



County of Hawai'i

PLANNING COMMISSION

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Phone (808) 961-8288 • Fax (808) 961-8742

September 21, 2007

Mr. Gregory R. Mooers
P.O. Box 1101
Kamuela, HI 96743

Dear Mr. Mooers:

Shoreline Setback Variance Application (SSV 07-000002)

Applicant: AOA O Hale Kai O'Kona

Request: Reconstruction of Two Buildings With Shoreline Setbacks of
11.5 Feet in Lieu of the Minimum 20-Foot Requirement

Tax Map Key: 7-6-17:27

The Planning Commission at its duly held public hearing on August 31, 2007, voted to approve the above-referenced application to allow the reconstruction of two (2) fire-damaged units and associated landscaping within the 20-foot shoreline setback area. The property is located along the southwest (makai) side of Alii Drive at the Alii Drive and Holualoa Beach Road intersection, Holualoa 2nd, North Kona, Hawaii.

Approval of this request is based on the following:

The applicant is requesting a Shoreline Setback Variance to reconstruct two (2) fire-damaged units (Units 3 and 4) of an 8-unit condominium project called Hale Kai O Kona, along with associated landscaping within the 20-foot shoreline setback area. The 8-unit condominium project, Hale Kai O Kona, was developed in 1978 under Special Management Area Use Permit No. 49. In 2004, a fire destroyed the roofs and second stories of Units 3 and 4, destroying approximately 60 to 70 percent of the building envelope. At the time the original development was constructed, the condominium project was outside of the shoreline setback area. The shoreline was re-certified on July 5, 2006, at which time it showed that portions of Units 3 and 4 are now encroaching approximately 2 feet and the lanai encroaches approximately 9.5 feet within the current 20-foot shoreline setback area. The Planning Director has determined that the reconstruction of the two (2) fire-damaged units within the shoreline setback area will require a Shoreline Setback Variance.

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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.

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 request to reconstruct Units 3 and 4 would meet the Hardship Standard of Rule 8, Section 8-10(b)(3). In reviewing the request against the criteria to allow a variance, the Planning Director has determined that the request for a Shoreline Setback Variance to allow the reconstruction of Units 3 and 4 on the former and existing foundation to their original condition prior to the fire within the shoreline setback does meet the criteria set forth in Rule 8, Section 8-10 (b) (3) regarding hardship to the applicant.

Section 8-10(b)(3) 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 Planning 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.
- (C) If a structure is proposed to artificially fix the shoreline, the Planning Commission must also determine that shoreline erosion is likely to cause hardship if the structure is not allowed within the shoreline setback area.
- (D) Hardship shall not be determined as a result of zoning amendments, planned unit development (PUD) permits, cluster plan development (CPD) permits, or subdivision approvals after June 16, 1989.”

As a result of the fire damage to Units 3 and 4, the owners of the property have suffered severe hardship due to the loss of personal property, property value, loss of use and loss potential rental income. Therefore, the applicant would be deprived of reasonable use of the land if required to comply fully with this rule.

The original development was approved by Special Management Area Use Permit No. 49 on January 12, 1978. At the time the original development was constructed, the condominium project was outside of the shoreline setback area. In 2004, a fire destroyed the roofs and second stories of Units 3 and 4, destroying approximately 60 to 70 percent of the building envelope. The development will consist of the exact reconstruction of Units 3 and 4. There will be no new grading and no new buildings or parking added. Thus, it is determined based on the above that the request is due to unique circumstances and does not draw into question the reasonableness of this rule.

The Planning Director has reviewed option with the applicant reconstructing the buildings outside the shoreline setback and it is physically difficult because of parking and turnaround requirements. The applicant explains the difficulty as follows:

“Relocating the building outside the setback area would require demolishing the existing and first floor, which are still quite reusable. Aside from the waste of this structure and its material, according to calculations by the owner’s association, the cost to relocate the buildings outside the setback area would be more than double the fire insurance amount for reconstruction. It would also detract from the small available parking area on the mauka side of the building. According to construction specialist Kevin Mitchell of Rider Hunt Levett & Bailey, at a minimum, demolishing the slab and wall would cost \$7,000, new walls \$38,000, utilities \$25,000, a new first floor deck \$100,000, and about \$100,000 for the loss of parking. This would lead to excessive financial hardship for the owners, who have received less than full value from insurance and have already been obliged to pay special assessments. For a small owners association with only eight units, the additional cost associated with a complete demolition and reconstruction would be excessively burdensome on individual owners, and the association does not consider this a reasonable alternative.”

One major reason for the shoreline setback is to keep a sense of open space along the shoreline. Moving the buildings back nine feet in this location would have minimal positive effect on shoreline open space because the other buildings are all in a line with the current location of Buildings 3 and 4. Moving two buildings back will not significantly increase coastal open space.

Based on the above findings, it is determined that the request to reconstruct Units 3 and 4 within the shoreline setback area, along with the proposed landscaping improvements, 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, and this request should be approved by the Planning Commission.

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 five (5) years from the effective date of this variance. This time period shall include securing Final Plan Approval for proposed development 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 Use Permit No. 49.
4. The applicant shall develop an Emergency Response Plan, which address all hazards such as tsunami, fire, earthquake, etc., and provide evacuation measures for employees and guests. The Emergency Response Plan shall be approved by the Civil Defense Agency. A copy of the approved plan shall be submitted to the Planning Department.
5. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to the issuance of a Certificate of Occupancy.
6. 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.
7. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
8. 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).

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- 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.

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,



William Graham, Chairman
Planning Commission

Laoahalekaikonassv07-000002

cc: Ms. Edy Campbell
Department of Public Works
Department of Water Supply
County Real Property Tax Division
Planning Department - Kona
Office of State Planning, CZM Program
Department of Land and Natural Resources-HPD/Kona
DOT-Highways, Honolulu
Ms. Alice Kawaha
Zoning Inspector