

Action

Dec 5 - HNL

Jan 9 ~~deadline~~

(extended from

Dec 27

original deadline)

January 15, 1970

Planning Commission
County of Kauai
P. O. Box 111
Lihue, Kauai

Attention: Mr. Brian Nishimoto
Planning Director

Gentlemen:

This is to advise you that the special permit request by Ah You and Masue Chow (SP69-70) to relocate two single-family dwellings onto a 1.98 acre parcel described by TMK 3-2-03: 20, Nawiliwili, Kauai, was denied by the Land Use Commission at its meeting on January 9, 1970.

Prior to taking action on this request, the enclosed memorandum was presented to the Commission.

Should you desire any further information, or have any questions, please feel free to contact us.

Very truly yours,

RAMON DURAN
Executive Officer

Encl.
cc: Ah You Chow

STATE OF HAWAII
LAND USE COMMISSION

VOTE RECORD

469-70 How
ITEM *469-226* - *William J. & Frances* DATE *January 9, 1970*
Akaka
PLACE *Council Room, County of Kauai* TIME *1 p.m.*
Lihue, Kauai

	YES	NO	ABSTAIN	ABSENT
WUNG, LESLIE	✓			
NISHIMURA, SHIRO	✓			
INABA, GORO	✓			
YAMAMURA, TANJI	✓			
KIDO, SUNAO	✓			
MARK, SHELLEY	✓			
NAPIER, ALEXANDER	✓			
TANGEN, EDDIE	✓			
CHOI, WILBERT	✓			

COMMENTS:

denied

STATE OF HAWAII
LAND USE COMMISSION

approved
6-12-70

Minutes of Meeting

County Council Room
Lihue, Kauai

January 9, 1970 - 1 p.m.

Commissioners Present: Wilbert Choi, Chairman
Goro Inaba, Vice-Chairman
Shelley Mark
Alexander Napier
Eddie Tangen
Leslie Wung
Tanji Yamamura
Shiro Nishimura

~~Commissioner Absent:~~ Sunao Kido

Staff Present: Ramon Duran, Executive Officer
Ah Sung Leong, Planner
Walton Hong, Legal Counsel
Jean Soma, Stenographer

Chairman Choi called the meeting to order and swore in persons wishing to testify before the Commission. Subsequently, he called for the first item on the agenda.

HEARINGS

PETITION BY WILLIAM AND GRACE MAHIKOA AND AGUIAR AND ASSOCIATES (A69-233) TO REZONE 29.43 ACRES FROM AGRICULTURAL TO URBAN AT KAPAA, KAUAI

Mr. Leong, staff planner, presented the staff report in which denial of subject petition was recommended in concurrence with the Kauai County Planning Commission's recommendation. In addition, staff recommendation that the district boundary be slightly adjusted to coincide with the newly created property boundary of parcel 101 would constitute the inclusion of said parcel in the Urban District, comprising approximately 4.42 acres. Mr. Leong also indicated the area under petition and surrounding properties on the district map of the area.

January 9, 1970

✓ SPECIAL PERMIT APPLICATION BY AH YOU AND MASUE CHOW
(SP69-70) TO RELOCATE TWO SINGLE-FAMILY DWELLINGS FOR RENTAL
PURPOSES AT NIUMALU, KAUAI

Deliverance of staff report was made by Mr. Leong followed by a brief account of the area being considered.

In response to Commissioner Kido's questioning, Mr. Leong stated that the request would be an addition to two existing dwellings presently situated on the subject premise. In relation to the staff's analysis that the special permit being sought is contrary to 5 of the 7 guidelines established, Commissioner Kido asked if the particular use will substantially alter the character of the land in view of the fact that a special permit was granted to the Mizutanis for the "Motel Frances". Mr. Leong responded that such an addition as proposed by Mr. and Mrs. Chow will add to the density of the area.

Commissioner Kido concluded that by granting this special permit it is not going to change the character of the use at the present time. Mr. Duran was inclined to agree with Commissioner Kido's conclusion and added that the problem is one of proper procedure. Approval of this special permit will set a precedent encouraging others to make similar requests to construct or relocate dwelling units in the Agricultural District.

Commissioner Tangen was of the opinion that the problem would be more properly handled through the boundary change procedure. Mr. Duran asserted that this would be the more logical approach.

In reviewing the staff report wherein the Kauai County Planning Director's recommendation is contained, Commissioner Kido noted that the Planning Director recommended placing "Motel Frances" in the Urban zone. To this, Mr. Leong added that Mr. Nishimoto also recommended rezoning the Mizutani property to the Urban District.

Chairman Choi asked Kauai County Planning Director, Mr. Nishimoto, if he would like to elaborate or present additional information regarding the subject at hand. In reply, Mr. Nishimoto remarked that the Land Use Commission staff had pretty well covered his comments and recommendations. Subsequently, Chairman Choi questioned Mr. Nishimoto as to the type of use proposed for the subject area on the County's General Plan. Mr. Nishimoto expounded that the County's

January 9, 1970

present General Plan is now under review, but the 1961 General Plan designates the area for heavy industrial use.

Regarding the inclusion of all of the developments into the Urban District, Mr. Nishimoto asserted that from the County's standpoint, heavy industrial use was proposed relative to the principle of planning since the area is in a tsunami inundation zone. However, the Planning Department has not made a final decision on the particular concept for this particular area.

In attempting to clarify the matter of the tsunami inundation area, Commissioner Nishimura stated that the first tsunami occurred in 1946. Mr. Nishimoto was unable to answer Commissioner Nishimura's question as to whether or not the tsunami occurred prior to the State's activity of dredging Niumalu Harbor. Mr. Leong explained that the study quoted in the staff report was conducted by the Department of Land and Natural Resources in 1963. In regard to this matter, Commissioner Nishimura replied that there were no flood damages in the area since the tsunami of 1946. Subsequently, the State dredged the Niumalu Harbor thereby creating a large land area; and therefore, the subject site is no longer prone to tsunamis and the problem of flooding.

Mr. Nishimoto reaffirmed his position that the Chow property and surrounding properties be placed in the Urban category.

Pursuant to Commissioner Mark's inquiry, Mr. Leong informed him that the other non-conforming use in the area is the "Motel Frances" which was the subject of a special permit request approved by the Land Use Commission in 1964. Furthermore, the Mizutanis are the owners of a 10,000 square foot parcel on which two homes are situated. Said property, the property in question (Chow property), and two smaller parcels in the center of the petitioned area are situated at approximately the same ground level in the State's Agricultural District. However, one of the applicant's parcels situated in the back of his property is swampy.

