

County of Hawai'i

PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

December 27, 2005

Steven S. C. Lim, Esq.
Carlsmith Ball LLP
121 Waiianuenue Avenue
Hilo, HI 96720

Dear Mr. Lim:

Shoreline Setback Variance Application (SSV 05-001)
Applicant: Kailua Kona Village Development Group
Request: Construct Outdoor Seating Lanai to Existing Restaurant
Within 40-Foot Shoreline Setback Area
Tax May Key: 7-5-7:21

The Planning Commission at its duly held public hearing on December 8, 2005, voted to approve the above-referenced application to allow the construction of an outdoor seating lanai to the existing restaurant proposed within the 40-foot shoreline setback area. The property is the site of the existing Kona Inn Shopping Village, Kailua Village, Kailua-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 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 205A-46(b) of the Hawaii Revised Statutes, and Section 8-10(b) of the Planning Commission's Rule 8, relating to Shoreline Setback, the Planning Commission may grant variances from the shoreline setback regulations.

The original request was to allow a 1,992 square foot uncovered lanai addition extending 23 feet beyond the wall of the existing restaurant building, which would have projected 20-feet into the 40-foot shoreline setback area. The applicant amended the request by eliminating the makai-most row of seating, which will reduce the encroachment into the shoreline setback area from 20 feet to 8 feet 10 inches. The applicant is also proposing to improve a wheelchair ramp to ADA standards, which will connect the yard frontage for the proposed outdoor lanai project with the open grass area fronting the Kona Inn Restaurant.

The property is the site of the Kona Inn Shopping Village Complex, which is located within Kailua Village along Alii Drive. The property is fully developed with a row of twelve (12) resort, commercial and office buildings that are parallel with the property's Alii Drive frontage. The shoreline follows along the seaward face of the existing CRM seawall, which was certified on September 23, 2004, and reconfirmed on January 24, 2005 by the Department of Land and Natural Resources. The surrounding areas consist of properties zoned resort-hotel, comprised of stores, restaurants, hotels, condominiums and offices. There are also areas zoned open on the north and south boundaries of the property, on which the Hale Halawai Park and the Hulihee Palace are located. Pedestrians access the shoreline in this area and walk along the existing seawall.

The amended request to the existing restaurant and public access improvements would meet the standards of Rule 8, Section 8-10(b)(2). In reviewing the amended request to construct an outdoor seating lanai to the existing restaurant along with public access improvements against the criteria to allow a variance, the Planning Commission has determined that this request for a Shoreline Setback Variance does meet the criteria regarding public interest, which states:

(2) 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.

The Shoreline Setback Variance request for the proposed outdoor seating lanai is an improvement undertaken by a private entity and, based on the amended request to provide public access improvements, is clearly in the public interest, and a practicable alternative that best conforms to the purpose of this rule.

The entire frontage of the Kona Inn Shopping Village has a 4 to 5 foot high seawall along the makai boundary of the property, which lessens the impact of the natural shoreline processes for the area of the proposed project. The applicant has amended the request to project 8 feet 10 inches within the 40-foot shoreline setback area instead of the original request of 20 feet. This will allow an open space of 31 feet 2 inches fronting the proposed area located behind the existing seawall. Additionally, the applicant has proposed to improve a wheelchair ramp that will result in a public benefit by enhancing public access along the north side of the Kona Inn Shopping Village, which will connect the yard frontage for the proposed outdoor lanai project with the open grass area fronting the Kona Inn Restaurant to the south.

Based on the above findings, the Planning Commission has determined that the amended request to construct an outdoor seating lanai within the shoreline setback area, along with the proposed improvements to public access for this area, is consistent with the Shoreline Setback Law pursuant to Chapter 205A-46 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:

1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.
2. The proposed development shall be established within one (1) year from the effective date of this variance. This time period shall include securing Final Plan Approval for proposed lanai addition from the Planning Director in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawaii County Code. Plans shall identify all existing and/or proposed structures, paved driveway access and parking stalls associated with the development. Landscaping shall also be indicated on the plans for the purpose of mitigating any adverse noise or visual impacts to adjacent properties in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements).

3. The applicant shall comply with all conditions of Special Management Area Minor Use Permit No. 178.
4. The applicant shall develop an Emergency Plan, which address all hazards such as tsunami, fire, earthquake, etc., and provide evacuation measures for employees and guests. The Emergency Plan shall be approved by the Civil Defense Agency. A copy of the approved plan shall be submitted to the Planning Department.
5. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials, be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigative measures have been taken.
6. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
7. An initial extension of time for the performance of conditions within the 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 General Plan or Zoning Code.
 - C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
 - D. 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).
 - E. If the applicant should require an additional extension of time, the Planning Department shall submit the applicant's request to the Planning Commission for appropriate action.


Should any of the conditions not be met or substantially complied with in a timely manner, the Planning Director may initiate to revoke this permit.

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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 Norman Hayashi of the Planning Department at 961-8288.

Sincerely,


Fred Galdones, Chairman
Planning Commission

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cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
Planning Department-Kona
Office of State Planning, CZM Program (w/Background)
Department of Land and Natural-HPD/Kona
Ms. Alice Kawaha
Zoning Inspector-Kona