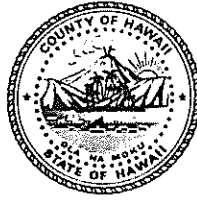


Stephen K. Yamashiro
Mayor



County of Hawaii

PLANNING COMMISSION

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 Fax (808) 961-9615

CERTIFIED MAIL

September 23, 1993

Mr. Glen T. Koyama
Belt Collins & Associates
680 Ala Moana Blvd., First Floor
Honolulu, HI 96813

Dear Mr. Koyama:

Shoreline Setback Variance Application (SSV 90-2)

Applicant: Azabu USA

Request: Repair of an Existing Shoreline Wall, Removal of Existing
Pool Decks and Tennis Courts, Creation of Sandy Area,

Landscaping, and Removal of other Certain Man-made Improvements

Tax Map Key: 7-8-10:Portion of 35 and 7-8-13:2, 13, 43, & 46

The Planning Commission at its duly held public hearing on September 16, 1993, voted to approve the above-referenced application. Shoreline Setback Variance Permit No. 647 is hereby issued to allow the repair of an existing shoreline wall, the removal of existing pool decks and tennis courts, creation of a sandy area, landscaping, and the removal of other certain man-made improvements within the 40-foot shoreline setback area. The project site is the Kona Lagoon/Keauhou Beach Hotel complex, Kahaluu, 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 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

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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 8-14(a) and (b) of the Planning Commission's Rule 8, relating to Shoreline Setback, the Planning Commission may grant variances from the shoreline setback regulations provided such a request conforms to the following criteria for approval:

1. A variance may be granted for a structure or activity otherwise prohibited by these rules if the Planning Commission finds in writing, based on the record, that the proposed structure or activity is necessary for or ancillary to landscaping [Section 8-14(a)(3)];
2. A variance may also be granted upon a finding that, based on the record, the proposed structure or activity meets a Shoreline-dependant Facility Standard [Section 8-14(b)(1)]; and
3. A variance may be granted for a private facility or improvement which is undertaken by a private entity and is clearly in the public interest; provided that the proposal is the practicable alternative which best conforms to the purpose of Rule 8 [Section 8-14(b)(2)].

The applicant proposes the following repair, restoration and landscaping-related improvements within the 40-foot shoreline setback area:

- a. Sandy area to be created between the existing shoreline wall and coconut grove.
- b. Existing Shoreline Wall to be repaired (approximately 5 linear feet).
- c. Removal of Existing Pool Decks from pools located at the Keauhou Beach and Kona Lagoon Hotels.
- d. Removal of Existing Tennis Courts located at the Keauhou Beach and Kona Lagoon Hotels with affected area to be subsequently landscaped.
- e. Removal of Existing Rock Wall fronting the makai side of the Kona Lagoon Hotel.

- f. Removal of portion of Existing A.C. Pavement which provides access and parking for the Kona Lagoon Hotel.

The proposed improvements are part of an overall upgrade of the existing Keauhou Beach and Kona Lagoon Hotel complexes. This upgrade would include the limited repair of an existing shoreline wall fronting the project site to its former condition, removal of various man-made elements and its restoration with landscaping. Repair of the existing shoreline wall would not raise its height nor extend its length. Its existing form and structural integrity of the wall will be kept intact. Within the area located immediately mauka of the shoreline wall, existing grass and plantings will be replaced by sand. New plantings will be provided within this new sandy area. The removal of existing pool decks, tennis courts, rock wall and A.C. pavement from other portions of the project site within the 40-foot shoreline setback area will be replaced with landscaping. Therefore, these proposed Landscaping improvements are consistent with a criteria which would allow the granting of a variance for structures or activities which are necessary for or ancillary to landscaping [Section 8-14(a)(3)].