Legal Counsel, George Pai, reported to Commissioner Mark that Section 98H-8 of Act 205 provides that: "no non-conforming use of land shall be expanded or changed to another non-conforming use". Consequently, if action were taken on this special permit, such action would violate that particular section as well as the underlying idea of a special permit request.

January 9, 1970

Immediately after being sworn in, Mr. Ah You Chow testified that he has never experienced the problem of flooding in view of the fact that he has lived on subject site for over 50 years. Three tsunamis have occurred during the time Mr. Chow has resided at the special permit site, but they never affected his property although the Mizutanis experienced some flooding. Moreover, subject property is not swampland as indicated by staff. In the past a store was located in this area, but the lot has been filled in since.

As a result from questioning the applicant, Mr. Duran ascertained that Mr. Chow intends to relocate two dwelling units onto his property on which two homes presently exist. Mr. Chow further explained that there is a deadline to relocate the two homes. In addition, the two homes are presently unoccupied and many of the household items have been stolen because the homes have been unattended. Mr. Chow reported to the Commission that he intends to rent the two dwelling units in the event he is permitted to do so. Also, the applicant was of the impression that because one hotel (Hale Niualu) and one motel (Motel Frances) presently exist in the area, he had the right to relocate two more dwelling units onto his property since subject property is located in the midst of these two establishments.

In order to aid the applicant, Mr. Duran recommended that the Commission issue a special permit to Mr. Chow for the storage of the two dwelling units and initiate a boundary change petition for the subject property and the areas recommended by the County of Kauai.

Commissioner Kido questioned the expediency of granting the special permit taking into consideration that the County feels that the general area is urban in character. Chairman Choi consulted Mr. Pai regarding this matter because approval of this special permit would only compound the problem of non-conforming uses. Mr. Pai counseled that, basically, the area is already non-conforming in character. The Commission would be expanding the situation of non-conforming uses, when eventually such uses should be abolished. Commissioner Kido then determined that the action of the Land Use Commission in 1964 was "wrong" (granting of a special permit for construction and operation of Motel Frances). Mr. Pai believed that the granting of the special permit to the Mizutanis in 1964 could be characterized as such except that in 1964 the underlying thought of what was the proper subject for a special permit had still not been clarified. Mr. Duran specified that the granting of a

January 9, 1970

special permit for hotel use in an Agricultural District can be construed as being "unusual" and the Commission must determine that it is a "reasonable" use. However, the granting of a special permit to relocate dwelling units in an Agricultural District cannot be deemed to be an "unusual" use since dwelling units are permitted in same district.

Chairman Choi reasoned that it would be wiser for the Commission to deny this subject request but to permit the applicant to store the two houses on the property; and, in the meantime, the Land Use Commission would initiate a boundary change.

Mr. Nishimoto stated that the County of Kauai has no objections to the subject request. However, they will require that Mr. Chow obtain a moving permit from the County for storage purposes.

Commissioner Napier moved that the special permit be denied as recommended by staff, seconded by Commissioner Yamamura.

Mr. Nishimoto asked whether it would be proper for him to advise Mr. Chow of the Commission's intention to place his property in the Urban District (presently situated in Agricultural District) and that such would be initiated by the Land Use Commission. Mr. Pai stated that although the Commission would initiate the action to rezone the area in question that this, in effect, does not represent a commitment by the Commission because some unforeseen factors may arise as a result of this public hearing and also at the County level. This being so, it should be understood that there is no "guarantee" of the outcome of the Commission's action.

Commissioner Tangen called for the question. Mr. Duran polled the Commissioners, and the motion to deny the special permit was carried unanimously.

At the request of Chairman Choi, Mr. Nishimoto discussed the intent of the Commission to Mr. Chow (LUC to initiate boundary change for the area in question and also the surrounding properties from the Agricultural District to the Urban District). Mr. Nishimoto stated he also explained to Mr. Chow that in the event his property is redistricted to urban, there will be an increase in the tax assessment. Mr. Chow was in accord and had no objections to the Commission's proposal.

The Chair entertained a motion at which time Commissioner Wung moved that the Commission initiate a boundary change for the area, seconded by Commissioner Nishimura and carried unanimously.

PROPOSED LEGISLATION

The following bills for an act were discussed:

1. A Bill for an Act Amending Section 205-5, Hawaii Revised Statutes, as amended, Relating to the Land Use Law.

(Purpose - Allow the counties to share with the Department of Land and Natural Resources the responsibility of determining appropriate land uses within the Conservation Districts, allowing for the more restrictive control to govern.);

2. A Bill for an Act Amending Section 205-4, Hawaii Revised Statutes, as amended, Relating to the Land Use Law.

(Purpose - Consolidate the processing of petitions for land use boundary changes in groups twice a year.);

3. A Bill for an Act Amending Section 205-6, Hawaii Revised Statutes, as amended, Relating to the Land Use Law.

(Purpose - Allow the Land Use Commission to impose protective restrictions on special permits in addition to those that may be imposed by the counties.);

4. A Bill for an Act Amending Section 205-4, Hawaii Revised Statutes, as amended, Relating to the Land Use Law.

(Purpose - Provide for the processing of boundary change petitions of under one hundred (100) acres only between the mandated five year land use districts and regulations review.);

STATE OF HAWAII
LAND USE COMMISSION

Council Room
Lihue, Kauai

January 9, 1970
1 p.m.

STAFF REPORT

SP69-70 - AH YOU AND MASUE CHOW

In accordance with Act 205, the records of a special permit application submitted by Ah You and Masue Chow have been forwarded by the Kauai County Planning Commission. The petitioners request that permission be granted to relocate two single-family dwellings onto a 1.98 acre parcel described by TMK 3-2-03: 20 which is located in the State's Agricultural District at Nawiliwili, Kauai, for rental purposes. **MAPs**

There are two homes presently situated on the property in question. Access to the property is from a very narrow unimproved road near the Niumalu-Hulemalu Road intersection at Nawiliwili Harbor. Niumalu Road and Hulemalu Road form the boundary which separates the Urban or makai portion from the Agricultural or mauka portion. Abutting the subject property's north boundary and also in the Agricultural District is a six-unit motel owned by Kiyoshik and Frances Mizutani. The motel operation was approved by the Land Use Commission on December 18, 1964, under a special permit. Within the Urban District directly to the south is a 48 unit apartment-motel development called Hale Niumalu. Also located in the Urban District nearby are Niumalu Park and the State's Harbor Disposal area.

