

February 12, 1973

Mr. Will Chestnut
P. O. Box 942
Kailua-Kona, HI 96740

Re: Variance Application
Tax Map Key 7-6-16:29 & 7-6-17:27 & 29

The Planning Commission at its preliminary hearing on February 8, 1973 reviewed your application for a variance to allow the construction of a swimming pool within the forty (40) foot shoreline setback area which is part of a condominium to be located on the makai side of Alii Drive, Holualoa 1 and 2 (Beach Section), North Kona, Hawaii.

This is to inform you that the Commission voted to deny your request based on the following considerations:

1. The proposed structure and activity would substantially interfere with natural shoreline processes and would be contrary to the intent of the shoreline regulation which attempts to prevent the encroachment of man-made improvements which may alter the natural shoreline.
2. The property is also subject to potential tsunami and flood inundation therefore requiring adequate setbacks to minimize damage to property and human life and for other safety considerations would be in the best public interest.

As your request has been denied, you may appeal the decision of the Planning Commission if you find that the action of the Planning Commission was based on an erroneous finding of a material fact, or that the Commission has acted in an arbitrary or capricious manner, or had manifestly abused its discretion.

Should you decide to appeal the decision of the Commission in the denial of your variance request, a petition setting forth the

FEB 13 1973

Mr. Will Chestnut
Page 2
February 12, 1973

following shall be submitted to the Board of Appeals within fifteen (15) days from the date of action and accompanied by a filing fee of ten dollars (\$10.00):

1. Name, mailing address and telephone number;
2. Identification of the property and interest therein;
3. The particular provision of the Zoning Ordinance or Subdivision Ordinance or regulation in question;
4. All pertinent facts;
5. The action of the Commission; and
6. Reasons for the appeal, including a statement as to why the appellant believes that the Commission's action was based on an erroneous finding of a material fact, or that the Commission has acted in an arbitrary or capricious manner, or had manifestly abused its discretion.

Inasmuch as no public hearing will be held on this matter, we will be returning your filing fee as soon as the refund is processed. We will be forwarding you a certified copy of the Order as soon as the document is prepared.

Should you have any questions regarding the above, please feel free to contact Glenn Miyao or Norman Hayashi of the Planning Department at 935-5721, extension 221.



Ed C. Watt
Chairman

lat

cc Corporation Counsel
Building Department
Fred R. White, AIA

PLANNING COMMISSION OF THE PLANNING DEPARTMENT
COUNTY OF HAWAII

In the Matter of the Appeal)
 of)
 Will Chestnut)
)
Tax Map Key 7-6-16:29)
and 7-6-17:27 and 29)
_____)

Variance Application
No. 321
SSV 321

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND
DECISION AND ORDER

PLANNING COMMISSION OF THE PLANNING DEPARTMENT

COUNTY OF HAWAII

In the Matter of the Appeal)	
of)	
Will Chestnut)	Variance Application
)	
Tax Map Key 7-6-16:29)	No. 321
and 7-6-17:27 and 29)	
)	

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND
DECISION AND ORDER

The above-entitled matter was brought on for a preliminary hearing before the Planning Commission of the Planning Department, County of Hawaii, on the 8th day of February, 1973, in the County Council Room, County Building, Hilo, Hawaii, at which hearing Will Chestnut, the applicant, appeared. The Planning Commission having heard the testimony and having examined the exhibits does hereby declare its Findings of Fact, Conclusions of Law, and Decision and Order.

FINDINGS OF FACT

1. An application requesting a variance from Section 30-G of Ordinance Number 63 to allow the construction of a swimming pool, sun deck and necessary pool equipment within the 40-foot shoreline setback area was received on September 21, 1972.

2. A preliminary hearing on the above matter was held on February 8, 1973.

3. The applicant proposed to develop a 23-unit condominium

with subject swimming pool facilities on property located in Holualoa 1 and 2, North Kona, Hawaii.

4. The property under consideration was 37,201 square feet in area based on tax map data. However, based on a high water mark survey, the property has an area of 28,879 square feet. The property has a frontage of approximately 207 feet and a depth ranging from 127 to 151 feet.

5. The proposed development will be located within the potential tsunami and flood inundation area.

6. The following guidelines must be substantiated when application is made for a variance from the shoreline setback regulations: (Ordinance No. 63, Section 30-G)

- a. such structure, activity, or facility is in the best public interest; or
- b. hardship will be caused if the proposed structure, activity, or facility is not allowed in that portion of the land within the shoreline setback.

7. According to the applicant, they need to construct the swimming pool in the subject location because: a) considerable erosion has eliminated the beach, leaving rocks and coral in a generally hazardous area for swimming, b) the property area is listed on the tax maps as 37,201 square feet. However, buildable area has been calculated at 28,879 square feet. The erosion has deprived the owner of 8,322 square feet and has constricted the property between Alii Drive and the ocean, c) the district classification of V-1.25 does not preclude a swimming pool. In fact, most developments in this classification have extensive pool and deck areas, d) recreation facilities of this nature are consistent

with the general purposes of the district and do not defeat the purpose of this ordinance. The construction of a swimming pool will not be detrimental to the public welfare and should enhance property rights in the vicinity. The pool would also visually and physically not impede site lines and open space within the shoreline setback area and will not materially affect properties in the near vicinity.

8. It was recommended by the staff that the request be denied based on the following findings: a) that the proposed structure and activity would substantially interfere with natural shoreline processes and would be contrary to the intent of the shoreline regulation (Ordinance No. 63, Sec. 30-G) which attempts to prevent the encroachment of man-made improvements which may alter the natural shoreline, b) that the property is also subject to potential tsunami and flood inundation, therefore requiring adequate setbacks to minimize damage to property and human life and for other safety considerations would be in the best public interest.

9. After due consideration, it was moved and seconded that the request be denied. The motion was carried unanimously.

CONCLUSIONS OF LAW

1. Pursuant to Section 5-4.3(g) of the County Charter, the Planning Commission has jurisdiction to hear and determine appeals requesting variances from the Subdivision and Zoning Ordinances.

2. All procedural requirements as prescribed by law have been complied with.

3. Under Section 5-4.3(g) of the Hawaii County Charter, a variance may not be granted unless there are special or unusual

circumstances applying to the subject property which would result in unnecessary hardship if the ordinance were literally enforced, and the granting of the variance would not be contrary to the public interest.

4. The requirements for the granting of a variance have not been met.

DECISION AND ORDER

Based upon the testimony and exhibits introduced at the hearing and the foregoing Findings of Fact and Conclusions of Law, it is the decision of the Planning Commission and it is hereby ordered that a variance from shoreline setback regulations, Ordinance Number 63, Section 30-G, for property described as Tax Map Key 7-6-17:27 and 29 located in Holualoa 1 and 2, North Kona, Hawaii, be and is hereby denied on its merits.

Dated at Hilo, Hawaii, this 19th day of July, 1973.



Ed C. Watt
Chairman

