

County of Hawai'i

LEEWARD PLANNING COMMISSION

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JAN 12 2011

Robert Fitzgerald, Director
Department of Parks & Recreation
County of Hawai'i
101 Pauahi Street, #6
Hilo, HI 96720

Dear Mr. Fitzgerald:

Shoreline Setback Variance Application (SSV 10-000006)
Applicant: County of Hawai'i, Department of Parks & Recreation
Request: To Allow Repair, Renovation, and Reconstruction of the Lower Pavilion
At Keokea Beach Park Damaged During the 2006 Earthquake
Tax May Key: 5-2-001:016

The Leeward Planning Commission at its duly held public hearing on December 15, 2010, voted to approve the above-referenced application for a shoreline setback variance to allow the repair, renovation, and reconstruction of an existing pavilion and related facilities at the Kēōkea Beach Park that is situated within the 40-foot wide shoreline setback area. The property is located at the end of Kēōkea Park Road and makai of Niuli'i Town, Niuli'i, North Kohala, Hawai'i.

Approval of this request is based on the following:

The applicant is requesting a shoreline setback variance to allow improvements to the existing lower pavilion at the Kēōkea Beach Park that was damaged during the 2006 earthquake.

The lower pavilion is a 224-square foot open pavilion located on the northern end of the property near the coastline. The improvements include removing and rebuilding the existing lower pavilion to current State and County building standards, which will occupy the same floor area as the existing building. The applicant has obtained a Special Management Area Use Permit for the proposed improvements on April 16, 2010.

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 and activities 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 uses and activities within the shoreline setback area.

The Legislature, however, also recognized that certain activities and improvements may be constructed within the shoreline setback area if these improvements are clearly in the public interest. 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(a)(7) of the Hawai'i Revised Statutes, and Section 8-10 of the Planning Commission's Rule 8, relating to Shoreline Setback, the Planning Commission may grant variances from the shoreline setback regulations.

The proposed request would meet the Public Interest Standard of Rule 8, Section 8-10(b)(2). 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 removal and rebuilding of the existing lower pavilion at the Kēōkea Beach Park within the shoreline setback area **does meet the criteria** set forth in Rule 8, Section 8-10 (b)(2) (Public Interest Standard).

Section 8-10(b) 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:

(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, Hawai'i 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 proposed request meets the “Public Interest Standard” for the following reasons:

The applicant, County of Hawaii – Department of Parks and Recreation, is proposing this project to bring the Kēōkea Beach Park facilities back into use for the public. The purpose of the project is to remove and rebuild the lower pavilion at Kēōkea Beach Park that was damaged during the 2006 earthquake, which is located within the shoreline setback area. Since the earthquake, the pavilion has been unsafe for public use. This project will enhance public use of the park by replacing the damaged pavilion and making it safe for park users, thereby meeting the Public Interest Standard for granting a shoreline setback variance.

Additionally, Section 8-10(c) states “No variance shall be granted unless appropriate conditions are imposed as applicable:

- (1) To comply with Chapters 10 and 27 of the Hawai‘i County Code (HCC) relating to Erosion and Sedimentation Control and Flood Control, respectively;
- (2) To maintain safe lateral access along the shoreline or adequately substitute for its loss;
- (3) To minimize risk of adverse impacts on beach processes;
- (4) To minimize risk of structures failing and becoming loose rocks or rubble on public property; and
- (5) To minimize adverse impacts on public views to, from, and along the shoreline.

According to the Department of Public Works (DPW), Flood Zone “VE” affects the subject property. As the applicant is proposing alterations within the VE Zone, a condition of approval will be added that the applicant comply with the requirements of HCC, Chapter 27, related to Flood Control. Additionally, a condition of approval will require the applicant comply with HCC, Chapter 10, related to Erosion and Sedimentation Control as required by DPW.

The proposed project will not hinder lateral access along the shoreline. Although located within the shoreline setback area, the pavilion is located approximately 30 feet above mean sea level (msl) and will not have an adverse impact on beach processes or on public views.

Lastly, the proposed project will be repairing an open pavilion along the shoreline

that was damaged and thereby minimizing the risk of the structure failing on public property.

Based on the above findings, it is determined that the request 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 thus 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 applicant shall comply with all conditions of Special Management Area Use Permit No. 10-000037.
3. During construction, measures shall be taken to minimize the potential of both fugitive dust and runoff sedimentation. Such measures shall be in compliance with construction industry standards and practices utilized during construction projects of the State of Hawai'i.
4. The applicant shall comply with Hawai'i County Code, Chapter 10, Erosion and Sedimentation Control as required by DPW.
5. The applicant shall comply with Chapter 27, Floodplain Management, of the Hawai'i County Code.
6. The applicant shall comply with Chapter 11-55, Water Pollution Control, Hawai'i Administrative Rules, Department of Health, which requires an NPDES permit for certain construction activities.
7. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.

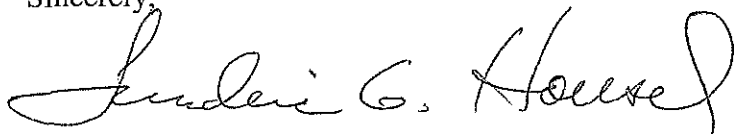
Should any of the conditions not be met or substantially complied with in a timely manner, the Planning Director may initiate to revoke this permit.

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.

Robert Fitzgerald, Director
Department of Parks & Recreation
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Should you have any questions, please contact Daryn Arai of the Planning Department at 961-8288.

Sincerely,

A handwritten signature in cursive script that reads "Frederic G. Housel". The signature is written in dark ink and is positioned above the printed name and title.

Frederic Housel, Chairman
Leeward Planning Commission

Lc0hp&rsv10-000006

cc: Mr. Chester Koga/RM Towill
Department of Public Works
Department of Water Supply
County Real Property Tax Division
Planning Department - Kona
Office of State Planning, CZM Program
Zoning Inspector - Kona
Mr. Gilbert Bailado ✓