1-5-70 sent copy of report w/agenda to petitioner

Soil classification of the land by the Land Study Bureau indicates that the soil is rated "D" or poorly suited for overall agricultural suitability. The land is relatively flat and is situated only a few feet above sea level. It lies within the limits of a tsunami inundation area. Median rainfall is approximately 55.8 inches annually. Water and electricity are available. However, no public sewerage system exists in the area. The Kauai General Plan designates heavy industrial use for the subject area, and the proposed comprehensive zoning maps indicate Agricultural use in accordance with the Land Use Commission's districting.

County Recommendation

At its meeting of November 6, 1969, the Kauai County Planning Commission voted to recommend approval of the special permit as recommended by the Planning Director based on the following reasons:

"In relationship to the surrounding uses, what is desired by the applicant is reasonable and the use sought will not adversely affect the surrounding properties.

"The north abutting property is 1.82 acres in size and contains the six (6) units "Motel Frances" and a single-family dwelling at the rear. The owners

of this property, Kiyoshi and Frances Mizutani, were granted a special permit for motel purposes in 1964 within an Agricultural District.

"The east abutting property also owned by the Mizutanis and within the Agricultural District, contains two dwellings on a 10,474 sq. ft. lot.

"The adjacent west properties contain single-family dwellings on lots less than three (3) acres in size.

"To the south, across the Hulemalu Road and within the Urban District, is the 48-unit Niumalu Hotel.

"In view of the foregoing reasons, the staff recommends approval of this request with the condition that the desired use is established within a one-year period from the date of action by the State Land Use Commission.

"The staff also recommends that the State Land Use Commission consider placing the "Motel Frances" property, Tax Map Key: 3-2-03: 9 and the property in question into the Urban District classification due to its urban-like uses."

Analysis

Section 98H-6 of Act 205 provides that:

1. "The County Planning Commission . . . may permit certain unusual and reasonable uses within agricultural and rural districts . . .
2. "The planning commission . . . may, under such protective restrictions as may be deemed necessary, permit such desired use, but only when such use would promote the effectiveness and objectives of this chapter."

Further, Section 98H-8 provides that:

" . . . no non-conforming use of land shall be expanded or changed to another non-conforming use."

The Land Use Commission has established seven guidelines in its regulations to determine an "unusual and reasonable use" within an Agricultural or Rural District. Staff evaluation of this special permit finds that it is contrary to the following five of the seven guidelines:

- "(a) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.
- "(b) That the desired use would not adversely affect surrounding property.

1- prevent urban dev.
in areas susceptible
to floods, tsunami
etc.
2- non-conformance 98H P

1- increase density of the
lot by 100%

"(d) Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established.

*and reg's
These boundary maps were adopted only a
this past summer. Whatever new
trends and needs have come up
since then has not appreciably
affected this area.*

"(f) That the proposed use will not substantially alter or change the essential character of the land and the present use.

*It will definitely
do so by increasing density
& expand non-conforming
uses in Sq Dist.*

"(g) That the proposed use will make the highest and best use of the land involved for the public welfare."

*Since it is contrary to
the int. & purpose of the
act because of the
flooding potential it will not
not be highest & best
use*

It is clear that the proposal to relocate two additional single-family dwellings onto a lot already containing two dwellings to be used for rental purposes does not meet the prerequisites for a special permit as set forth in Act 205 and the Land Use Commission's Rules and Regulations. It would further violate the provisions of the Land Use Law dealing with non-conformance in that the existing non-conforming use will be expanded and increased in the intensity of use. Approval of the special permit under these circumstances would set a dangerous precedent.

Moreover, the problem of inundation by floods, high seas, and tsunami exists in the area as evidenced by the following excerpt from the General Flood Control Plan for Hawaii prepared by the Division of Water & Land Development of the

Department of Land & Natural Resources:

"Lihue-Nawiliwili Area Program - Lihue Water Shed
Physical Background. Encompassing the Lihue, Nawiliwili
and Niumalu areas, this sub-watershed of roughly 6.9
square miles consists of two major streams and
their tributaries - the Nawiliwili and Puali - which
discharges into Nawiliwili Bay. Nawiliwili Stream,
larger of the two, flows through Lihue and Nawiliwili,
Puali Stream through Nawiliwili and Niumalu.

. . . The Puali Stream flood plain, smaller than
Nawiliwili, broadens considerably in the
the/Nawiliwili Bay coastal region which is exposed
to damage from heavy seas and tsunamis.

Flood Problem. Within the past 60 years, the
Lihue, Nawiliwili and Niumalu areas have suffered
primarily from floods and hurricanes, and also
from high seas and tsunamis."

In conclusion, it is also noted that the proposed use
is contrary to the County's General Plan and the County's
proposed comprehensive zoning for the area.

Recommendation

In view of the above discussion, it is recommended that
the special permit be disapproved.

UNIVERSITY OF HAWAII

LAND STUDY BUREAU

SP
Masumi & Ah Yon Chow

Lihue, Kauai

Tax Map Key: 3-2-03-20

The soils in this parcel are essentially coral sand and have an overall productivity rating of D (poorly suited for agriculture).

Since the County Planning Commission has approved of this request, it is assumed that the intended use conforms with the zoning.

12/31/69

ACADEMY BOND

RAC CONTENT

VALLEY PAPERS CO

December 22, 1969

Mr. Ah You Chow
R. R. #1, Box 169
Lihue, Kauai, HI 96766

Dear Mr. Chow:

The Land Use Commission next meets at 1 p.m.,
in the Council Room, County of Kauai, Lihue, Kauai,
on January 9, 1970.

At that time your application for a special
permit (SP69-70) will be reviewed.

Although there is no requirement for you to
be present, should you wish to attend, please feel
free to do so.

