

CERTIFIED MAIL

January 9, 1989

Mr. Sidney Fuke
100 Pauahi Street, Suite 212
Hilo, Hawaii 96720

Dear Mr. Fuke:

Special Management Area (SMA) Use Permit and
Shoreline Setback Variance Applications
Applicant: Kailua Bay Village, Inc.
TMK: 7-5-09:25, 28, & 43

The Planning Commission at its duly held public hearing on December 28, 1988, voted to approve your client's applications, Special Management Area (SMA) Use Permit No. 277, and Shoreline Setback Variance No. 641, to allow the construction of a commercial specialty center and related improvements at Auhaukeae 2nd, North Kona, Hawaii.

Approval of this request is based on the following:

The requested Special Management Area Use Permit Application and Variance from the Shoreline Setback requirements conform to the General Plan Land Use Pattern Allocation Guide (LUPAG) Map which designates the area for Resort development. Such a designation may allow Resort and related commercial uses. For the Kailua Village Special District area, the LUPAG Map provides for the concentration of urban activities with development occurring in an orderly manner commensurate with the provision of the necessary infrastructure. The General Plan LUPAG map has designated the Resort core to extend from Palani Road south and makai of Kuakini Highway to Walua Road and down to Alii Drive. The property is within this established core area and as such is in close proximity to Kailua Village and other resort and commercial retail activities in the area. The County of Hawaii General Plan also designates Kailua Village as a major visitor destination area. It is therefore determined

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that the request is consistent with the urban form depicted on the LUPAG Map as the area would be an extension of Resort core for the Village of Kailua.

The request would be consistent with the urban form depicted for Kailua Village in that it would add resort related commercial uses serving the entire village in a central location and in close proximity to other similar services. Thus, the approval of the request is anticipated to strengthen the existing resort core in addition to providing services to the community. In this regard the approval of the subject request would be consistent with the General Plan Commercial Policy which states that the "Distribution of commercial areas shall be such as to best meet the demands of neighborhood, community and regional needs."

The Kona Regional Plan and the Kailua Village Design Plan is intended to provide short and middle range implementation strategies for the goals, policies, and land use pattern presented in the General Plan. The Kona Regional Plan recommends that the area be designated Resort uses. Therefore, it recognizes basic planning issues associated with the existing resort and commercial development. The potential growth of the West Hawaii district with the major resort developments in the South Kohala and North Kona districts and the commercial needs to be created by this growth need to be continually assessed. The necessity of providing areas which will support the major visitor destination role is included in this assessment function. In anticipation of this, the General Plan recognized that it was necessary to designate specific areas in which this anticipated development would occur. The proposed change of zone would be implementing the General Plan with respect to this premise. Therefore, we have determined that the properties are within this designated resort core of Kailua Village. It is felt that the area in question is compatible to be used for the uses within the Resort category. The inclusion of this area with the requested Resort zoning would provide a more compatible land use pattern with the existing zoning and uses. Therefore, the requested change of zone would still complement the goals and policies of the General Plan as it will tend to concentrate resort related commercial developments as well as assist in reinforcing the major visitor destination role of Kailua Village.

The request also conforms to the Land Use Element of the General Plan which states that urban designated land shall be

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served with essential services such as water, utilities, and transportation systems. The area is or will be provided with all of these essential services. A condition of the change of zone will be for the curb, gutter, sidewalk and pavement improvements be provided along the frontage of the subject property as well as to comply with the Department of Public Works, wastewater, drainage, grading, building, plumbing, electrical and other related construction requirements. Thus, with the provision of these essential infrastructure, it is determined that the request also complements this policy of the General Plan.

Based on the above reasons, it is determined the granting of this request would result in an appropriate land use pattern that will further the public necessity and convenience and the general welfare.

