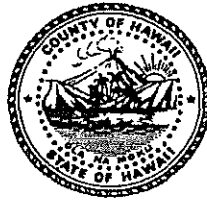


Harry Kim
Mayor



County of Hawaii

PLANNING COMMISSION

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FEB 28 2001

Mr. Klaus D. Conventz
P.O. Box 2308
Kailua-Kona, HI 96745-2308

Dear Mr. Conventz:

Shoreline Setback Variance Application (SSV 00-001)

Applicant: Klaus D. Conventz

Request: Repair Foundation Pillars, Construct Roof Over Existing Open Deck, Add
Safety Fence Under Perimeter of Dwelling

Tax Map Key: 7-8-14:75

The Planning Commission at its duly held public hearing on February 2, 2001, reaffirmed their vote of November 1, 2000, to approve the repair foundation pillars and install the safety chain link fence under the existing dwelling and deny the roof extension over the existing deck for the above-referenced request. Shoreline Setback Variance Permit No. 655 is hereby issued as stated above. The property is located in Kahaluu Beach Lots on the makai side of Alii Drive and approximately ¼ mile north of Kahaluu Beach Park, Kahaluu, North Kona, Hawaii.

The denial and approval decisions 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 these structures have disturbed the natural shoreline processes and caused erosion of the shoreline. Concrete masses along the shoreline are contrary to the policy for the preservation of the natural shoreline and the open space. Unrestricted removal of sand, coral, rocks, etc., for commercial uses can only deteriorate the shoreline and remove it from public use and enjoyment. Moreover, the Hawaiian Islands are subject to tsunamis and high waves which endanger residential dwellings and other structures which are built too close to the shoreline. For these reasons, it is in the public interest to establish shoreline setbacks and to regulate the use and activities within the shoreline setbacks.

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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:

The Planning Director has determined that the Shoreline Setback Variance shall be processed in accordance with Rule 8, Section 8-14 (b)(3) which states: A variance may also be granted upon a finding that, based upon the record, the proposed structure or activity meets one of the following standards of this subsection:

(3) Hardship Standard.

- (A) A structure or activity may be granted a variance upon grounds of hardship only if:
 - (i) The applicant would be deprived of reasonable use of the land if required to comply fully with this rule; and
 - (ii) The request is due to unique circumstances and does not draw into question the reasonableness of this rule; and
 - (iii) The request is the practicable alternative which best conforms to the purpose of this rule.
- (B) Before granting a hardship variance, the Commission must determine that the request is a reasonable use of the land. The determination of the reasonableness of the use of land shall consider factors such as shoreline conditions, erosion, surf and flood condition, and the geography of the lot as it relates to health and safety.

On July 14, 2000, the Findings of Fact, Conclusions of Law, Decision and Order was adopted by the Board of Appeals for a Variance from Section 5-504(a)(b)(1) and 5-1711 of the Building Code Relating to Projections. The variance requested relief from the following: 1) to allow the retention of eaves having clear space to the property line of 12 to 38.4 inches on the northern boundary and 22.8 to 27.6 inches on the southern

boundary in lieu of the 30 inches required. 2) The eave overhangs are also required to be fire resistive of incombustible materials or one-hour fire resistive construction. The Board of Appeals granted the variance and found the roof eaves would require slicing off a wedge of up to 2 feet deep from the north eave, and 2.4 and 7.2 inches from the south eave would entail expenses unreasonably high for the applicant. As a condition of the variance the eaves shall be constructed in compliance with the fire-resistive requirements of the Uniform Building Code and the walls and any other encroachments shall be removed from the County right-of-way adjacent to the property, and no other encroachments shall occur or be permitted.

On July 26, 2000, a Special Management Area Use Permit Assessment Application No. 00-19 was submitted to the Planning Director for the proposed improvements. The proposed improvements were determined to be exempt from the definition of "development" pursuant to Rule No. 9-4 (10) (B)(vi).

In this Shoreline Setback Variance Application, the applicant proposes the following improvements within the 20-foot shoreline setback area as part of its repair and upgrade of the existing single family dwelling:

- A. Repair the existing foundation pillars. The existing footings (36" x 36" x 18") will be formed with lumber and hand filled with 3,000 PSI ready mix concrete which will be a pea-gravel mix in pastry form. A vibrator will be used to release any air pockets. The 24" columns will be hand filled with 3,000 PSI ready mix concrete and vibrated to release any air pockets.
- B. Construct a new roof over an existing open deck. The roof will not extend beyond exterior dimension of existing open deck. A portion of the new roof will be located within the 20-foot shoreline setback area, but no closer than 6.7 feet from the certified shoreline dated May 26, 2000.
- C. Erect a safety fence under portions of the perimeter of the existing dwelling. The safety fence is located within the 20-foot shoreline setback area, but no closer than 6.7 feet from the certified shoreline dated May 26, 2000.

