provisions. Where a residential use is already lawful and predates zoning restrictions, the property is already protected as a nonconforming use. Continued occupancy is already authorized under law, and Bill No. 36-0304 would duplicate an already existing legal pathway. In such cases, pursuing Bill No. 36-0304 is not only unnecessary but may create confusion or inconsistency in enforcement. The Nonconforming use provisions are already designed to allow existing uses to continue, discourage expansion or intensification, and gradually aligns land uses with long-term planning objectives.

For properties without clearly documented nonconforming status, or where such status has lapsed, the zoning map amendment process already exists and is well-suited as a systematic solution for residential occupancy issues.

The bill is also for residential properties participating in the Envision Tomorrow Homeowner and Rental Reconstruction and Rehabilitation Program, a program that may no longer exist once funding is exhausted, and future disasters are experienced.

The following recommendation is offered in lieu of Bill No. 36-0304, based on the existence of Title 29, Section 234 which already allows existing uses to continue:

The submission of a list of residential properties participating in the Envision Tomorrow Homeowner and Rental Reconstruction and Rehabilitation Program that are located within zoning districts in which residential use is deemed nonconforming for targeted zoning map amendments.

This will allow for greater transparency, predictability, and alignment with comprehensive planning goals for determination if these residences are in zoning districts that were erroneously zoned nonresidential when the Zoning Code was adopted in 1972. The department has experienced development applications received over the years for various areas and subdivisions requiring constant correction of zoning violations, substandard calculations, and nonconforming waivers due to the Government adopting the inappropriate zones in 1972.

In conclusion, while the use variance is legally available within the Virgin Islands zoning framework, it is not the most feasible or practical mechanism for addressing continued residential occupancy in districts where such use is not permitted. The existing nonconforming use provisions already provide a clear, efficient, and legally sound pathway for maintaining lawful residential occupancy.

I thank you for the opportunity to provide this testimony and welcome any questions from the Committee.