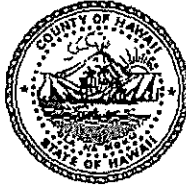


Stephen K. Yamashiro  
Mayor



## County of Hawaii

### PLANNING COMMISSION

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

CERTIFIED MAIL

JAN - 3 1995

Mr. Steven S. C. Lim  
Carlsmith Ball Wichman Murray Case & Ichiki  
PO Box 686  
Hilo, HI 96721-0686

Dear Mr. Lim:

Shoreline Setback Variance Application (SSV 94-2)  
Applicant: Harry Wright and Linda Elliot Wright  
Request: Construct Lap Pool, Deck, Rock Wall Improvements and  
Other Related Improvements within the 20-foot  
Shoreline Setback Area

Tax Map Key: 7-5-05:42

The Planning Commission at its duly held public hearing on December 14, 1994, voted to approve the above-referenced application. Shoreline Setback Variance Permit No. 650 is hereby issued to construct a lap pool, deck and rock wall improvements adjacent to and fronting their existing residence. The project site is located in the Kona Bay Estates Subdivision near the Old Kona Airport, Lanihau Nui, 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.

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

CC-119  
JAN - 3 1995

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 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.

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. The existing CRM wall on makai edge of the property was constructed as part of the Kona Bay Estates Subdivision and based on a certified shoreline survey (November 24, 1981), the CRM wall was located immediately mauka of the then shoreline setback area (20 feet at this lot). The Certified Shoreline Survey of October 21, 1994 locates the shoreline at the makai face of this CRM wall.

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, lateral public access in the form a pedestrian easement has been recorded with the Bureau of Conveyance. The CRM wall, 2 feet wide, is coincident with the pedestrian easement. These improvements, along with the

existing public access pathways will not interfere with 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.

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. Construction shall be completed within five (5) years from the effective date of this permit.
4. The pool and related improvements shall comply with the requirements of Chapter 27 (Flood Control) of the Hawaii County Code.
5. 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.
6. 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.

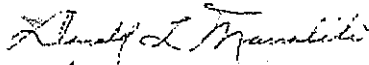
Mr. Steven S. C. Lim  
Page 4

7. 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).
8. 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.

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

Sincerely,



Donald L. Manalili, Chairman  
Planning Commission

RKN:jdk  
LWright01.PC

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