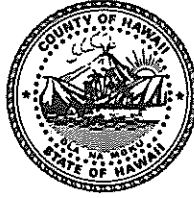


Stephen K. Yamashiro
Mayor



County of Hawaii

PLANNING COMMISSION

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 Fax (808) 961-9615

CERTIFIED MAIL
P 101 317 818

JUL 14 1999

Mr. Herbert M. Y. Chun
1029 Mamalu Place
Honolulu, HI 96817

Dear Mr. Chun:

Revocation of Special Management Area (SMA) Use Permit No. 318
Permit Granted to Donald E. Maloney
Initiator: Planning Director
Tax Map Key: 7-6-14:13

The Planning Commission at its duly held meeting on July 2, 1999, voted to revoke Special Management Area (SMA) Use Permit No. 318, granted to Donald E. Maloney, which allowed the construction of a 12-unit condominium building and related improvements. The property is located on the makai side of Alii Drive, adjacent and to the south of the Kona Banyan Tree Condominiums, Holualoa 1st and 2nd, North Kona, Hawaii.

According to the current landowner of the subject parcel, the applicant has filed for bankruptcy and is unable to pursue this project. Therefore, SMA Use Permit No. 318 is hereby revoked.

Should you have questions regarding the above, please contact Alice Kawaha of the Planning Department at 961-8288.

Sincerely,

Leonard S. Tanaka, Chairman
Planning Commission

Lmalon01.pc

cc: Department of Public Works
Department of Water Supply
Real Property Tax Division
Office of Planning, CZM Program
Department of Land and Natural Resources
Kazu Hayashida, Director/DOT-Highways, Honolulu
Mr. Norman Hayashi

005971

JUL 14 1999



Planning Commission

Lorraine R. Inouye
Mayor

25 Aupuni Street, Rm. 109 • Hilo, Hawaii 96720 • (808) 961-8288

CERTIFIED MAIL

August 23, 1991

Mr. Donald E. Maloney
75-5909 Alii Drive
Kailua-Kona, HI 96740

Dear Mr. Maloney:

Special Management Area Use Permit Application (SMA 91-7)

Applicant: Donald E. Maloney

Requests: 12-unit Condominium and Related Improvements,
Revocation of SMA Use Permit No. 173 and
Shoreline Setback Variance No. 616

Tax Map Key 7-6-14:13

The Planning Commission at its duly held public hearing on August 15, 1991, voted to approve your application, SMA Use Permit No. 318, to allow for the construction of a 12-unit condominium building and related improvements. The property is located along the makai side of Alii Drive, adjacent and to the south of the Kona Banyan Tree Condominiums, Holualoa 1st and 2nd partition, North Kona, Hawaii.

Approval of this request is based on the following:

The purpose of Chapter 205-A, Hawaii Revised Statutes, and Rule 9, Special Management Area Rules and Regulations of the County of Hawaii is to preserve, protect, and, where possible, to restore the natural resources of the coastal zone areas. Therefore, special controls on development within an area along the shoreline are necessary to avoid permanent loss of valuable resources and the foreclosure of management options.

One of the criteria for approving a development within the SMA is that it is consistent with the General Plan and Zoning Code. The proposed project does conform to the General Plan Land Use Pattern Allocation Guide (LUPAG) map which designates this area for Resort development. Further, the Resort-Hotel zoning designation allows for the proposed use.

AUG 23 1991

Mr. Donald E. Maloney
August 23, 1991
Page 2

Another criteria in reviewing an SMA Use Permit application is that "The 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 elimination of planning options." The proposed development is not anticipated to have substantial adverse ecological effects. The property, which is located within an area that has been extensively developed, is not known to contain any unique ecological systems nor provide habitats for any endangered plant or animal species. No adverse impacts on air and water quality are expected to be generated by the proposed development. Air emissions generated during the construction phase can be mitigated by existing regulations.

The property is located adjacent to the shoreline. Negative impacts on the local water resulting from soil erosion and runoff during site preparation and construction phases can be adequately mitigated through compliance with existing regulations. A wastewater treatment plant will be provided as required to avoid impacts to coastal ecosystems. Therefore, no significant adverse impact to coastal ecosystems is anticipated.

The proposed development is not expected to have adverse impact on public access to or along the shoreline. Because of the relatively small size of the lot and the close proximity and availability of public access, a mauka/makai shoreline access is not required to assure continued public access to the shoreline. It is recommended, however, that approval of this application be conditioned upon assured lateral public shoreline access.