According to the application, the applicant states the following reasons as justification for the issuance of a Shoreline Setback Variance by the Planning Commission:

"Owner purchased the property in April of 2000, and intends to generally upgrade the structure, which was built in 1965-1967 under Building Permits Nos. 32499 and 35586, having an unchanged structural footprint ever since. A new Building

Permit No. 005788 was recently issued for the general remodel of the existing living area itself, and is currently under construction for various repairs and more attractive appearance. Among other things owner intends to replace the roof of the existing dwelling, and requests respectfully the approval of variance by the Commission to extend the roof also over the existing sundeck in order to reduce the open deck's maintenance to a bearable level, and protect inhabitants from the adverse impact of excessive exposure to the sun's rays.

"In addition owner intends to in the course of the general renovation and maintenance to repair and install property single posts footings for the pillars of elevated residence, has requested such a permit already from the County for the footings outside the shoreline setback line, and would like to do the same in the case of the perimeter footings inside the shoreline setback with the required permission of the Commission.

"A third problem came up already for quite some time. The initial parcel contained 8,400 square feet more or less, of which after a shoreline certification of May 26, 2000, 5,355 square feet remain inside the shoreline itself. Due to the elevated nature of the residence additional approx. 4,000 square feet are open (under the dwelling) to public access. This has lead to severe problems. The open space under the dwelling has been greatly abused as shelter to individuals resulting even in makeshift overnight accommodations together with considerable refuse of any kind left behind, and even remnants of BBQ fireplaces, thus endangering the structure itself, as well as leaving considerable trash accumulation behind. For this reason owner intends to install some kind of barrier (chain link fences or a similar remedy to the problem), and requests respectfully any reasonable suggestion from the Commission."

The property is situated within the Kahaluu Beach Lots Subdivision. This subdivision extends approximately 1 mile along the shoreline on Alii Drive. The project area consists of approximately 8,400 square feet of improved lands. The property is fully developed with an existing single family dwelling; and the shoreline was certified by the Department of Land and Natural Resources on May 26, 2000. The certification was not appealed. The surrounding areas consist of single family dwellings.

The proposed improvements as discussed above are simply a function of maintenance, protection, and enhancement of an existing single family dwelling. These improvements have no relation to the cultivation of crops, aquaculture or landscaping improvements that are defined as permitted activities within the shoreline setback area. Furthermore, the proposed improvements have no relation to the construction of a shoreline-dependant facility such as boating or ocean recreational facilities or the

construction of a facility that is clearly in the public interest as provided for under Section 8-10(a) of Planning Commission Rule No. 8 regarding Shoreline Setback as standards for the issuance of a shoreline setback variance. The only standard available to the applicant in the granting of a shoreline setback variance would be its conformance with the Hardship Standard as defined by Section 8-10(b)(3), which states that "A structure or activity may be granted a variance upon grounds of hardship only if:

- (i) The applicant would be deprived of reasonable use of the land if required to comply fully with this rule; and
- (ii) The request is due to unique circumstances and does not draw into question the reasonableness of this rule; and
- (iii) The request is the practicable alternative which best conforms to the purpose of this rule."

DENIAL

The denial of the applicant's request to extend the existing roof of the house to cover an existing open deck, a portion of which will be situated within the Shoreline Setback Area, will not deprive the applicant of reasonable use of the land. While the roof extension will not extend beyond the perimeter of the existing deck, it will extend makai of the dwelling's existing roofline. The purpose of the Shoreline Setback regulations are for the preservation of the natural shoreline and open space. While the existing deck already extends into the shoreline setback area, the extension of the roof to cover the existing deck will extend another structural mass into the shoreline setback area, thereby further reducing the open space that is sought to be preserved by the Shoreline Setback requirements. According to the applicant, the purpose of extending the roof is to reduce maintenance on the deck as well as to protect the inhabitants of the dwelling from the sun's exposure. To reduce deck maintenance and sun exposure are not sufficient reasons to support a variance for building within the coastal open space sought to be protected by the County's Shoreline Setback requirements. Therefore, the applicant has not demonstrated a hardship that would warrant the approval of a variance to allow the construction of a new roof over an existing deck.

This denial is based on findings that the effects of sun upon the deck and upon the residents of the dwelling does not present unique circumstances that draws into question the reasonableness of Planning Commission Rule No. 8 and Planning Department Rule No. 11 regarding Shoreline Setback. The sunny North Kona coastline is one of the primary benefits of residing within this district and certainly does not present a unique circumstance that would warrant the intrusion of additional structures within the open

space sought to be preserved by the County's Shoreline Setback regulations. Approval of this request will establish an unwelcomed precedent by which protection from the sun for both structures and people will be an accepted guideline for the issuance of a Shoreline Setback Variance.

The construction of a proposed new roof over the existing deck is not the most practicable alternative that conforms to the purpose of the County's Shoreline Setback requirements and its rules. Other alternatives available to the applicant to protect their deck structure from the adverse effects of the sun include the application of surface treatment such as paints and preservatives. Secondly, the applicant should take care in exposure to the sun with sun block or other topical applications. There are various other more reasonable alternatives available to the applicant that will adequately serve the concerns of the applicant while preserving the coastal open space.

