

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

February 17, 2017

Committee
Report No. _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Land Use Committee, having met on February 1, 2017, makes reference to County Communication 17-58, from the Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM R-2 RESIDENTIAL DISTRICT TO SERVICE BUSINESS RESIDENTIAL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT WAILUKU, MAUI, HAWAII TAX MAP KEY (2) 3-4-004:083," and other related documents.

The purpose of the proposed bill is to grant a Change in Zoning to JYS Brothers and Sisters, LLC to conform with the current Wailuku-Kahului Community Plan designation of Business/Commercial and correctly reflect the existing use of the property as a small scale residential take-out kitchen and catering business.

Your Committee notes that the proposed Change in Zoning is for the restaurant known as Ichiban Okazuya, which has been operating in the same location for 34 years. The property has been a retail location for 70 years and no development or change in use is being proposed.

Your Committee noted that the Change in Zoning will allow the business to conform to and be consistent with, the Wailuku-Kahului Community Plan.

Your Committee discussed automobiles entering and leaving from the parking lot behind the restaurant. Your Committee noted that the second Condition of Zoning requires that all ingress and egress be from Kaohu Street and none from Kalua Road. Your Committee recommended relaxing this restriction to allow for egress on to Kalua Road, but no ingress to the parking lot from Kalua Road.

COUNCIL OF THE COUNTY OF MAUI
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Committee
Report No. _____

Your Committee voted 8-0 to recommend passage of the proposed bill on first reading, recordation of the unilateral agreement, and filing of the communication. Committee Chair Carroll, Vice-Chair Hokama, and members Atay, Crivello, Guzman, King, Sugimura, and White voted "aye." Committee member Cochran was excused.

Your Committee is in receipt of an agreement, entitled "Unilateral Agreement and Declaration for Conditional Zoning," executed by the landowner, and approved as to form and legality by the Department of the Corporation Counsel.

Your Committee is also in receipt of a revised proposed bill, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions and nonsubstantive revisions.

Your Land Use Committee **RECOMMENDS** the following:

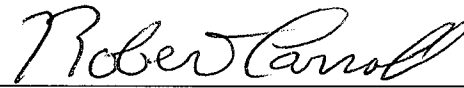
1. That Bill _____ (2017), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM R-2 RESIDENTIAL DISTRICT TO SERVICE BUSINESS RESIDENTIAL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT WAILUKU, MAUI, HAWAII TAX MAP KEY (2) 3-4-004:083," be **PASSED ON FIRST READING** and be **ORDERED TO PRINT**;
2. That the County Clerk **RECORD** the unilateral agreement; and
3. That County Communication 17-58 be **FILED**.

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

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**Committee
Report No.** _____

This report is submitted in accordance with Rule 8 of the Rules of the Council.



ROBERT CARROLL, Chair

lu:cr:17016aa:grs

ORDINANCE NO. _____

BILL NO. _____ (2017)

A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM
R-2 RESIDENTIAL DISTRICT TO SERVICE BUSINESS RESIDENTIAL DISTRICT
(CONDITIONAL ZONING) FOR PROPERTY SITUATED AT
WAILUKU, MAUI, HAWAII
TAX MAP KEY (2) 3-4-004:083

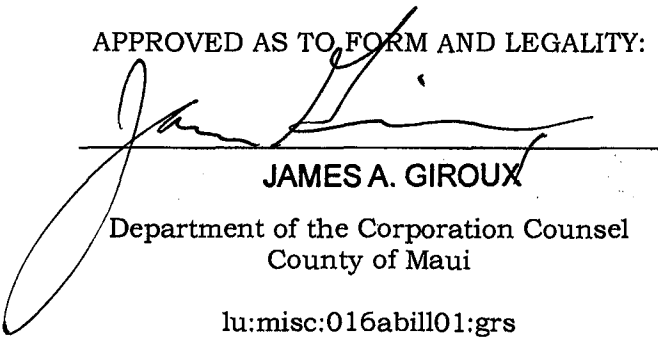
BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Pursuant to Chapters 19.11 and 19.510, Maui County Code, a change in zoning from R-2 Residential District to Service Business Residential District (Conditional Zoning) is hereby granted for that certain parcel of land situated at Wailuku, Maui, Hawaii, and identified for real property tax purposes as tax map key (2) 3-4-004:083, comprising approximately 7,800 square feet, and more particularly described in Exhibit "A", attached hereto and made a part hereof, and in Land Zoning Map No. L-426, which is on file in the Office of the County Clerk of the County of Maui, and by reference made a part hereof.

