

COUNTY OF KAUA'I
PLANNING DEPARTMENT
LIHU'E, KAUA'I

SUBJECT TO CHANGE

PLANNING DIRECTOR'S REPORT

HEARING DATE: October 14, 2014

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| PROJECT: | Special Management Area SMA (U)-2015-2 Class IV Zoning Permit Z-IV-2015-3 Use Permit U-2015-3 |
| APPLICANT: | Ed Ben-Dor/Joan Ben-Dor |

FINDINGS

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| LOCATION: | Hanalei, Kaua'i 5111 Weke Road. The property is located at the Weke Road/Pilikoa Street intersection, along the southern side. |
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| TAX MAP KEY: | <u>(4) 5-5-010:032</u> | AREA: | <u>7,568 square feet</u> |
| ZONING: | <u>Residential (R-4)</u> | SLUD: | <u>Urban</u> |
| GEN. PLAN: | <u>Residential Community</u> | EXIST. USE: | <u>Residential</u> |

I. ACTIONS REQUIRED:

A *SPECIAL MANAGEMENT AREA USE PERMIT* is required since the proposed development is located within the Special Management Area (SMA) of the County of Kaua'i, and the project valuation is in excess of \$500,000 which is considered "Development", as defined in Section 1.4 H. of the County's SMA Rules and Regulations.

A *USE PERMIT* is required since proposed use is not generally permitted within the General Commercial (C-G) zoning district and a *CLASS IV ZONING PERMIT* is a procedural requirement in obtaining a Use Permit.

II. PROJECT DESCRIPTION AND USE:

The proposal involves "After-the-Fact" permits for the conversion of an existing residence that is being utilized as a "Homestay," commonly referred to as a Bed & Breakfast facility. The lodging accommodates up to six (6) guests within a 2,656 square feet residence containing 4 bedrooms & 3.5 bathrooms.

As represented, the Applicant offers concierge service to its guests through a full-time occupant of the dwelling.

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III. LEGAL REQUIREMENTS:

This report is being transmitted to the Applicant and Planning Commission in order to satisfy the requirements of Section 8-3.1(f), relating to the provision of the Planning Director's report and recommendation on the subject proposal within 60 days of the filing of a completed application. The application was received on August 18, 2014 and the Applicant, through its authorized agent, was notified accordingly of the Planning Department's intent to commence permit processing.

In accordance with Section 8-3.1(f), the public hearing for this matter is scheduled on OCTOBER 14, 2014.

In addition to the foregoing, the Applicant shall comply with the notification requirements of Section 9.0 of the County of Kaua'i SMA Rules and Regulations.

IV. APPLICANT'S REASONS/JUSTIFICATION:

Refer to Part B. of the Applicant's SMA Assessment.

V. ADDITIONAL FINDINGS:

1. The residence was originally constructed in 1977 and has had four modifications to arrive at its current size of 2,656 square feet (SF). Permits were approved in 1978, 1983 & 1988, and noted as follows:
 - Z-477-78, Approved 2.14.78 – Deck enclosure, entry addition.
 - Z-380-83, Approved 1.4.83 – Additions incl. bedroom, bathroom, family recreation room, carport.
 - Z-645-88, Approved 12.15.87 – Open deck.
2. The subject parcel is identified as Lot A-7 of the Hanalei Palms Subdivision, Phase I that was developed in 1975. The subdivision involving 7 residential lots was originally processed through Subdivision Application No. S-75-63 and was approved by the Planning Commission on November 12, 1975. Phase II of the Hanalei Palms Subdivision (S-76-38) involved 29 residential lots and was completed in 1977.
3. The subject parcel is located within the Zone 'AE' of the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map, with a base flood elevation of 13 feet. An area designated 'AE' represents a one percent (1%) annual chance of flooding and this area is more commonly referred to as the 100-year flood plain or the base flood area.
4. The State Land Use District (SLUD) designation is "URBAN," which allows for urban growth in a specified area. Lands on the makai side of Kūhi'ō Highway in Hanalei Town are all situated within the Urban SLUD.

