

CERTIFIED MAIL

August 20, 1984

Mr. Colin L. Love  
77-6400 Nalani Street  
Kailua-Kona, HI 96740

Dear Mr. Love:

Shoreline Setback Variance Application  
Petitioners: Robert Johnson/Banyan Tree Homeowners Association  
TRK: 7-6-14:14

The Planning Commission at its duly held public hearing on August 15, 1984, voted to approve your application, Variance Permit No. 621, Holualoa, 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 the 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

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Rule No. 8, the Planning Commission may grant variances for certain improvements within the shoreline setback areas if it is found that:

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 reconstruct a pre-existing rock wall along the makai boundary of the property and extend a rock wall along the northern boundary of the property both serve the public interest. Prior to the January 1980 storm, the original wall was a loose rubble wall. Reconstructing the wall using cement as mortar for the rock created a definite boundary between the public and private property that is now safer and more stable.

The extension of the rock wall along the property's northern boundary also serves the public interest by delineating the boundary between public and private property. It provides the public with a clear and definite pathway to the ocean and prevents them from inadvertently trespassing on private property.

Given the proximity of the ocean and the certified shoreline to the subject property, conditions for the applicant would be less safe without the rock wall along the makai boundary, particularly during times of surge or high surf. Hardship to the applicant would also result if the request were denied, as the beach at Banyan Tree Condominium is a well known and heavily used surfing beach. During surfing competition, several hundred people use the public area at any given time. Previously, without a well-defined boundary there were problems caused by the spillover of people onto the project property.

Further, denial of the request to extend the pool slab would also result in hardship for the applicant. The original slab was narrow and congestion was created around the pool by people sunbathing. Extending the slab provides a sufficient amount of additional room to relieve the congestion and thereby making the area safe to use. The area surrounding the slab was a part of the landscaped area for the condominium. Extension of

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the slab six feet into the landscaped area does not have any significant impact on the overall appearance of the area.

At this point, it should be further noted that in accordance with the Planning Department's existing penalty settlement guidelines for Shoreline Setback violations, in lieu of a fine, the applicant shall pay the County of Hawaii a sum of \$200 for administrative costs and expenses.

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 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:

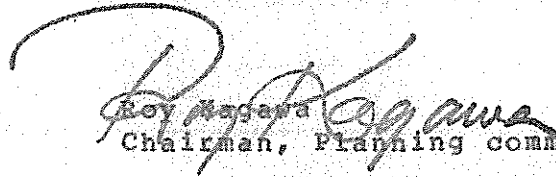
1. The petitioner, its assigns or successors, shall be responsible for complying with all of the stated conditions of approval.
2. The petitioner, its assigns or successors, shall pay a sum of \$200 to the County of Hawaii, through its Planning Department, as penalty settlement for the Shoreline Setback violation. The Shoreline Setback Variance Permit will not take effect until the settlement payment has been paid in full.
3. Comply with the conditions of Special Management Area Minor Use Permit No. 84-41.
4. Comply with all other rules, regulations and requirements.

Should the Planning Department 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.

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

Sincerely,

  
Roy Asagawa  
Chairman, Planning Commission

cc: Mr. Robert Johnson/Banyan Tree Homeowners Association (certified mail)  
Real Property Tax Division  
Chief Engineer  
Building Dept.  
Kona Services Office  
Dept. of Water Supply

bcc: Plan Approval Section