SECTION 2. Pursuant to Section 19.510.050, Maui County Code, the zoning granted by this ordinance is subject to the conditions set forth in Exhibit "B", attached hereto and made a part hereof, and the Unilateral Agreement and Declaration for Conditional Zoning, attached hereto and made a part hereof as Exhibit "C".

SECTION 3. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:



A handwritten signature in black ink, appearing to read 'James A. Giroux', is written over a horizontal line. The signature is stylized with a large loop on the left side.

JAMES A. GIROUX

Department of the Corporation Counsel
County of Maui

lu:misc:016abill01:grs

CONSOLIDATION DESCRIPTION
Ichiban Consolidation

LOT 1 of the Ichiban Consolidation, Subdivision File No. 3.2334, being of portions of Royal Patent 5515, Land Commission Award 2532, Apana 5 to Kamakanohano and Royal Patent 2162, Land Commission Award 2420, Apana 1 to Kaai, situate at Kalua, Waifuku, Island and County of Maui, State of Hawaii and more particularly described as follows:

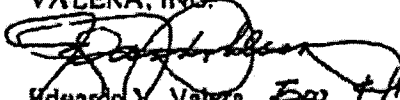
BEGINNING at a found 3/4 inch pipe at the northeast corner of this parcel, along the south side of Kaohu Street and the northwest corner of Tax Map Key (2) 3-4-004:002, the coordinates of said point of beginning being

North 1,435.40 feet
West 2,321.30 feet

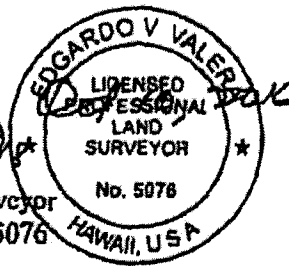
referred to Government Survey Triangulation Station "LUKE" and running by azimuths measured clockwise from true South (meridian of said "LUKE"); thence,

