

CERTIFIED MAIL

December 17, 1987

Mr. David Akana
881 Hokulani Street
Honolulu, HI 96825

Dear Mr. Akana:

Shoreline Setback Variance Application
TMK: 6-9-05:1¹⁰ and 11

The Planning Commission at its duly held public hearing on December 8, 1987, voted to approve your application, Shoreline Setback Variance Permit No. 639, to allow the construction of a retaining seawall and related improvements within the 40-foot shoreline setback area at Puako Beach Lots Subdivision, 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 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

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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 200-foot long retaining seawall with landscaping and related improvements within the minimum 40-foot shoreline setback area. It is the intent of the applicant to prevent further damage to the existing dwelling and protection of the new dwelling under construction from seasonal high storm wave action. In addition, the applicant seeks to minimize continual desalinization of the ground preventing re-vegetation and to prevent increase cost in flood insurance. A permanent seawall should prevent further erosion from occurring and would stabilize the shoreline conditions.

Therefore, in looking at the proposal, it is determined that the denial of the subject request will cause a hardship to the applicant if the proposed seawall is not constructed.

In addition, the Department of Land and Natural Resources has recommended that the course of the proposed seawall be realigned to provide for lateral public access between the wall and the certified shoreline. However, this would not resolve the matter of such lateral access since there presently exists a boundary wall and seawall on the adjoining property without a similar provision for lateral access.

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 applicant, its successors or assigns shall be responsible for complying with all conditions of approval.
2. The applicant, 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 or assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit.
3. Construction of the seawall shall not exceed 4' in height from the existing grade, and shall not impede lateral public access.
4. Comply with all of the conditions set forth in SMA Minor Use Permit No. 87-35.
5. Plans for the proposed improvements shall be submitted to the Planning Department within six months from the effective date of the Shoreline Setback Variance.
6. Construction of the proposed improvements shall commence within six months from the date of Planning Department and/or Department of Public Works, Building Division's approval and be completed within one year thereafter. The Planning Department shall be notified of the project's completion within two weeks from the date of completion. All 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 May 11, 1987.
7. Should any unanticipated archaeological sites or features be uncovered during land preparation activities, work within the affected area shall immediately cease and the Planning Department notified. No work within the affected area shall resume until clearance is obtained from the Planning Department.
8. Comply with all other applicable laws, rules, regulations, and requirements.

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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