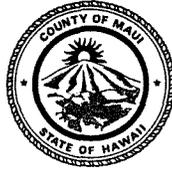


Alan M. Arakawa
Mayor



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February 9, 2012

MEMO TO: Robert Carroll, Chair
Land Use Committee

F R O M: James A. Giroux, Deputy Corporation Counsel

SUBJECT: DISTRICT BOUNDARY AMENDMENT AND CHANGE IN ZONING FOR
HANZAWA'S VARIETY STORE AND ADJACENT PROPERTY (HAIKU)
(LU-22)

I. INTRODUCTION

This is in response to your memorandum dated July 11, 2011. At its November 18, 2009, and November 23, 2009 meetings, the Land Use Committee considered the application of Sandra and Matthew Daniells ("the Daniells") for a District Boundary Amendment and Change in Zoning to allow for the expansion of Hanzawa's Variety Store and other uses. The Committee also considered the application of the Daniells and Ralph Hanzawa for a District Boundary Amendment and Change in Zoning for property adjacent to Hanzawa's Variety Store.

In their application related to the expansion of the Hanzawa's Variety Store, the Daniells proposed to expand the existing store by 400 square feet, and construct new commercial space comprised of three new buildings. Pursuant to Section 19.510.010(D)(21), the Daniells submitted the attached schematic site development plans detailing the proposed development. At the Committee's November 18th meeting, the Daniells indicated that they would be willing to forego constructing the three new buildings, if they were permitted to double the existing size of the store.

Your memorandum asks the following questions:

1. Would a change to the schematic site development plans, as indicated by the Daniells at the November 18, 2009, Land Use Committee meeting, constitute a change that would require referral of the application back to the Maui Planning Commission for further review?

2. Is a revised schematic site development plan required to be submitted to the Committee in order for the Committee to consider the proposal made at the November 18, 2009, Land Use Committee meeting?

II. SHORT ANSWERS

1. No. Additional review by the Maui Planning Commission is not required by law if changes in the schematic site development plan do not amount to a change in the fundamental character of the property.

2. Yes. Without a revised schematic site development plan, it will be difficult for the Council to analyze the impacts of the project in order to meet the requirements of Maui County Code Chapter 19.68 and Section 19.510.040.

III. A REVISED SCHEMATIC SITE DEVELOPMENT PLAN THAT DOES NOT AMOUNT TO A CHANGE IN THE FUNDAMENTAL CHARACTER OF THE PROPERTY DOES NOT REQUIRE REVIEW BY THE MAUI PLANNING COMMISSION

In regard to processing an application for a State Land Use District Boundary Amendment, Maui County Code Section 19.68.030 (B) states in relevant part:

The appropriate planning commission shall thereupon conduct a public hearing on the application for the requested reclassification/boundary change...

Maui County Code Section 19.68.040 further states in relevant part:

A. Upon receipt of the appropriate planning commission's report and recommendations, the county council shall consider the application and may adopt the findings and recommendations, in whole or in part, or otherwise act upon the report and transcript or summary, and, in the council's discretion, hold further hearings and take further evidence and testimony in connection therewith, before taking final action...

Maui County Code Section 19.510.040 states in relevant part:

A. All applications for change in zoning shall be processed as applications which require a public hearing in accordance with the procedures set forth in sections 19.510.010 and 19.510.020 of this code and the following requirements:

1. The appropriate planning commission shall conduct a public hearing on all change of zoning applications;...

4. The county council may grant a change in zoning if all the following criteria are met:

a. The proposed request meets the intent of the general plan and the objectives and policies of the community plans of the county,

b. The proposed request is consistent with the applicable community plan land use map of the county,

c. The proposed request meets the intent and purpose of the district being requested,

d. The application, if granted, would not adversely affect or interfere with public or private schools, parks, playgrounds, water systems, sewage and solid waste disposal, drainage, roadway and transportation systems, or other public requirements, conveniences and improvements,

e. The application, if granted, would not adversely impact the social, cultural, economic, environmental, and ecological character and quality of the surrounding area; and...

