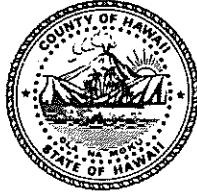


Stephen K. Yamashiro
Mayor



County of Hawaii

PLANNING COMMISSION

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

CERTIFIED MAIL

January 10, 1994

Mr. Joseph N. Castelli, President
Homeowners Association of the
Keauhou-Kona Surf and Racquet Club
78-6800 Alii Drive
Kailua-Kona, HI 96740

Dear Mr. Castelli:

Shoreline Setback Variance Application (SSV 93-1)
Applicant: Homeowners Association of the
Keauhou-Kona Surf & Racquet Club
Request: Construct Wave Energy Dissipators
Tax Map Key: 7-8-13:3

The Planning Commission at its duly held public hearing on December 16, 1993, voted to approve your above-reference application. Shoreline Setback Variance Permit No. 648 is hereby issued to construct wave energy dissipators and to level an 8-foot wide pedestrian pathway in the 40-foot shoreline setback area. The property is located on the makai side of Alii Drive approximately 2000 feet north from its intersection with Kamehameha III Road, Kahaluu & Keauhou 1st, 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 believed it was in the best interest of the public to establish shoreline setbacks in order to regulate the uses and activities within the shoreline setback area.

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Mr. Joseph N. Castelli, President
January 10, 1994
Page 2

The Legislature, however, also recognized that certain activities and improvements may be required 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 8-14(b) of the Planning Commission's Rule 8, relating to Shoreline Setback, the Planning Commission may grant variances from the shoreline setback regulations based on the following criteria for approval:

A variance may be granted upon meeting the Public Interest Standard.

A variance may be granted for an activity or structure which is undertaken by a public agency or by a public utility regulated under Chapter 269, Hawaii Revised Statutes, or 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 this rule.

A variance may also be granted upon grounds of Hardship only if:

- a) The applicant would be deprived of reasonable use of the land if required to comply fully with this rule;
- b) The request is due to unique circumstances and does not draw into question the reasonableness of this rule;
- c) The request is the practicable alternative which best conforms to the purpose of this rule; and
- d) The request is a reasonable use of the land based on factors such as shoreline conditions, erosion, surf and flood condition, and the geography of the lot as it relates to health and safety.

Mr. Joseph N. Castelli, President
January 10, 1994
Page 3

The applicant proposes the following improvements within the 40-foot shoreline setback area:

1. Wave Energy Dissipators in the form of eleven (11) riprap barriers will be constructed between Buildings no. 4 & 5 of the Keauhou-Kona Surf and Racquet Club, which is located at the southwestern tip of the property are. In the past, these buildings have been hit by storm waves causing damage to ground floor units and hospitalization of some of its residents. These rock barriers will be placed of the top of the lava ledge oceanside, which is 16-18 feet above the mean high waterline. The barriers will be staggered and are designed to disseminate waves by allowing them to drain back into the sea. Piles of 2-5 feet diameter pahoehoe lava rocks will be keystone trench cemented into the existing lava ledge with black cement. The barriers will measure approximately 15-25 feet long by 8 feet wide and 6-8 feet high and constructed at the base elevation between 16-20 feet. The height of the barriers is determined by the maximum allowable so as not to block the ocean view from the ground floor apartments and the Inikiwai Heiau. The base pad of buildings no. 4 & 5 are between 23-25-foot level elevations; and the base of the heiau is at the 17-foot elevation.
2. A Pedestrian Pathway 8-feet wide and 300 feet long will also be levelled to allow for public access. This unpaved walkway will connect to an existing paved walkway that was previously restored under SMA Minor Use Permit No. 90-5. There are pedestrian right-of-passages along the subject property which is indicated on a map in the Environmental Assessment.