Very truly yours,

RAMON DURAN
Executive Officer

cc: Kauai Planning Commission



STATE OF
HAWAII

DEPARTMENT OF PLANNING AND ECONOMIC DEVELOPMENT
LAND USE COMMISSION

P. O. BOX 2359 • HONOLULU, HAWAII 96804

JOHN A. BURNS
Governor

SHELLEY M. MARK
Director Department
of Planning and Economic
Development

WILBERT H. S. CHOI
Commission Chairman

Goro Inaba
Vice Chairman

RAMON DURAN, AIP, ASLA
Executive Officer

COMMISSION MEMBERS
Alexander J. Napier
Shelley M. Mark
Sunao Kido
Eddie Tangen
Leslie E. L. Wung
Tanji Yamamura
Shiro Nishimura

12-9-69

SEE ATTACHED LIST FOR ADDRESSEES OF THIS FORM LETTER

SP 69-70 - AH YOU AND MASUE CHOW

Please be advised that a special permit application has been filed with the Land Use Commission to ~~construct and operate a~~ relocate two single-family dwellings for rental purposes on parcel 20, TMK 3-2-03. This property is generally located in the Niualu area, on the island of Kauai. The County Planning Commission approved this request on November 6, 1969.

An action meeting by the Land Use Commission will be held on this application sometime between November 12, 1969, and December 27, 1969. (extension of time was granted)

We would appreciate any written comments for or against this request, or you or your agent may appear at the meeting. Please do not hesitate to call this matter to the attention of other interested parties. We will notify you of the exact date, time, and place of the meeting.

Should you desire additional information, feel free to contact this office.

Very truly yours,

RAMON DURAN
Executive Officer

NOTE: Action ^{on} ~~for~~ this special permit is tentatively scheduled for January 9, 1970.

file 3123
RECEIVED

NOV 25 1969

State of Hawaii
LAND USE COMMISSION

November 25, 1969

Mr. Ramon Duran
Land Use Commission
Department of Planning &
Economic Development

Dear Mr. Duran:

I am requesting an extension of time for action on my special permit, until the Kauai meeting in January 1970.

Because its more convenient for me to attend the Kauai meeting. I thank you.

Very truly your,

Ah You Chow

AH YOU CHOW

November 17, 1969

Mr. Ah You Chow
R.R. #1, Box 199
Lihue, Kauai 96766

Dear Mr. Chow:

The Land Use Commission must consider your special permit application concerning parcel 20 of Tax Map Key: 3-2-03, Niumalu, Kauai before December 27, 1969. We have tentatively scheduled your request for consideration by the Land Use Commission on December 5, 1969 in Honolulu. However, the Commission's next meeting will be on or about January 9, 1970 on the Island of Kauai.

If it is more convenient for you to attend the Kauai meeting rather than the Honolulu meeting, please advise this office in writing requesting an extension of time for action on your special permit until the Kauai meeting in January.

Very truly yours,

RAMON DURAN
Executive Officer

ANTONE VIDINHA, JR.
MAYOR



3102 ✓
BRIAN K. NISHIMOTO
PLANNING DIRECTOR

THOMAS T. YAMASAKI
ADMINISTRATIVE ASSISTANT

COUNTY OF KAUAI
PLANNING DEPARTMENT
P. O. BOX 111
LIHUE, KAUAI, HAWAII 96766

November 7, 1969

RECEIVED

NOV 12 1969

State of Hawaii
LAND USE COMMISSION

State of Hawaii
Land Use Commission
P. O. Box 2359
Honolulu, Hawaii 96804

Subject: Application for Special Permit
Our File No. SP-69-3 - Ah You Chow & Masue Chow

At the regular meeting of the Planning Commission held on November 6, 1969, the Commission approved the subject application for special permit as recommended by the Planning Director (see comments & recommendation attached).

In accordance with provisions under Section 205-6 of RHS, we herewith transmit for your consideration the foregoing application, transcript of proceedings attached.


BRIAN K. NISHIMOTO
Planning Director

attach.
cc: applicant

COUNTY OF KAUAI
PLANNING AND TRAFFIC COMMISSION
Lihue, Kauai, Hawaii

This space for official use
Date Application and Fee
received by KP&TC _____

APPLICATION FOR SPECIAL PERMIT *SP 69-70*

(I) (We) hereby request approval of a special permit to use certain property located in the County of Kauai, Island of Kauai, Land Use Commission District Boundary map number and/or name K-11, for the following-described purpose:

Description of property:

Tax Map Key 3-2-03:20

Petitioner's interest in subject property:

Fee Simple Ownership

Petitioner's reason(s) for requesting special permit:

I bought 2 house and like to move it to my property for rental use.

Signature(s) _____

Al You Chow
Masie Chow

Address: R.R.#1 Box 199, Lihue, Kauai, 96766

Telephone: 245-4266

This space for official use

The property is situated in a(n) _____ district, whose regulations adopted by the Land Use Commission prohibit the desired use.