5. The subject property is NOT located within the Visitor Designation Area (VDA) and the County General Plan designation is "Residential Community". According to the General Plan, lands included within the Residential Community designation shall be used predominantly for low- to high-density housing in towns and other residential areas. Density shall be 1 to 20 units per acre. Residential Community areas may also be used commercial and industrial businesses, government facilities, and institutions.
6. Based on the Residential (R-4) zoning, the subject parcel property qualifies for one single-family residence. However, pursuant to Section 8-15.2 of the Comprehensive Zoning Ordinance (CZO), the parcel may qualify for an Additional Dwelling Unit (ADU) provided that the Applicant obtains proper clearances from the respective government agencies.
7. Although the proposal does not involve any exterior improvements to the existing residence, all developments on Lot A-7 is subject to the development standards contained in Sections 8-4.3 & 8-4.5 of the CZO.
8. Although the subject parcel is situated within 500 feet from the shoreline area, a Shoreline Setback Application is not applicable since the development is not subjected to the setback requirements specified in Ordinance No. 887. The proposal involves the conversion of an existing residence into a homestay and does not involve any exterior improvements.
9. In addressing the issues of the Special Management Area and its objectives and policies, the following aspects are considered:
 - a. Recreational Resources – The project site is not directly adjacent to the shoreline and is surrounded by other development. Therefore, there are no opportunities for public access to coastal recreational area in connection with the proposed project.
 - b. Cultural/Historic Resources – The proposal does not involve any exterior improvements to the residence and no site work is anticipated. As such, there should be no archaeological considerations.
 - c. Scenic Resources – The project site is surrounded by residential development and this parcel does offer views to the ocean since it is situated along the mauka side of Weke Road. Situated immediately across the street is the County Park Facility featuring the Hanalei Pavilion.
 - d. Coastal Hazard – As noted, the project is located within the Zone 'AE' of the FEMA Flood Insurance Rate Map, with a base flood elevation of 12 feet. Any further development shall be subject to the standards implemented by the County Department of Public Works, Engineering Division.
 - e. Coastal Ecosystem- Since the project is not directly adjacent to the shoreline, the project will not affect any coastal ecosystem. Furthermore, the parcel is surrounded by residential development and

as a result, there is no known rare, threatened or endangered plant or critical habitats are located within the project site.

Furthermore, the proposal does not:

- a. Involve dredging, filling or otherwise altering any bay, salt marsh, river mouth, slough or lagoon;
- b. Reduce the size of any beach or other area usable for public recreation;
- c. Reduce or impose restrictions upon public access to tidal and submerged lands, beaches, rivers, and streams within the SMA; and
- d. Adversely affect water quality, existing areas of open water free of visible structures, existing and potential fisheries and fishing grounds, wildlife habitats, estuarine sanctuaries, potential or existing agricultural uses of land.

VI. AGENCY COMMENTS:

Comments from applicable government agencies are being sought and are expected at time of the public hearing scheduled on August 18, 2014. At the present time, the department has received comments from the COK Dept. of Public Works – Engineering & Wastewater Divisions, Water, and the State Department of Health (DOH).

VII. PRELIMINARY EVALUATION:

1. General Plan (GP)

One of the primary goals of the General Plan contained in Chapter 5, entitled “*Preserving Kauai’s Rural Character*” is to help ensure development of the “RESORT” area designation by limiting visitor development in specified areas of the island. These areas are to be used primarily for housing and serving visitors of Kaua‘i. Section 5.4.2.1 further reads, “In addition to hotels and multi- and single-family dwellings used for transient lodging, the Resort designation shall provide for commercial, recreational and public facilities that serve visitors or support the visitor industry. Lands designated Resort may also be used for residential purposes, including resort employee housing.”

