

CERTIFIED MAIL

October 1, 1987

Mr. John Lowrey
P. O. Box 4302
Kamuela, HI 96743

Dear Mr. Lowrey:

Shoreline Setback Variance Application
TMK: 6-6-02:27

The Planning Commission at its duly held public hearing on September 23, 1987, voted to approve your application, Shoreline Setback Variance Permit No. 638, to construct a retaining seawall and related improvements within the minimum 40-foot shoreline setback area at Lalamilo, South Kohala, 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 process 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 interest of the public to establish shoreline setbacks and to regulate the uses and activities within the shoreline setback area.

The Legislature, however, also recognized that certain activities and improvements may be required to be done or constructed within the shoreline setback area for protection of certain shoreline properties. In recognizing this need, the Legislature authorized the respective authorities within the various counties, in this case the Planning Commission, to grant variances for certain activities and improvements within the shoreline setback area. In accordance with Section 205-35(b) of

Mr. John Lowrey
Page 2
October 1, 1987

the Hawaii Revised Statutes, and Section 8.9 of the Planning Commission's Rule No. 8, relating to Shoreline Setback, the Planning Commission may grant variances within the shoreline setback area if it is found that:

1. Such structures, activities or facilities are in the 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.

The applicant seeks to construct a 2'-6" wide retaining seawall with landscaping within the minimum 40-foot shoreline setback area. It is the intent of the applicant to prevent further erosion of land into the ocean waters. Photographs of the shoreline and a field inspection of the property revealed exposed roots and fallen trees caused by erosion and high surf action. The proposed action would clear the area of debris and provide safer passage for Wailea Bay users. A permanent seawall should prevent further erosion from occurring and would stabilize the shoreline conditions.

This approval contains a condition which maintains a low seawall not to exceed 2'-6" in height, mindful of its potential use by the public during periods of high surf and winter storms. Unlike some "privacy" walls, the proposed seawall will not dangerously isolate the public on the seaward side of the property. Further, the applicant has stated that access and use of the wall by the public will not be restricted. This, too, has been included as a condition of approval and will run with the land. It is felt that existing access to and along the shoreline on state property is adequately available.

The landscaping improvements would provide a ground cover to the silt-ash soils which have aggravated air and water quality. This situation has become a serious concern of local residents since the recent fire.

Therefore, in looking at the proposal, it is determined that the approval of the subject request will be in the public interest.

The limited action will create minimal interference with natural shoreline processes. The seawall plans were drawn by a structural engineer in line with comments from the U.S. Army Corps of Engineers. The engineer has provided written

instructions for mitigative measures during site preparation and construction. Given these considerations, the seawall has been engineered to withstand as well as dissipate wave action.

Finally, the applicant has coordinated his efforts with the adjacent property owner to the south. This has enabled a consistent seawall design, which would be aesthetically better.

Based on the foregoing, it is determined that the proposed seawall and landscaping improvements will be consistent with the Shoreline Setback Law pursuant to Chapter 205-31, HRS, and the criteria established in Rule No. 8 of the Planning Commission's Rules of Practice and Procedure.

Approval of this request is subject to the following conditions:

1. The petitioner, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
2. The petitioner, its successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim or demand for the property damage, personal injury and death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit.
3. The proposed seawall shall not exceed a height of 2'-6" from the existing natural grade looking landward (east).
4. Public use of the seawall shall not be restricted or obstructed in any manner.
5. Comply with all of the conditions set forth in SMA Minor Use Permit No. 87-27.
6. Plans for the proposed improvements shall be submitted to the Planning Department within six months from the effective date of the shoreline setback variance.
7. Construction of the proposed improvements shall commence within six months from the date of Planning Department approval and be completed within one year thereafter. The Department shall be notified of the project's completion within two weeks from the date of completion. All

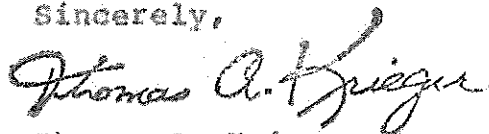
Mr. John Lowrey
Page 4
October 1, 1987

construction and construction activity shall occur mauka of the certified shoreline as confirmed by the Chairman of the Board of Land and Natural Resources on February 5, 1987.

8. Comply with all other applicable rules, regulations and requirements.
9. An 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 applicant, successors, or assigns, and that are not the result of their fault or negligence; b) 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 may initiate procedures to nullify the permit.

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

Sincerely,



Thomas A. Krieger
Chairman, Planning Commission

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
Planning Office - Kona
DBED, CZM Program w/background

bcc: Plan Approval Section