

CERTIFIED MAIL

October 1, 1987

Mr. John Tanaka
1080 Siskiyou Drive
Menlo Park, CA 94025

Dear Mr. Tanaka:

Shoreline Setback Variance Application
TMK: 6-6-02:26

The Planning Commission at its duly held public hearing on September 23, 1987, voted to approve your application, Shoreline Setback Variance Permit No. 637, to allow the construction of a retaining seawall, landscaping and related improvements within the 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 the Hawaii Revised Statutes, and Section 8.9 of the Planning

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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 and to protect the existing single-family dwelling on the property from storm wave action. 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 and installation of a sprinkler system 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 north. 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. 87-26.
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

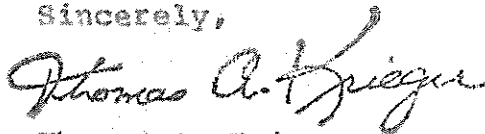
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within two weeks from the date of completion. All construction and construction activity shall occur mauka of the certified shoreline as confirmed by the Chairman of the Board of Land and Natural Resources on April 13, 1987.

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

October 19, 1990

Mr. John S. Tanaka
SR Box 4600
Mauna Lani Point J206
Kohala Coast, HI 96743

Dear Mr. Tanaka:

Amendment to Shoreline Setback Variance No. 637
Applicant: Gregory M. Cook
(Previously Issued to John Tanaka)
Tax Map Key: 6-6-02: 26

This is to acknowledge receipt of your letter dated September 21, 1990, providing us with a history of actions within the subject property which ultimately led to the above-referenced request.

Your letter describes the events which led to the construction of the wooden deck. While we understand your reasons for the construction of the wooden deck within the shoreline setback, your statement that the subject wooden deck "is an integrally 'related improvement' of the landscaping," which was installed pursuant to Planning Commission's approval of SSV No. 637, is incorrect.

Your Shoreline Setback Variance Application submitted on February 17, 1987, indicates the following proposed improvements within the minimum 40-foot shoreline setback area:

1. A retaining seawall traversing the subject property for a length of approximately 115.2 feet. Looking landward, the height of the vertical CRM rockwall would not exceed 2'-6";
2. Placement of fill material and topsoil to create a landscaped embankment from the existing dwelling foundation to the proposed seawall;

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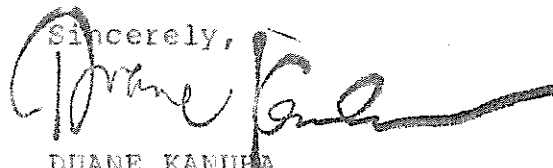
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3. Installation of a sprinkler system to service the 40-foot shoreline setback area;
4. A stairway immediately mauka and parallel to the seawall in the northwest corner of the property leading to the shoreline. A gate would connect a breach that exists between the subject and adjacent property to the north.

Nowhere within the subject application was the construction of the subject deck ever mentioned. We understand your definition of the deck as being a "related improvements," and, thereby, supposedly covered under SSV No. 637. However, the approval of SSV No. 637 by the Planning Commission was based on the above-mentioned improvements proposed by you and represented to this office and the Planning Commission. Our Background Report and Recommendation to the Planning Commission was based on the improvements represented and its conformance 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. The Planning Commission's decision was also based on what was represented by you at that time. Therefore, Shoreline Setback Variance No. 637 was approved to allow the construction of the specific items discussed above and any improvements directly related to them. To be more specific, "related improvements" would refer to any activity associated with the construction or installation of the mentioned improvements. We hope that we have adequately addressed your concerns as well as our position.

Mr. Cook has applied for an SMA Use Permit and amendment to SSV No. 637, which is an effort to legitimize and resolve the violation. In the meantime, should you have any questions, please do not hesitate to contact Daryn Arai of this office at 961-8288.

Sincerely,



DUANE KANUHA
Planning Director

DSA:syw

cc: Planning Commission (w/ltr)
Mr. Gregory Cook (w/ltr)
Sandra Pechter Schutte, Esq. (w/ltr)



Planning Department

County of Hawaii • 25 Aupuni Street, Room 109 • Hilo, Hawaii 96720 • (808) 961-8288

December 23, 1992

Sandra Pechter Schutte, Esq.
Roehrig, Roehrig, Wilson, Hara
Schutte & DeSilva
101 Aupuni Street, Suite 124
Hilo, HI 96720

Dear Ms. Schutte:

Amendment to Shoreline Setback Variance No. 637
Applicant: Gregory Cook
Request: Allow after-the-fact deck
Tax Map Key: 6-6-02: 26

We are in receipt of your letter dated December 15, 1992, regarding the above-referenced matter.

We have reviewed your request that the wooden deck be considered a "minor structure" as defined under Rule 8-7(d). After thorough review, we have determined that the wooden deck is considered a "minor structure" and that an amendment to Shoreline Setback Variance No. 637 is no longer required.

Our findings, as discussed below, are based on the information submitted as part of the applicant's request to amend Shoreline Setback Variance Application No. 637 and included within your letter:

Certified shoreline survey of the subject property dated November 29, 1989, defines the shoreline facing that portion of shoreline setback area within which the wooden deck is located as being the makai face of the existing seawall.

The wooden deck is located immediately mauka of the existing seawall. The wooden deck, which measures approximately 35 feet in length and 10 feet in width, maintains an overall height of approximately 1 foot above the level of the approximately 2'-6" high seawall.

Section 8-3(f) of the Planning Commission Rules states that a Minor structure "shall not alter the existing grade of the setback area and shall be limited to landscaping; landscape features (i.e. benches, chairs, borders, wooden walkways for access; and sprinkling systems."

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Sandra Pechter Schutte, Esq.
December 23, 1992
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Section 8-7(d) states that "A minor structure or activity proposed in the shoreline setback area shall not need a beach processes or artificially fix the shoreline and would not interfere with public access or public views to and along the shoreline."

As represented in your letter and consistent with Section 9-3(f), the wooden deck, constructed on posts, does not alter the existing grade of the setback area and is considered a landscaping feature. Consistent with Section 8-7(d), the wooden deck, in its location makai of the existing seawall, will not affect beach processes or artificially fix the shoreline. The existing seawall, whose construction was approved under Shoreline Setback Variance No. 637, has its makai face "fixed" as the certified shoreline per survey approved on November 29, 1989. As required as a condition of approval of Shoreline Setback Variance No. 637 and SMA Minor Use Permit No. 87-26, the applicant shall not restrict or obstruct public use of the seawall. The deck's overall height of approximately 1 foot above the level of the seawall will not interfere with public views to and along the shoreline.

We have appreciated the cooperation and patience of the applicant during the Commission's revision of its Rule 8. Should you have any questions on this matter, please contact Daryn Arai or Susan Gagorik of this office.

Sincerely,



VIRGINIA H. GOLDSTEIN
Planning Director

DSA:mlm

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cc w/ltr: Planning Commission
West Hawaii Office