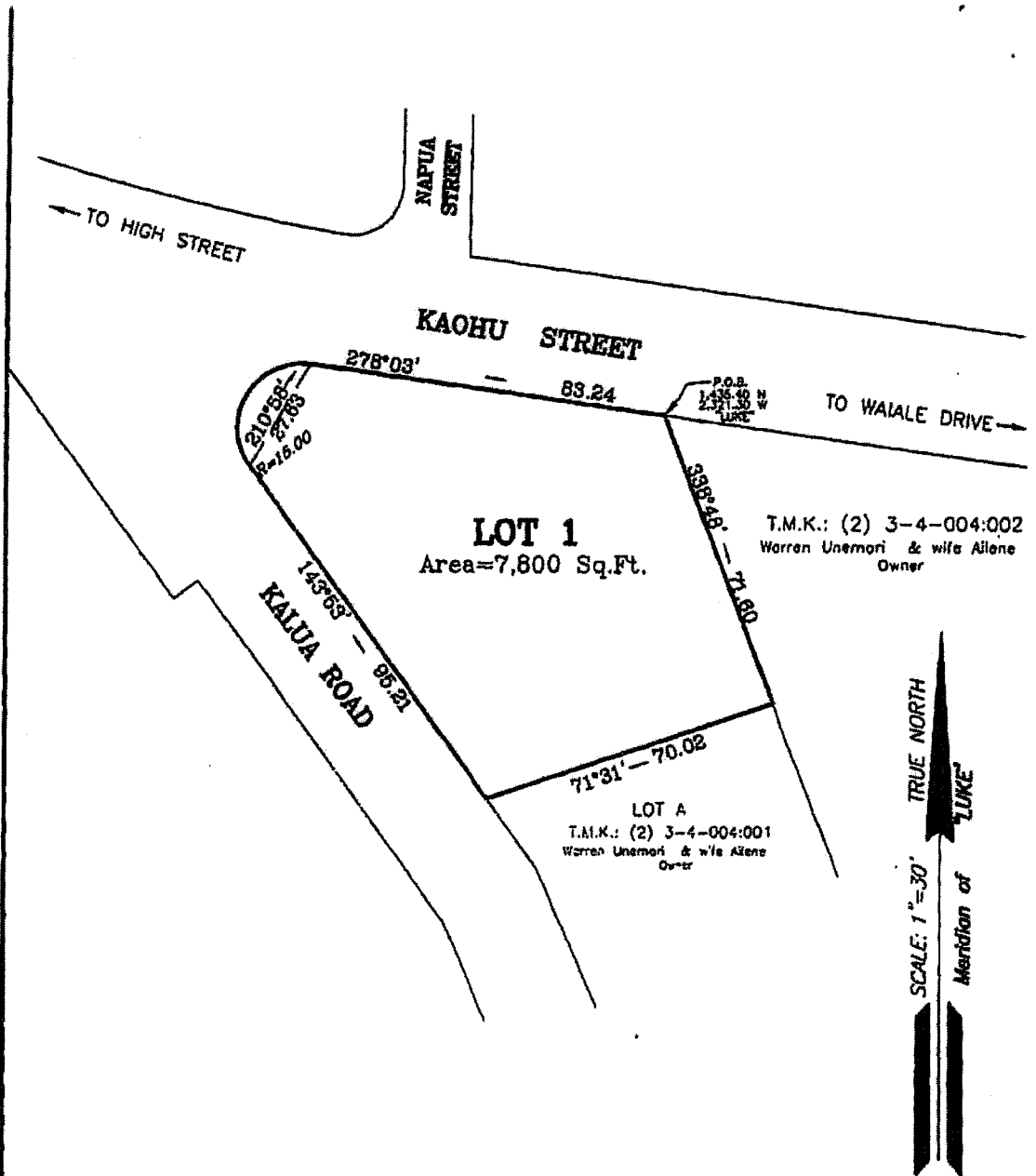
1. 338° 48' 71.60 feet along Tax Map Key (2) 3-4-004:002, a portion of R.P. 5515, L.C.Aw.2532:5 to Kamakanohano to a found 1/2 inch pipe; thence,
2. 71° 31' 70'02 feet along Tax Map Key (2) 3-4-004:001, a portion of R. P. 5515, L.C. Aw. 2532:5 to Kamakanohano to an "+" mark on concrete (set); thence,
3. 143° 53' 95.21 feet along Kalua Road to a 1/2 inch pipe (set); thence,
4. Along Kalua Road on a curve to the right with a central angle of 134° 10' and a radius of 15 feet, the chord azimuth and distance being
210° 58' 27.63 feet to a "Conc. Nail" (set on AC pavement), thence,
5. 278° 03' 83.24 feet along the south side of Kaohu Street to the point of beginning and containing an area of 7,800 square feet, more or less.

This work was prepared by me
or under my direct supervision.
VALERA, INC.



Edgardo V. Valera *EVP + H**
Licensed Professional Land Surveyor
State of Hawaii Certificate No. 5076
End of description.
79621.11





T.M.K.(2) 3-4-004:083

Area=7,800 SQ.FT.

LAND ZONING MAP NO.L-426

CHANGE IN ZONING-KALUA, WAILUKU, MAUI, HAWAII
 FROM R-2 RESIDENTIAL TO SBR SERVICE BUSINESS RESIDENTIAL

APPROVED:		PUBLIC HEARING: 8/11/2015	
COUNTY CLERK	DATE	ADOPTED - COUNCIL:	
APPROVED:		ADOPTED - MAYOR:	
PLANNING DIRECTOR	DATE	ORDINANCE:	
		DATE:	SCALE: 1" = 30'

OFFICE OF THE COUNTY CLERK

200 HIGH STREET, WAILUKU, MAUI, HAWAII 96793

EXHIBIT "B"

CONDITIONS OF ZONING

1. That there shall be no deliveries before 7:00 a.m. each day.
2. That egress from the property onto Kalua Road shall be permitted. However, there shall be no ingress onto the property from Kalua Road.