Signature(s) _____

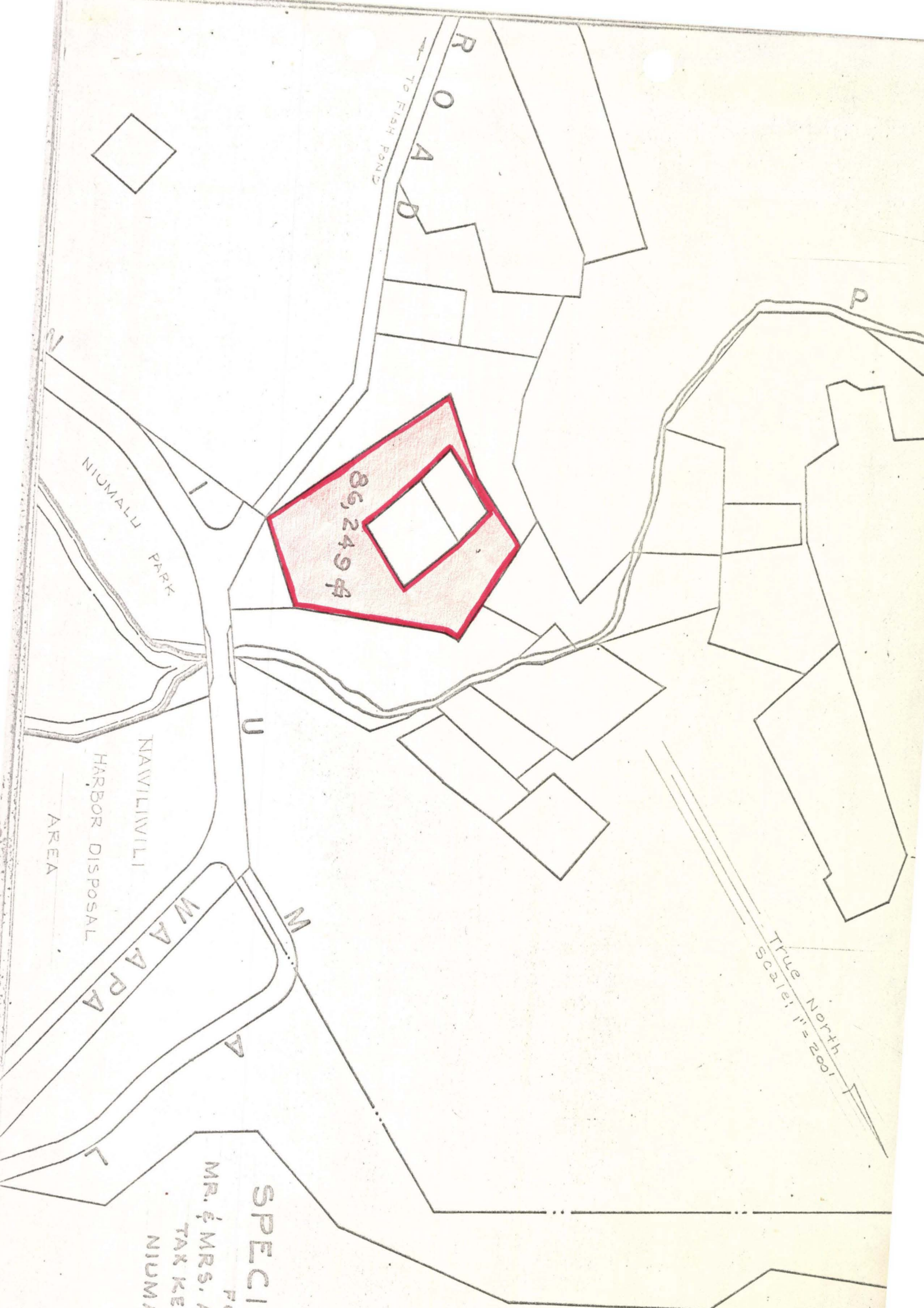
For (agency) _____

RECEIVED

NOV 12 1969

State of Hawaii
LAND USE COMMISSION





SPECIAL PERMIT
FOR
MR. & MRS. AH YOU CHOW
TAX KEY: 3-2-03:20
NIUMALLU, KAUAI

2

KAUAI PLANNING COMMISSION
LIHUE, KAUAI

STAFF REPORT

TO: Planning Commission

RE: L.U.C. Special Permit No. SP-69-3

APPLICANT: Ah You Chow and Masue Chow

Location: Along the north boundary of Hulemalu Road, approximately 100 feet west of the junction with Niumalu Road, being a portion of Land Court Application 957, Exclusion 9, Tax Map Key: 3-2-03:20, Niumalu, Lihue, Kauai.

Lot Size: 1.98 Acres or 86,249 Sq. Ft.

Existing Use: Two (2) single-family units located on lot.

Master Plan Designation: County General Plans indicate proposed Heavy Industrial use. The proposed comprehensive zoning maps indicate Agricultural use as established by the State Land Use Commission.

Public Facilities: (Comments from various agencies)

Department of Public Works

This property does not abut any government road. Access to this property is over the lands owned by Kiyoshi and Frances Mizutani and Edward K. Kaiwi. The approximate location of this access is shown in red on the attached map. (See map on file.)

There is no public sewerage system in the immediate vicinity of this property.

This property is within the tsunami inundation limits.

This property is not subject to any normal adverse flooding.

State Department of Health

No objections.

Building plans subject to review.

Water Department

Since the new 12" main has been brought up to the Kauai High School area, the domestic water phase is adequate to take on these additional homes. We therefore have no objections to this Special Permit Application SP-69-3.

C

Kauai Electric Company
Power is available.

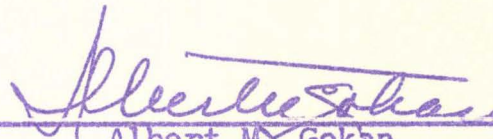
The petitioner proposes to relocate two (2) houses (single-family) to this lot (TMK 3-2-03:20).

The land is level and classified D-93 as per the Detailed Land Classification by the Land Study Bureau L.S.B. Bulletin No. 9, 1967.

The area is excessively drained.

A special permit (SP-64-1) for motel purposes was granted to Kiyoshi and Frances Mizutani in 1964. The lot is directly adjacent (east) to this property in question.

10/7/69


Albert M. Gokan
Zoning Technician-Inspector

TO: Planning Commission
RE: L.U.C. Special Permit No. SP-69-3
APPLICANT: Ah You Chow and Masue Chow

COMMENTS & RECOMMENDATION:

In relationship to the surrounding uses, what is desired by the applicant is reasonable and the use sought will not adversely affect the surrounding properties.

The north abutting property is 1.82 acres in size and contains the six (6) units "Motel Frances" and a single-family dwelling at the rear. The owners of this property, Kiyoshi and Frances Mizutani, were granted a special permit for motel purposes in 1964 within an Agricultural District.

The east abutting property also owned by the Mizutanis and within the Agricultural District, contains two dwellings on a 10,474 sq. ft. lot.

The adjacent west properties contain single-family dwellings on lots less than three (3) acres in size.

To the south, across the Hulemalu Road and within the Urban District, is the 48-unit Niumalu Hotel.

In view of the foregoing reasons, the staff recommends approval of this request with the condition that the desired use is established within a one-year period from the date of action by the State Land Use Commission.

The staff also recommends that the State Land Use Commission consider placing the "Motel Frances" property, Tax Map Key: 3-2-03:9 and the property in question into the Urban District classification due to its urban-like uses.

10/16/69



Brian Nishimoto
Planning Director



KAUAI PLANNING COMMISSION
REGULAR MEETING
OCTOBER 16, 1969

The regular meeting of the Planning Commission of the County of Kauai was called to order by Mr. Leonard Zalopany, Chairman, at 1:30 p.m. on Thursday, October 16, 1969, in the Council Room at the County Building, Lihue. Following Commissioners answered roll call:

Mr. Leonard Zalopany, Chairman
Mr. Welcome Albao
Mr. Richard Johnston
Mr. Robert Kunimura
Mr. Alfred Louis, Jr.
Mr. Takato Sokei
Mr. Gisao Tateishi

HEARINGS:

Interim Zoning Variance, Application V-69-26, G.N. Wilcox Memorial Hospital, General Commercial Use of Property, Koloa, Kauai.