As a general proposition, an amendment to a zoning ordinance will be held invalid where, as finally adopted, it contains alterations so substantially different from the changes proposed in the notice as to amount to an entirely new proposal. Carlsmith, Carlsmith, Wichman and Case v. CPB Properties, Inc., 64 Haw. 584, (1982). However, "Implicit in the procedure of holding public hearings before enacting zoning ordinances is the possibility that changes in the original proposal might ensue as a result of the views expressed at the hearing. McQuillan, Municipal Corporations, 3rd Edition Revised, §25.249, p. 336.

The zoning authority need not follow the entire statutory procedure whenever a minor change is requested, but when the deviation is of such importance or materiality as to amount to a change in the fundamental character of the property then due process requires notice to be given. Nesbit v. City of Albuquerque, 91 N.M. 455 (1977).

The State Land Use District Boundary Amendment process anticipates that amendments will be made and that Council can take

further evidence and testimony regarding these amendments before taking final action. Inherent in the Council's powers of zoning is to have the power to restrict "buildings and structures, their location on lots and their uses within the project as long as the restrictions and prohibitions have a reasonable relationship to the public health, safety, morals, order or welfare." McQuillan, Municipal Corporations, 3rd Edition, §25:179.2, p. 782.¹

In this case the elimination of three additional commercial buildings and doubling the size of an existing commercial building results in a net loss of commercial space. This proposal comes as a result of public testimony and compromise. Therefore, absent Council finding that the revised schematic constitutes a deviation of such importance or materiality as to amount to a change in the fundamental character of the property, the Maui Planning Commission would not be required by law to review the applications.

IV. A REVISED SCHEMATIC SITE DEVELOPMENT PLAN IS A NECESSARY TOOL IN DETERMINING IMPACTS OF A PROPOSED DISTRICT BOUNDARY AMENDMENT AND ZONING CHANGE

Maui County Code Section 19.68.020 states in relevant part:

B. The application shall include:

...
4. A legal description, a map, and a site plan prepared by an engineer or land surveyor registered in the State of Hawaii showing the existing and proposed buildings, landscaping, parking, and access of the real property for which the boundary change/reclassification is being sought...

Maui County Code Section 19.510.010 (D) in relevant part states:

D. Content of Application. All applications shall provide the following information:

21. Schematic site development plans, if applicable, drawn to scale, which identify the following:

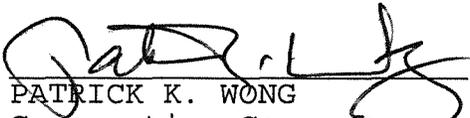
a. Property lines and easements with their dimensions and area calculations,

¹See also; Maui County Code Section 19.68.040(B) conditions on ordinances affecting reclassification/boundary change and Maui County Code Section 19.510.050, Conditional zoning.

- b. Location, size, spacing, setbacks and dimensions of all existing and proposed buildings, structures, improvements and uses,
- c. Existing and proposed building elevations, sections, floor plans and site sections which clearly define the character of the development.
- d. Topographical information showing existing features and conditions and proposed grading,
- e. Existing and proposed landscaping which depicts open spaces, plantings and trees,
- f. Existing and proposed roadways and accesses to the projects and parking layout with dimensions, and
- g. Shoreline, shoreline setback lines, stream and other setback lines;...

Absent a revised schematic site development plan, it would be difficult for the Council to make proper land use decisions regarding this application. It would be prudent to require an updated schematic site development plan be given to the Council prior to any land use decisions regarding the new proposal.

APPROVED FOR TRANSMITTAL:


PATRICK K. WONG
Corporation Counsel

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cc: William Spence, Planning Director
Michele McLean, Deputy Director of Planning
Michael J. Hopper, Deputy Corporation Counsel
Webpage