Chapter 6 of the General Plan, “*Enhancing Town & Communities and Providing for Growth*” identifies the vision & assets, issues & opportunities, and land policies for various communities on the island. **Section 6.1.2, “Preliminary Planning District Vision,”** identifies Princeville as the North Shore’s primary visitor destination area since it has the infrastructure to support all different types of urban development including a wide variety of visitor accommodations as well as two full-service hotels. Furthermore, the Land Use Map and Policies contained in Section 6.1.4 shares the community sentiment as a result of the General Plan update process that urban development in the Hanalei and Wainiha-Hā‘ena areas was undesirable because of the special character of the area, limited roads and other services, and environmental factors.

The Hawai'i Tourism Authority (HTA) has adopted a strategy to develop programs based on special themes, including agriculture, culture, education, health and wellness, nature, sports, and science and technology. The intent is to broaden the range of experiences and activities offered to visitors, cultivate niche markets, and create entrepreneurial opportunities. Chapter 4.2.6 of the General Plan recognizes a need to provide alternative lodging experiences, Bed and Breakfast (B&Bs), and single-family vacation rentals to allow visitors to learn about Hawaii's culture and environment from a community setting. In the same token, the GP identifies a need to develop clear policy regarding Bed & Breakfast and Vacation Rentals.

Many ideas were raised both in the General Plan Planning District meetings and at the 1998 Future Fair. In public meetings on the North Shore, residents reported that many Hā'ena houses were used primarily as vacation rentals and that the character of the area had changed. The neighborhood was affected not only by the continual turnover of vacation renters, but also by the lack of full-time residents. Additionally, providing lodging for more than one party increases the potential for impacts. Such a use becomes more of a commercial enterprise than a home occupation and should require more detailed review with the opportunity for public comment.

Relative to Section 4.2.6.2, the GP identified specific development standards that should be developed for multi-unit B&Bs and vacation rentals, which should at least address the following factors:

- a. Buffering of adjacent properties in order to prevent noise impacts and visual impacts. Related factors are the size of the property and the location of the visitor units relative to adjacent properties;
- b. Access to adequate public roads;
- c. Parking for employees and patrons;
- d. Adequate wastewater treatment and disposal; and
- e. The total number of vacation rentals in the area and the cumulative impacts on the neighborhood.

While the department supports the concept of providing "Alternative Lodging" in order to broaden the range of experiences and activities offered to visitors, it is just as important to provide these lodging units in the appropriate areas on the island. The department considers Bed and Breakfast operations to be similar in nature to that of a "boarding house" or "resort" type of uses, and therefore requires a Use Permit pursuant to the provisions of the CZO. Since such operations are similar to resort uses, it would be more appropriately located within the Visitor Destination Area (VDA) or Resort District. These areas or communities have the appropriate infrastructure to support these types of developments and it would be consistent with the policies outlined in the General Plan.

As previously stated, Hanalei Town is designated by the GP as "Residential Community" and introducing B&Bs as well as vacation rentals in this area would significantly change the character of the neighborhood and create unwanted impacts,

and therefore would be contrary to the Residential Community designation. Additionally, Hanalei Town does not have connection to a sewer system and as a result, all wastewater is currently treated through individual wastewater systems (i.e. septic systems & cesspools).

2. SMA Rules and Regulations

The COK SMA Rules and Regulations contain objectives, policies and guidelines designed to protect coastal resources. Within the SMA, special consideration is given to recreational opportunities, cultural and historic resources, scenic qualities and open space, coastal ecosystems, and coastal hazards. In evaluating the proposed development relative to the goals and objects of the SMA Rules and Regulations, the following aspects is taken into consideration:

- Public Access and Coastal Recreation – The project site is not directly adjacent to the shoreline and is surrounded by other residential development. Therefore, there are no opportunities for public access to coastal recreational area in connection with the proposed project since there exist roadways between this parcel and the coastline.
- Cultural/Historical Resources – The subject property has been disturbed by previous activities, however, the department is still awaiting comments from the State Department of Land & Natural Resources (DLNR), Historic Preservation Division (SHPD).
- Coastal Hazards – The subject parcel is located within the Zone ‘AE’ of the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map, with a base flood elevation of 12 feet.
- Coastal Ecosystems – There are no known rare, threatened or endangered, plant or animal species or critical habitats located within the project site. The subject property has been extensively disturbed by previous activities, and developed lands surround the site. The proposed development should be required to conform to the requirements of the Department of Public Works regarding drainage and runoff concerns from the proposed development, as well as the Department of Health regarding limitations on the existing individual wastewater system.
- Scenic and Open Space Resources – The project site is located within a residential subdivision mauka of the Hanalei Park Pavilion. The parcel does not offer views to or along the ocean or from public viewing locations since it is situated along the mauka side of Weke Road.

3. Historic Reference

As represented, the Applicant notes that the past use of the parcel includes having the only B&B/Homestay/Hotel in Hanalei dating back to the 1880’s. There are many examples within Hanalei Town that displays the rich history of the area and the

department will not dispute the existence of the historic “Deverill House.” However, it should be clarified that the facility did not specifically occur on this lot since the parcel was created through the Hanalei Palms Subdivision, Phase I that was approved in 1975 and any historical artifacts would have been addressed during the subdivision. The Deverill House may have existed on the parent parcel surrounding or containing the subdivision, but not at the actual project location. The SMA Assessment also notes that there have been no archaeological findings on the subject property or evidence of prior developments.

VIII. CONCLUSION:

Based on the foregoing, it is concluded that the proposed development does not comply with the policies and objectives of the General Plan and the Comprehensive Zoning Ordinance in that:

1. The development is contrary to the goals/objectives of the “Residential Community” designation of the County General Plan since such operations are similar to “resort” type uses.
2. The subject property and the surrounding residential properties are not situated within the Visitor Destination Area (VDA) or the Resort District. The subject property is located in an area that is an established residential community and is predominantly residential in character.
3. Approval of the subject permit may set precedence for similar requests to be followed by other property owners in the neighborhood. The introduction of such “resort” type uses may cause a change to the character and nature of the residential neighborhood. Furthermore, in cases where proposals for bed and breakfast operations are situated outside of the VDA or Resort District, additional assessment and evaluation of the effects of such use to the surrounding neighborhood should be further examined.
4. It can be anticipated that the increase in such uses may cumulatively cause increased traffic impacts to the surrounding neighborhood. Such an increase would not be in the interest of the surrounding residents as the roadway condition of Weke Road, which services the project area and also the primary roadway to the County’s Black Pot Beach Park, does not meet present County Standards for a Minor Street classification.

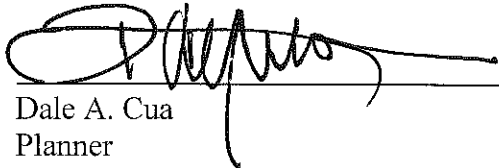
IX. RECOMMENDATION:

Based on the foregoing evaluation and conclusion, it is recommended that Special Management Area SMA(U)-2015-2, Class IV Zoning Permit Z-IV-2015-3, and Use Permit U-2015-3 be **denied**.

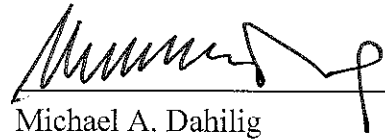
However, the Planning Commission is advised that this report does not represent the Planning Department’s final recommendation in view of the forthcoming

public hearing process scheduled on October 14, 2014 whereby the entire record should also be included as part of the decision making process. The entire record should include, but not be limited to:

- a. pending government agency comments;
- b. testimony from the general public and interested others; and
- c. the Applicant's response to staff's report and recommendation as provided herein.

By 
Dale A. Cua
Planner

Approved and recommended to Commission:

By 
Michael A. Dahilig
Director of Planning
Date: 