Public hearing on the subject variance application was opened by Chairman Zalopany at 1:31 p.m.

Mr. Albert Gokan, staff member, presented the report and analysis on the proposal to use, on a temporary basis, an existing residence as a doctor's office and residence. (Staff Report on file.)

Relative to the comments by the Public Works Department regarding traffic, Planning Director Nishimoto reported that Mr. Philip Coke estimates that by appointments, 30 patients a day will be entering the premises; that having more than one car at the same time is very nill.

Questions by the Commissioners as follows:

Mr. Tateishi: You have the cane haul road in the back...are there any problems on drainage?

Chairman Zalopany: No, there's a big ditch behind the building which flows down to Hale Nani; drainage is good there.

Director Nishimoto: From what I see, majority of the water will go down to the existing stream. It would not create any problem for the temporary use at this time.

Mr. Albao: How high is the existing rock wall going into the area?

Mr. Gokan: It's only about 2-3 feet above the ground; in the vicinity of the bridge, the wall drops into the stream about 10-15 feet.

Mr. Sokei: Is the parking and driveway in already?

Mr. Gokan: The driveway is existing and is not paved.

Mr. Johnston: It looks like the stream goes under the road. Is there any history of the water backing up onto the road?

Director: Mr. Yamasaki, do you find any problems?

Mr. Thomas Yamasaki, staff member: As far as I can recollect, there hasn't been any drainage problem.

Mr. Kunimura: (Pointing out on landscape plan) I would like to add that exactly on the western side of the theater, going back on the can road, there is a road and I was assured by Grove Farm management

this morning that they will attempt to close that. Another road goes diagonally in the back to the Maluhia Road.

Mr. Albao: Are there any street lights now going to the area?

Director: During the building permit review, this can be checked out.

The hearing was then opened to the public and the following are statements, in effect, of the proceedings:

Mr. Philip Coke, Administrator, G.N. Wilcox Memorial Hospital: I would like to introduce our other representatives...Dr. Wallis, Chief of Staff and Kauai Director of the Kauai Medical Group and Dr. McLaughlin, who will be the permanent physician located at this vicinity, if our request for variance is granted.

I would like to emphasize a couple of things we discussed. (1) The Hospital has at this time removed any branches and foliage off the site which will improve the situation. (2) Our lease, between the Hospital and Bishop Trust on behalf of Knudsen Estate, does state terminating of the use should the property in question be necessary for the development of the historical sugar mill site. The lease also mentions that the Hospital will not be permitted to alter or destroy any portion of the existing site.

The Hospital will be leasing the property, staffing it and equipping it and maintaining it to extend medical coverage in the Koloa-Poipu area. Under the Hospital sponsorship, this will now make it possible for us to provide certain out-patient services in the physician's office and I refer to laboratory work, electrocardiogram work and also pharmaceutical work where it would not be possible outside of the hospital. These services would be available to any patient in the Poipu-Koloa area. Dr. Boido is quite enthusiastic about this. It serves as a convenience in directing patients to Lihue.

Mr. Kunimura: Will employees of Grove Farm and Lihue Plantation residing in that area get medical attention here?

Mr. Coke: This is a good question. At the present time, this is still under discussion. We have tentatively agreed with Grove Farm to take care of Grove Farm people who at the present time, in Koloa-Poipu area, go in to Lihue.

The reason we are not opening it to the Grove Farm people is that we don't know what the volume would be...the number of plantation people. If we find that we can take care of the volume, then we will open this up. Lihue Plantation and Grove Farm, both dependents and employees, will be able to use this facility 24 hours a day for emergencies; we will take care of all emergencies for all employees and dependents.

Mr. Tateishi: Are you thinking about several physicians or one?

Mr. Coke: We are thinking of just having a single physician here except for occasional consultants if a patient is taken in for a special case. Basically, it's a one physician office. If we find that there's a volume, if we take additional employees and dependents from the sugar plantations, we will seek for more permanent facilities.

Mr. Tateishi: This will be tied in with Wilcox Hospital?

Mr. Coke: Yes, it will be an extension to the Out-Patient Department; it will have a variety of services but a single physician's office.

Mr. Tateishi: I'm concerned about the fact that if Wilcox Hospital changes ownership, what will happen?

Mr. Coke: The Wilcox Hospital has no intentions to sell. I think if ownership were to change, it will be under the State's Act 97.

Mr. Tateishi: This request is on a temporary basis and if the area is developed into a historical site, you will move out. However, if there is another use for the area besides the historical use, would you be willing to move out?

Mr. Coke: We have already contacted and have been assured by both Grove Farm and Big Save that when they develop a shopping center, we will locate there; we think this will be the most convenient thing for the patient and Hospital.

Mr. Sokei: We always talk about consolidating for better services; is this a consolidation?

Mr. Coke: We don't believe that this has anything at all to do with consolidation of services. We are speaking of diagnostic services. I didn't say we are going to see a consolidation of physician offices.

Mr. Sokei: Is it feasible to maintain an office there?

Mr. Coke: Oh yes; what we are merely doing is expanding medical coverage in that area.

Mr. Johnston: This will be opened to all the public?

Mr. Coke: This will include the public, but not necessarily to the routine use of all plantation employees and dependents. If we find that with this particular facility we can handle the increased volume, then we will open it to employees and plantation dependents.

Mr. Johnston: In your letter to Mr. Nishimoto, you emphasize "...combined residence and office for a single doctor for a temporary period"; why are you calling it a temporary period? Is this a trial period to see if it is going to work out?

Mr. Coke: Temporary because of the possible use as a historical site. We don't have the experience for the type of volume that will develop in this area. We were unable to find any other facility suitable in the Koloa area. We hope in the future to lend ourselves to something that is built for hospital purposes. I don't think this will be a continuing use.

Mr. Johnston: Are you going to pave the parking lot?

Mr. Coke: We were not intending to; we felt that the driveway is more than adequate for our purposes. I think if we found that this is going to be a long-term situation, with more traffic than anticipated, then we will have to pave the area.