The proposed improvements would help to restore and stabilize the shoreline in areas eroded by high surf conditions, between buildings no. 4 & 5 of the Keauhou-Kona Surf and Racquet Club. Damages have already occurred to the ground floor level of the condominium and caused the hospitalization of some tenants. In addition, existing public pathways have also been destroyed by the surf. As these buildings abut the 40-foot shoreline setback, they are directly impacted by the Kona winter and south swell storms. Should these barriers not be constructed, further erosion of the shoreline would occur, and the safety of the residents of the condominium would be at stake. The proposed eleven (11) riprap barriers will serve as a buffer zone between the

Mr. Joseph N. Castelli, President
January 10, 1994
Page 4

existing condominium buildings and the ocean by preventing additional property damage as well as protecting the health and safety of its residents. Hardship will be caused to the applicant if the proposed improvements are not allowed within the shoreline setback area and the applicant would be deprived reasonable use of their land. In addition, since this request is due to the unique circumstances, it does not draw into question the reasonableness of Rule 8 regarding the Shoreline Setback Area.

The natural shoreline processes will experience minimal interference, if any, from the proposed improvements. A temporary roadway 19-foot wide will be constructed by laying coarse gravel fill several feet deep between building No. 4 and the Inikiwai Heiau to accommodate heavy construction equipment. Fencing will be installed along the base outcrop of the Inikiwai Heiau so as not to cause any damage. In addition, Mr. Joseph Castelli, President of the Homeowners Association, will monitor and supervise the work to ensure that the Inikiwai Heiau is protected and that no construction contaminants from entering the ocean water. In addition, a condition is being recommended to require that no construction or deposition of material occur seaward of the certified shoreline.

The nature of the proposed improvements are not anticipated to interfere with public access to shoreline areas or existing view planes as designed. On the contrary, these improvements, along with the existing public access pathways will enhance public shoreline access. Existing mauka-makai public access will not be affected. In addition, the limited nature of the proposed improvements are not anticipated to affect historical sites or nearby coastal water quality. The barriers, by design, will be between 6-8 feet with a base elevation between 16-20 feet. The applicant states that the highest barrier will be at the 27-foot elevation. With the base elevation of the buildings being between 23-25 feet; and the Inikiwai Heiau at the 27 foot elevation, existing view planes to and along the shoreline would not be adversely affected. Therefore, construction of the barriers and pathway, is the practicable alternative which best conforms to the purpose of this rule by protecting natural shoreline processes and in the best interest of public health and safety.

Mr. Joseph N. Castelli, President
January 10, 1994
Page 5

The proposed construction of the riprap barriers will contribute to the provision of lateral public access along the shoreline, which has been curtailed by the loss of shoreline material. Since the applicant also proposes to level a pedestrian pathway along the shoreline in the vicinity, the barriers would allow for public access along the pathways. Thus, approval of this request will enhance existing public access and is clearly in the public interest by providing safe lateral access along the shoreline.

Given the limited nature of the proposed improvements, approval of this request would allow for a reasonable use of the land which would not affect shoreline views, public access, and the environment or ecology of the shoreline area.

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. The applicant shall comply with Special Management Area (SMA) Minor Use Permit Use Permit No. 93-23.
4. The height of the barriers shall not block the ocean view from the ground floor apartments and the Inikiwai Heiau.
5. Construction shall be completed within one year from the effective date of this permit.
6. Prior to any construction-related activities, a temporary and durable fence shall be installed along the base outcrop of the Inikiwai Heiau.

Mr. Joseph N. Castelli, President
January 10, 1994
Page 6

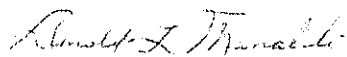
7. Prior to any construction-related activity, the applicant shall clearly stake the certified shoreline as approved by the Chairman of the Board of Land and Natural Resources on June 22, 1992. The Planning Department shall be notified, in writing, of the staking. No construction or deposition of material shall occur seaward of this staked line.
8. 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.
9. Upon compliance with all conditions of approval, and upon completion of the proposed work, the applicant shall submit a final status report, in writing, to the Planning Director.
10. 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 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.

Mr. Joseph N. Castelli, President
January 10, 1994
Page 7

Should you have any questions, please feel free to contact Rodney Nakano or Susan Gagorik 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
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
SMM 93-23