APPROVAL

The applicant will be deprived of reasonable use of the land if required to comply fully with the Planning Department's Shoreline Setback rules. Furthermore, the applicant's request is based upon unique circumstances that does not draw into question the reasonableness of the County's Shoreline Setback requirements and its rules. To not allow the applicant to provide for continued maintenance of the subject dwelling by repairing the existing concrete pillars will result in the eventual compromise of the structural integrity of the single family dwelling and the ultimate loss of use of the property as a single family residence. This same basic argument holds true for the installation of a safety fence under the perimeter of the dwelling. Due to its construction on pilings, people have utilized the area beneath the dwelling for shelter. Aside from the trash left behind, there were also remnants of a fireplace under the dwelling which causes concern for the possibility of safety for the dwelling structure itself from accidental ignition. All homeowners should have the ability to ensure the structural integrity of their home as well as to protect their home and homesite from unauthorized use and from hazards, both natural and man-made. To deny the applicant the ability to maintain and protect their home would be unreasonable to ask of any homeowner, especially when considering the limited nature of the request to repair existing concrete pillars and to install safety fencing under the existing open deck.

The applicant's request to repair the dwelling's existing concrete pillars and the installation of safety fencing under the perimeter of the existing dwelling is the best practicable alternative available to the applicant that conforms to the purpose of County's Shoreline Setback requirements and its rules. The only alternative available to the applicant regarding the repair of the concrete pillars is to forego any such repairs. This alternative will eventually seriously compromise the safety of the dwelling and its use as

a residence. There are no practicable alternatives available to the applicant to control the use of the area under the dwelling as shelter by people other than the installation of physical barriers, such as the safety fencing being proposed. Only constant monitoring by the landowners or the presence of 24-hour security are options, albeit unreasonable due to the inconveniences and potential cost such options could present.

The proposed repair to the concrete pillars and installation of safety fencing will not interfere with public access to shoreline areas or existing view planes. The request is the practicable alternative which best conforms to the purpose of this rule.

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

The proposed improvements are consistent with the County General Plan and Zoning Code. The proposed improvements conform to the General Plan Land Use Pattern Allocation Guide (LUPAG) Map, which designates this area as Medium Density. Medium Density allows for development for village and neighborhood commercial, residential, and related functions. The area is zoned Single Family Residential (RS-7.5). Therefore, it is determined that the request is consistent with the urban form depicted on the LUPAG Map for this area for North Kona.

The proposed use will compliment the following goals, policies and standards of the Land Use and Residential Elements of the General Plan:

- a. Environmental Quality
 - o The County of Hawaii shall take positive action to further maintain the quality of the environment for residents both in the present and in the future.

- b. Natural Resources and Shoreline
 - o Protect and conserve the natural resources of the County of Hawaii from undue exploitation, encroachment and damage.
 - o Protect and promote the prudent use of Hawaii's unique, fragile, and significant environmental and natural resources.

- o Ensure that alterations to existing land forms and vegetation, except crops, and construction of structures cause minimum adverse effect to water resources, and scenic and recreational amenities and minimum danger of floods, landslides, erosion, siltation, or failure in the event of earthquake.

Based on the above findings, it is determined that the proposed repair of existing foundation pillars and the installation of safety fencing under the perimeter of the existing dwelling are consistent with the Shoreline Setback Law pursuant to Chapter 205-31 and the criteria established in Rule No. 8 of the Planning Commission's Rules of Practice and Procedure.

Approval of this Shoreline Setback Variance request is subject to the following conditions. Should any of these conditions not be met or substantially complied with in a timely fashion, the Director may initiate to revoke this permit.

1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.
2. The applicant shall comply with the requirements of Department of Public Works.
3. Construction of the proposed improvements shall be completed and all outstanding building permits applicable to the subject property shall be finalized within two (2) years from the effective date of this variance.
4. The applicant shall comply with Special Management Area Use Permit Assessment Application No. 00-19 and Board of Appeals Decision and Order (BOA 00-02).
5. Before construction or any land alteration activities occurs within the subject property, the 20-foot shoreline setback shall be measured, staked, and roped with a continuous flagline by a registered surveyor based on the certified shoreline survey of the subject property dated May 26, 2000. The Planning Department shall be notified to conduct a site inspection of the subject property to verify the location of the flagline prior to commencing any construction or land alteration activities and subsequently, after completion of the proposed improvements. The flagline shall be left in place for the duration of construction activities within the subject property.
6. 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, work in the immediate area shall cease and the Planning Department

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shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the Planning Department when it finds that sufficient mitigative measures have been taken.

7. An extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:

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 contact Daryn Arai of the Planning Department West Hawaii Office at 327-3510 or Alice Kawaha of the Planning Department Hilo Office at 961-8288.

Sincerely,



Geraldine M. Giffin, Chairman
Planning Commission

Lconventz01pc

cc: 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
Brian Minaai, Director/DOT-Highways, Honolulu
Mr. Norman Hayashi
Mr. Jeffrey Darrow