Dr. Samuel Wallis: I would like to tell you the reason why we are going into this area. For some time we have had a number of calls from the hotels to take care of their guests. The thing that started this was that in order to take care of these people, we found that house calls from Lihue to Koloa was prohibitive not only from the time element but from the cost element. So we began looking for a site to put an office over there. We even contacted the hotels themselves to put a facility there but no hotel had the business to justify giving us an area to put an office and to keep a doctor all the time.

The temporary idea is that we hope we won't have to keep the facility in this building long; the idea is to keep an office in that area all the time. Our group has been called in that area to furnish medical attention. It is a fast growing area there.

Dr. McLaughlin will have access to all the different specialists at different times and the people of Koloa will very greatly benefit in having the facility there. We have talked with Dr. McLaughlin before we went into this and he is not opposed to this move.

In answer to the question about Lihue Plantation and Grove Farm people going over there, we have a contract to take care of their personnel and we have had a first aid station over there even before the Lihue Dispensary closed up, but it isn't satisfactory on the standpoint of the Hospital and for the people going there; it's really not the type of thing that you would like to have.

Mr. Sokei: Mr. Coke, in the event that this venture is not feasible. what is the next step...private practice?

Mr. Coke: Not feasible in what sense...economical or patients? We think that we are fairly well equipped for the economics that will be there...unless the patient volume fail to materialize.

Mr. Johnston: Have you discontinued ambulance service to Koloa?

Mr. Coke: No, not yet. We contacted the State in September of 1968, that we will phase out the service over a six-month period; they asked us to reconsider it. The Board of Trustees agreed to phase out of ambulance service in Koloa in January 1970. This is State responsibility and we have indicated that if we continue this service, we would receive the same subsidy.

There were no letters of protest as of this date.

The hearing was closed at 2:10 p.m. with decision on the application to be made at the regular meeting which followed.

Director Nishimoto presented his comments on the proposal and recommended approving the use on a temporary basis and terminating when the area is developed into a historical site. (Comments and recommendation on file.)

Interim Zoning Variance, Application V-69-27, Ah Sau Ahana and Mary E. Ahana, Apartment Use of Property, Lihue, Kauai.

Public hearing on the subject variance application was opened by Chairman Zalopany at 2:11 p.m.

Mr. Albert Gokan, staff member, presented the report and analysis on the proposal to construct four new units and use of an existing single-family dwelling for rental purposes. (Staff Report on file.)

There were no letters of protest as of this date.

No one spoke for or against the variance.

The hearing was closed at 2:16 p.m. with decision on the application to be made at the regular meeting which followed.

Director Nishimoto presented his comments and recommended approving the request with construction plans subject to plan approval.

It was also recommended that the County establish a 10 foot setback along Akahi Street.

✓ Special Permit, Land Use - County of Kauai, Application SP-69-3, Ah You Chow and Masue Chow, Use of Property for Rental Purposes, Niumalu, Lihue, Kauai.

Public hearing on the request for special permit was opened by Chairman Zalopany at 2:17 p.m.

Mr. Albert Gokan, staff member, presented the report and analysis on the proposal to relocate two single-family dwellings for rental purposes on Agricultural land at Niumalu. (Staff Report on file.)

Mr. Gokan noted that the roadway through the property may be a kuleana easement; that according to law, any kuleana has a right of entry.

Questions by the Commissioners as follows:

Mr. Sokei: Does the roadway have meets and bounds?

Mr. Gokan: No designated easement by metes and bounds in this area.

Mr. Tateishi: This kuleana has been used for 40-50 years so the applicants can claim the use of the road.

Mr. Sokei: In case of resale of the property, does the buyer have the right to the kuleana?

Director Nishimoto: It will be a legal matter. (Staff was instructed to obtain an explanation from the County Attorney.)

The hearing was then opened to the public and the following statement, in effect, was made:

Mr. Ah You Chow, applicant: The reason why I applied for special permit is that I have this land and I'm only paying taxes and not doing anything; so I might as well put some houses and get some money out of it.

There were no letters of protest as of this date.

The hearing was closed at 2:25 p.m. with decision on the application to be made 15 days after the public hearing.

Director Nishimoto presented his comments and recommended approving the request for special permit on condition that the desired use be established within a year from the date of approval by the State Land Use Commission.

He further recommended that the State Land Use Commission consider placing this property, the Motel Frances property and the 10,474 sq. ft. property into the Urban District due to the urban-like uses.

On question of Mr. Albao, the Director explained that the motel (Mizutani) development in that area has established an urban feature so the remaining properties, also urban-like, should be considered to make it equitable for tax assessment purposes; that if the Land Use Commission takes account of this matter, they will notify the people involved and then conduct a public hearing.

COMMUNICATION:

A communication (10/1/69) from T. R. Hofmann, M.D., regarding condominiums at Poipu. Communication was received for the record.

Copy of communication (10/7/69) from J. M. Rolls, Sr., to Louie Gonsalves, Chairman of Kauai County Council, supporting enactment of a comprehensive zoning ordinance for Kauai. Communication was received for the record.

A communication (10/8/69) from Mr. & Mrs. Ralph J. Mossman supporting the 40 feet maximum height restriction for Kauai. Communication was received for the record.

Mr. Kunimura suggested that late communications on matters already disposed by the Commission be placed on file. This was agreeable to the members.

SUBDIVISION:

Mr. Sokei moved to approve Subdivision Report No. 12 with the exception of application S-67-72, to be deferred for review by the Public Works Department, seconded by Mr. Albao and carried.

NEW BUSINESS:

Director Nishimoto called the Commissioners attention to Bill No. 28, introduced by Councilman Shigeomi Kubota, amending the lot size in agricultural subdivisions from three (3) acres to one (1) acre. He reported that the Council passed the Bill on first reading and public hearing is scheduled for October 28, at 7:00 p.m. in the Council Room.

The Director pointed out the Charter provides that the Planning Commission administer the Subdivision Ordinance and any recommendation for amendment to our zoning and subdivision ordinance must be made through the Mayor to the Council. He felt this blanket provision for all agricultural lands will have great affects on Kauai; that this matter should be investigated to consider the pros and cons before deciding what is best for the general welfare of the people.

Mr. Kunimura inquired if the intent of this change is to allow agricultural landowners to cut their lots into one acre lots; that the newspaper reported of a landowner objecting to the three-acre lot size because he was desirous of dividing his property for his children.

Director Nishimoto said he was not very clear on the reasons for this change; that if the intent were as indicated, ramifications would develop.