Approval of this request is subject to the following conditions:

- A. The applicant, successors or assigns shall comply with all of the stated conditions of approval.
- B. The applicant shall submit plans for Plan Approval to the Planning Department within one year from the effective date of this Permit.
- C. The applicant shall submit the required water commitment payment to the Department of Water Supply in accordance with its "Water Commitment Guidelines Policy" within ninety days from the date of approval of the change of zone. The zoning of the property shall not be in effect until the water commitment payment is accepted by the Department of Water Supply.
- D. A drainage system shall be installed in accordance with the requirements of the Department of Public Works.
- E. Curbs, gutters and sidewalk improvements be provided along Kuakini Highway and Alii Drive meeting with the approval of the Department of Public Works prior to receipt of occupancy permit for the proposed development.
- F. Improvements to address vehicular/pedestrian concerns associated with the development of the subject property shall be provided along the Alii Drive and Kuakini Highway

frontages of the subject property in a manner meeting with the approval of the Department of Public Works. In determining the level of improvements, the Department of Public Works shall consider matters such as deceleration and acceleration lanes, driveway, accesses, left turn storage lanes, traffic signals, etc. Preliminary plans for these improvements shall be submitted with plans for Plan Approval review. These improvements shall be installed prior to issuance of any certificate of occupancy for the development.

- G. Prior to the issuance of a grading permit, a detailed archaeological data recovery plan (which shall serve as the scope of work) shall be approved by the County Planning Department and the Department of Land and Natural Resources, Historic Sites Section. A final data recovery report shall be submitted to the Planning Department and the Department of Land and Natural Resources prior to issuance of the certificate of occupancy for any structure indicating that the archaeological data recovery has been successfully executed as per approved plan.
- H. Furthermore, should any unidentified sites or remains, such as artifacts, shell, bone or charcoal deposits, human burials, rock or coral alignments, paving or walls be encountered during the data recovery process or the development phase of the project, work in the area affected shall cease and the Planning Department immediately notified. Subsequent work shall proceed upon an archaeological clearance from the Planning Department when it finds that sufficient mitigating measures have been taken.
- I. All applicable laws, rules, regulations and requirements shall be complied with, including those of the Department of Water Supply and the Department of Public Works.
- J. The method of sewage disposal shall meet with the approval of the appropriate governmental agencies.
- K. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the approval of the permit. The report shall include, but not be limited to, the status of the development and to what extent the conditions of approval are being complied

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with. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.

- L. An extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances: 1) the non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicants, successors or assigns, and that are not the result of their fault or negligence; 2) granting of the time extension would not be contrary to the general plan or zoning code; 3) granting of the time extension would not be contrary to the original reasons for the granting of the SMA Use Permit; and 4) 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); and 5) if the applicant should require an additional extension of time, the Planning Director shall submit the applicant's request to the Planning Commission for appropriate action. Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate proceedings to nullify the SMA Use Permit.

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

Sincerely,



Gary Mizuno
Chairman, Planning Commission

xc: Mr. Bryant L. Morris
Department of Public Works
Department of Water Supply
County Real Property Tax Division
Planning Office - Kona
DBED, CZM Program w/background
DLNR

bcc: Plan Approval Section

December 2, 1992

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

Dear Ms. Schutte:

Shoreline Setback Variance No. 641
Applicant: Old Kailua Town Associates
Request: Amendment to include Parcel 43
Tax Map Key: 7-5-9:25, 28

This is to inform you of the Planning Commission's adoption of revised Rule 8 relating to Shoreline Setback. Your application to amend Shoreline Setback Variance No. 641 was held in abeyance pending adoption of the new rule.

A copy of Rule 8, which has an effective date of October 29, 1992, is attached for your information. Upon review of the amended rule, we have determined that a shoreline setback variance does not apply to this property. Our determination is made due to the following provision stated in Rule 8-5(a):

"Except as otherwise provided in this section, all lots which abut the shoreline shall have a minimum shoreline setback line of forty feet."

The application of this rule is intended only for shoreline parcels and is not to be construed for parcels which do not abut the shoreline.

Parcel 43 is not a shoreline parcel and, therefore, will not be affected by the shoreline setback line. The Alii Drive frontage of this property would be affected by a front yard setback.

With this decision, you may proceed to submit plans for Final Plan Approval addressing the points raised in our Preliminary Plan Approval letter dated July 12, 1990, from this office. The \$100 filing fee submitted with the application will be remitted to you under separate cover.

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Sandra Pechter Schutte, Esq.
December 2, 1992
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We do appreciate your patience and apologize for the extended delay in adopting revisions to Rule 8. Should you have any questions or concerns, please feel free to contact this department at 961-8288.

Sincerely,



NORMAN K. HAYASHI
Planning Director

CRK:mjh
7239D
Enclosure (Rule 8)

cc: SMA 277
West Hawaii Office
DLNR - Honolulu
DLNR - Hilo
Mr. Bryant L. Morris

bcc: Sandy (please remit)
Alice/Rick
Daryn/Susan
Staff

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