As with most resorts within the County, the coastal area is a major element of attraction to visitors. However, the shoreline area fronting the Keauhou Beach-Kona Lagoon Hotel complex and the project site is composed primarily of narrow, coarse sand beaches and basaltic rock. An area located south of the project site, adjacent to the Kona Lagoon Hotel is classified as a wetland coastal area. These physical shoreline characteristics limit the recreational opportunities normally associated with such coastal resorts. The proposed creation of a sandy area mauka of an existing shoreline wall will provide an alternate recreational area within an area currently maintained in landscaping. This sandy area is anticipated to generate a secondary benefit by possibly relieving sensitive shoreline areas, such as the wetland coastal area and tidal areas, from adverse impacts associated within its potential use as resort-related recreational areas. Based on the discussion above, the proposed use would also satisfy the Shoreline-dependant Facility Standard for which a variance may be granted [(Section 8-14(b)(1)]. The creation of the sandy area will also compliment the Public Interest Standard [Section 8-14(b)(2)] by providing a practical alternative for an area which does not have adequate shoreline recreational resources normally associated with coastal resorts, thereby potentially relieving nearby sensitive wetland and tidal habitats from recreational pressures.

Given the limited nature of the proposed improvements, natural shoreline processes will experience minimal interference, if any, from the proposed improvements. Areas to be affected by the proposed improvements have already been extensively improved as a landscaped area within the Keauhou Beach and Kona Lagoon Hotel complexes. The nature of the proposed improvement, which will be limited to the creation of a sandy area, repair of an existing shoreline wall, the removal of certain man-made elements and the enhancement and creation of landscaping elements are not anticipated to interfere with public access to shoreline areas or existing viewplanes. On the contrary, these improvements, along with the implementation of an approved public access plan as required by SMA Use Permit No. 321, will enhance public shoreline access. While the limited nature of the proposed improvements are not anticipated to affect historical sites or nearby coastal and pond water quality, the implementation of a historical preservation mitigation plan, water quality and pond management plan, and the best efforts of the applicant to minimize fugitive dust and sedimentation during construction have been also been imposed as conditions of approval of SMA Use Permit No. 321. These measures will mitigate any potential adverse impacts generated by the proposed shoreline area improvements to historical sites and coastal and pond water quality.

Approval of this request is subject to the following conditions:

1. The applicant, successors, or assigns shall be responsible for complying with all of the stated 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. Engineering plans for the repair of the existing shoreline wall and the creation of the sandy area, which shall be certified by an engineer registered with the State of Hawaii, shall be submitted to the Planning Department for review and approval within two (2) years from the date of approval of this permit. A grading permit or other relevant permits, if required, shall also be secured from

the Department of Public Works within the 2-year time frame specified above.

4. Prior to any repair or land alteration activity, the applicant shall clearly stake the certified shoreline as approved by the Chairman of the Board of Land and Natural Resources on July 3, 1990. The Planning Department shall be notified, in writing, of the staking. All construction or land alteration activities shall be prohibited makai of this staked line.
5. Comply with all of the conditions set forth within Special Management Area Use Permit No. 321, as well as all other applicable laws, rules, regulations and requirements.
6. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings or walks be encountered, work in the immediate area shall cease and the Planning Department shall be immediately notified. Subsequent work shall proceed upon a archaeological clearance form the Planning Department when it finds that sufficient mitigative measures have been taken.
7. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the approval of this permit. The report shall include, but not be limited to, the status of the improvements and to what extent the conditions of approval are being complied with. This condition shall remain in effect until all of the conditions of approval have been complied and the Planning Director acknowledges that further reports are not required;
8. An initial extension of time for the performance of conditions within this 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 original reasons for the granting of the permit; and (c) 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

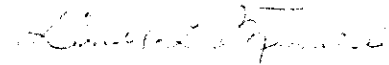
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timely fashion, the Director shall initiate procedures to
revoke this permit.

This approval does not, however, sanction the specific plans
submitted with the application as they may be subject to change given
specific code and regulatory requirements of the affected agencies.

Should you have any questions, please feel free to contact Rodney
Nakano or Daryn Arai of the Planning Department at 961-8288.

Sincerely,



Donald L. Manalili, Chairman
Planning Commission

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xc: Honorable Stephen K. Yamashiro, Mayor
Planning Director
Azabu USA
Corporation Counsel
Department of Public Works
Department of Water Supply
County Real Property Tax Division
West Hawaii Office
Office of State Planning, CZM Program w/background
Department of Land and Natural Resources
Plan Approval Section
SMA 321