Mr. Albao asked the Director for a specific ramification and the Director cited the 12 feet pavement width standard for the agricultural district. He explained the agricultural lot was not intended to be used for houselots and if the desire is to use it for houselot purposes, the lot should not be for agricultural use. He pointed out that to provide services to a small area will become very expensive as compared to an urbanized area.

Director Nishimoto stated since this Commission will have to administer this subdivision, our comments should be submitted to the Council.

Mr. Tateishi concurred the Council should be made aware of the fact that we are not thinking very favorably of the Bill.

At this time, Mr. Albao requested for a short recess and discussion continued at 3:02 p.m.

Mr. Sokei suggested the Commission inform the Council, by letter, that we are very much interested and request to discuss this matter with them; if this is agreeable, then we can present our views.

Director Nishimoto recommended to request that the Council defer adoption of Bill No. 28 as introduced by Councilman Kubota; further, that a good comprehensive study be conducted regarding what is desirable as a minimum lot size within an agricultural district to determine the pros and cons of the minimum lot size before deciding what would be best in terms of the interest of the general public.

Mr. Johnston moved to accept the Director's recommendation and further recommended that the Council consider the Planning Director when any changes to the CZO and Subdivision Ordinance are proposed. The motion was seconded by Mr. Kunimura.

Mr. Kunimura felt the Council's action is hasty if it is based on responses from the public hearings, when not more than 300 persons

participated in all the hearings last week; that we should strongly urge the Council to further study the matter and seriously consider it before arriving at any decision.

Mr. Sokei maintained we should communicate with the Council first; that the Council is the authoritative body; that when they agree to meet with us, then we should talk "turkey."

Mr. Kunimura stated he wants the Council to know that this Commission is a part of the County Government; that it has its duties and functions and one of the duties is to advise the Mayor on planning; that we are not telling the Council what to do and what not to do, but recommending that this matter be deferred; let us use our prerogative as provided in the Charter and exercise our duty.

He questioned how can the Council, by holding 4 or 5 meetings, draft an ordinance of this nature; that they are insulting the intelligence of the people. He said, "I would rather have good government by Commission than by omission."

Mr. Albao was dubious about mentioning the CZO on the basis of our Interim Zoning and with the 701 project underway. He also felt very strongly that a concrete reason be given as to why we are requesting deferment of this matter.

The Director explained the three-acre minimum lot size is included in the CZO and the Interim Zoning Ordinance specifies same for piggeries, etc.

The question was then put and carried with Mr. Sokei dissenting.

Mr. Sokei requested the staff check into methods of better communication between the Council and Planning Commission.

Chairman Zalopany recommended that this matter be considered further at the next meeting of the Commission.

COMMISSION ACTION ON FOLLOWING VARIANCE APPLICATIONS:

V-69-26, G.N. Wilcox Memorial Hospital: Mr. Kunimura moved to accept the recommendation by the Planning Director, seconded by Mr. Sokei.

Mr. Tateishi called attention to the condition "...the use be terminated when the area is ready for a historical site restoration project," and recommended the use also be terminated when any other development is proposed for the property.

The motion, as amended, was unanimously carried by the following roll call vote:

AYES:	Johnston, Kunimura, Louis, Sokei, Tateishi	
	Albao, Zalopany	- 7
NOES:	None	- 0
ABSENT, NOT VOTING:	None	- 0

V-69-27, Ah Sau Ahana & Mary E. Ahana: Mr. Sokei moved to approve Variance Application V-69-27 as recommended by the Planning Director, seconded by Mr. Tateishi and unanimously carried by the following roll call vote:

AYES:	Johnston, Kunimura, Louis, Sokei, Tateishi	
	Albao, Zalopany	- 7
NOES:	None	- 0
ABSENT, NOT VOTING:	None	- 0

OTHER BUSINESS:

Director Nishimoto announced that copies of the public hearing notices on forthcoming variance and special permit applications will be sent with the Commission's agenda.

ADJOURNMENT:

There being no further business, the meeting was adjourned at 3:30 p.m.

Respectfully submitted,

/s/ Brian Nishimoto

BRIAN K. NISHIMOTO
Secretary to the Commission

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RECEIVED

OCT 10 1969

State of Hawaii
LAND USE COMMISSION

NOTICE OF PUBLIC HEARING

Special Permit, Land Use - County of Kauai

NOTICE IS HEREBY GIVEN of a public hearing to be held by the County of Kauai Planning Commission in the County Building at Lihue on Thursday, October 16, 1969, at 1:30 p.m. or soon thereafter to consider an application for special permit within the County of Kauai as provided for in Section 205-6, Hawaii Revised Statutes.

Docket Number
and Applicant

SP-69-3

Ah You Chow
and Masue Chow

Tax Map Key
3-2-03:20

Permission Requested

Relocation of (2) single-family residences for rental purposes.

Subject property is situated along the north boundary of Hulemalu Road (portion Easement C, Land Court Application 957), approximately 150 feet west of the centerline intersection of Hulemalu and Niumalu Roads, Niumalu, Nawiliwili, Lihue, Kauai, Hawaii.

Map showing the area under consideration for special permit is on file in the office of the Planning Department at Lihue and is open to the public for inspection during office hours.

All protests or comments regarding the above application should be filed in writing to said Commission before the public hearing or presented in person at the time of the public hearing, or up to fifteen (15) days following this public hearing.

KAUAI PLANNING COMMISSION

Leonard H. Zalopany, Chairman
By Brian K. Nishimoto, Planning
Director

(Oct. 8, 1969)

SPECIAL PERMIT APPL. SP-69-3

AH YOU CHOW AND MASUE CHOW

Note: We request the presence of the applicant or representative at the public hearing on October 16 to answer any questions by the Planning Commission.

Planning Dept.

C

SP69-70 CHOW

MOTEL
FRANCIS

HALE
NIUMALU
MOTEL

STATE HARBOR
DISPOSAL
AREA

NAWILIWILI
HARBOR

PUALI
STREAM

HULEIA
STREAM

HULEMALU
ROAD

ROAD

NIUMALU PARK

NIUMALU

ITIMILIMILI

KAHOA TRUST PLAT
PASTURE 99 AC
(including 39 AC)

State of Hawaii
NAWILIWILI
HARBOR DISPOSAL AREA

18,045 AC.

TRUE NORTH
Scale: 1" = 100'

State of Hawaii
Department of Transportation
Engineering Division
Map No. 14-171