The site is located in an area that has already been extensively developed for condominium-type residential use. However, the structure's visual impacts should still be compatible with the surrounding environment. The building bulk and building area coverage will be evaluated at the time of plan approval to ensure that design considerations will be addressed. Similarly, the applicant's site plan shows a 6-foot high lava rock wall along the entire frontage of Alii Drive, excluding the driveway opening. The cumulative effect of this type of fencing, if continued extensively along Alii Drive,

Mr. Donald E. Maloney
August 23, 1991
Page 3

would be the eventual establishment of a high solid wall along Alii Drive that would have a 'tunneling' effect on open space resources as one travels the road. A condition of this approval would include that any wall or fence constructed along the Alii Drive frontage must be reviewed and approved by the Planning Department at the time of plan approval. The height and design of the wall or fence must not have cumulative impacts that would constrict views and an open space feeling.

As stated by the Historic Sites Section of the Department of Land and Natural Resources, the property has been heavily bulldozed and, therefore, the proposed construction will have "no effect" on historic sites.

Because of the small number of units, the proposed development will not significantly impact any surrounding roadways, provided that site distance from the driveway is improved in a manner meeting with the approval of the Department of Public Works.

The site is within the coastal flood hazard area. Hazard to property from tsunami or storm waves will be mitigated by compliance with County requirements for construction within the flood zone.

Based on the above, it is determined that the proposed development will not have substantial adverse impacts on the surrounding area, nor will its approval be contrary to the objectives and policies of Chapter 205A, HRS, relating to Coastal Management and Rule No. 9 of the Planning Commission relating to the Special Management Area.

Approval of this request is subject to the following conditions:

1. The applicant, successors or assigns shall comply with all stated conditions of approval.
2. The applicant shall submit the required water commitment payment to the Department of Water Supply in accordance with its "Water Commitment Guidelines Policy" within ninety days from the effective date of this permit.
3. Final Plan Approval shall be secured from the Planning Department within one year from the effective date of approval of the permit. To assure adequate time for plan

Mr. Donald E. Maloney
August 23, 1991
Page 4

approval review and in accordance with Chapter 25-244 (Zoning Code), plans shall be submitted a minimum of forty-five days prior to the date by which plan approval must be secured. Plans shall identify structures, landscaping, parking stalls, and related improvements associated with the proposed development. Plans shall be revised to minimize the dominant height and massiveness of the structure. In addition, the construction of walls or fences along the Alii Drive frontage shall be reviewed and approved at the time of plan approval. The height and mass of the wall/fence shall be evaluated in terms of its cumulative effect on view perspectives along Alii Drive.

4. Construction shall commence within one year from the date of receipt of Final Plan Approval and shall be completed within two years thereafter.
5. Sewage treatment facilities shall meet with the approval of the Department of Health.
6. A lateral shoreline access plan meeting with the approval of the Planning Director shall be submitted prior to receipt of Final Plan Approval. The lateral access plan shall provide for perpetual public access along the shoreline.
7. The minimum 20-foot shoreline setback area shall be clearly staked and delineated on ground. A letter confirming the staking shall be submitted prior to or in conjunction with a building permit application. No construction or construction-related activities shall occur within the minimum 20-foot shoreline setback area unless appropriate approvals have been secured pursuant to Rule 8 of the Planning Commission.
8. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings, or walks be encountered, work in the immediate area shall cease and the Planning Department shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the Planning Department when it finds that sufficient mitigative measures have been taken.

Mr. Donald E. Maloney
August 23, 1991
Page 5

9. Access to the subject property from Alii Drive, including sight distance improvements, shall meet with the approval from the Department of Public Works. The applicant shall also extend the pavement of that portion of Alii Drive fronting the subject property to its front property line meeting with the approval of the Department of Public Works prior to the issuance of a certificate of occupancy.
10. An emergency preparedness and response plan shall be filed with the Hawaii County Civil Defense Agency and the Planning Department prior to issuance of a certificate of occupancy for any portion of the development.
11. Comply with all other applicable laws, rules, regulations and requirements.
12. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the permit. The report shall include, but not be limited to, the status of the development and to what extent the conditions of approval are being complied with. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.
13. An initial extension of time for the performance of conditions within the permit 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 petitioner, successors or assigns, and that are not the result of their fault or negligence; (b) the granting of the time extension would not be contrary to the general plan or zoning code; (c) granting of the time extension would not be contrary to the original reasons for the granting of the permit; and (d) the time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year). Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director shall initiate procedures to revoke the permit.

Mr. Donald E. Maloney
August 23, 1991
Page 6

This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

The Planning Commission also voted to revoke SMA Use Permit No. 173 and Shoreline Setback Variance No. 616, which allowed for the development of an 8-unit condominium and related improvements, including landscaping, a CRM wall and a sprinkler system within the minimum 20-foot shoreline setback area.

Please feel free to contact the Planning Department if there are any questions on this matter.

Sincerely,

Mike Luce

Mike Luce, Chairman
Planning Commission

6620d
jdk

xc: Mr. Jack Clark
Department of Public Works
Department of Water Supply
Department of Health
Civil Defense Agency
County Real Property Tax Division
West Hawaii Office
OSP, CZM Program w/background
DLNR
Plan Approval Section