

CERTIFIED MAIL

June 15, 1984

Mr. Robert C. Robertson
1235 North Coast Hwy.
Laguna Beach, CA 92651

Dear Mr. Robertson:

Shoreline Setback Variance Application
TMK: 7-7-10:6

The Planning Commission at is duly held public hearing on June 13, 1984, voted to approve your application, Variance Permit No. 620, Kapalaalaea 2nd, North Kona, Hawaii.

Approval of this request is based on the following:

The Shoreline Setback Law was enacted by the State Legislature in 1970 for the protection of the shoreline from undue man-made improvements. Many of the improvements have disturbed the natural shoreline processes and have caused erosion of the shoreline. To prevent unnecessary encroachment of structures and other improvements upon the shoreline, the Legislature felt that it is in the best public interest to establish shoreline setbacks and to regulate the uses and activities within the shoreline setback area.

The Legislature, however, also recognized that certain improvements may be required to be constructed within the shoreline setback area for the protection of certain shoreline properties and their improvements. In recognizing this need, the Legislature authorized the respective authorities within the various counties--in our case, the Planning Commission--to grant variances for certain improvements within the shoreline setback areas. In accordance with Section 205-35(b) of the Hawaii Revised Statutes, and Section 8.9 of the Planning Commission's Rule No. 8, the Planning Commission may grant variances for certain improvements within the shoreline setback areas if it is found that:

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1. Such structures, activity, or facility is in the best public interest; or
2. Hardship will be caused to the applicant if the proposed structure, activity or facility is not allowed on that portion of the land within the shoreline setback.

Considering the situation of the subject property, both criteria are found to be met. The petitioner's proposal to create a public easement allowing the perpetuation of the present access situation on the shoreline portion of the subject property will be in the public interest. Having such an easement in place will maintain the relatively easy lateral access now possible. Given the shoreline conditions fronting the subject property, a legal access at the mauka limit of the shoreline itself would be less safe for the public even during times of moderate surge due to the close proximity of water exposed to wave action and the certified shoreline. Approval of the shoreline setback variance with the allowance for continued public lateral public access below the existing wall will thus be in the best public interest.

Further, given the small size of the subject property the denial of the request would result in considerable hardship. The property's 3,650 square foot size significantly limits the utility of the property. These circumstances previously led to the approval of a front yard setback variance for the structural improvements now in place. The present request would continue the open nature of the shoreline area although in an altered or man-made sense rather than leaving the natural setting in place. This alteration is, to a degree, in keeping with the open space character sought to be achieved by the shoreline setback rules and is reasonable in view of the limited site area.

For the record, it should be noted that the "no setback variance for future improvements" condition previously imposed on the subject property is intended to apply to structural improvements only, and not to landscaping improvements as being presently sought.

Based on the foregoing, it is determined that the proposed improvements will be consistent with the Shoreline Setback Law pursuant to Chapter 205-31, Hawaii Revised Statutes, and with

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the criteria established in Rule No. 8 of the Planning Commission's Rules and Regulations.

Approval of this variance request is subject to the following conditions:

1. The petitioner, its assigns or successors, shall be responsible for complying with all of the stated conditions of approval.
2. A lateral public pedestrian access encompassing all land below the existing rock wall shall be provided. The shoreline access area shall be described by metes and bounds and shall be approved by the Planning Director and recorded with the Bureau of Conveyances within six months of the effective date of the Shoreline Setback Variance.
3. Comply with all other rules, regulations, and requirements.
4. Should the Planning Director determine that any of the foregoing conditions have not been met or substantially complied with in a timely fashion, the Shoreline Setback Variance Permit shall be void.

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

Sincerely,



Roy Kagawa
Chairman, Planning Commission

cc: Mrs. Chrystal Yamasaki
Real Property Tax Division
Chief Engineer
Building Dept.
Kona Services Office
Dept. of Water Supply

bcc: Plan Approval Section