LAND COURT SYSTEM

REGULAR SYSTEM

Return By Mail () Pickup (): To:
Office of the County Clerk
County of Maui
200 South High Street
Wailuku, Hawai'i 96793

Total Number of Pages: 8

Affects Tax Map Key (Maui) (2)3-4-004:083, Wailuku, Maui, Hawai'i

UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING

THIS INDENTURE, made this ____ day of _____, 2017, hereinafter referred to as "DECLARATION" or "UNILATERAL AGREEMENT", by JYS Brothers & Sisters, LLC, a Hawai'i limited liability company, whose principal place of business is located in Wailuku, Maui Hawai'i, and whose mailing address is 2133 Kaohu Street, Wailuku, Hawai'i, 96793, hereinafter referred to as "DECLARANT", and who is the owner of that certain parcel located at Wailuku, Maui, Hawai'i, comprised of approximately 7,800 square feet, and identified for real property tax purposes by Tax Map Key No. (2)3-4-004:083, hereinafter referred to as "PROPERTY".

WITNESSETH:

WHEREAS, the Council of the County of Maui, State of Hawai'i, hereinafter referred to as "Council", is considering the establishment of zoning for the Property, comprised of approximately 7,800 square feet, which is more particularly described in Exhibit "1", which is attached hereto and made a part hereof, and which is more particularly identified in Land Zoning Map No. L-426, which is on file in the Office of the County Clerk of the County of Maui; and

EXHIBIT "1"

WHEREAS, the Council recommends through its Land Use Committee, Committee Report No. _____, that said establishment of zoning be approved for passage on first reading subject to certain conditions, pursuant to Section 19.510.050, Maui County Code; and

WHEREAS, the Declarant has agreed to execute this instrument pursuant to the conditional zoning provisions of Section 19.510.050, Maui County Code;

NOW, THEREFORE, the Declarant makes the following Declaration:

1. That this Declaration is made pursuant to the provisions of Section 19.510.050, Maui County Code, relating to conditional zoning;

2. That until written release by the County of Maui, the Property, and all parts thereof, is and shall be held subject to the covenants, conditions and restrictions which shall be effective as to and shall run with the land as to the Property, from and after the recording of this Declaration with the Bureau of Conveyances or the Land Court of the State of Hawai'i, without the execution, delivery or recordation of any further deed, instrument, document, agreement, declaration, covenant or the like with respect thereto by the Declarant, the County of Maui, or any heir, devisee, executor, administrator, personal representative, successor, and assign; that the acquisition of any right, title or interest in or with respect to the Property by any person or persons, entity or entities, whomsoever, shall be deemed to constitute the acceptance of all of the covenants, conditions and restrictions of this Declaration by such person or persons, entity or entities; and that upon any transfer of any right, title or interest in or with respect to the Property the same shall be subject to, and the transferee shall assume and be bound and obligated to observe and perform all of the covenants, conditions and restrictions of this Declaration;

3. That this Declaration and all of the covenants, conditions and restrictions contained herein shall continue to be effective as to and run with the land in perpetuity, or until the Declarant notifies the appropriate County Department that any of said covenants, conditions and restrictions are satisfied by the Declarant, and the appropriate County Department verifies the satisfaction and provides a written release of the covenant, condition or restriction;

4. That the term "Declarant" and any pronoun in reference thereto, wherever used herein, shall be construed to mean the singular or the plural, the masculine or the feminine, or the neuter, and vice versa, and shall include any corporation, and shall be held to mean and include the "Declarant", the Declarant's heirs, devisees, executors, administrators, personal representatives, successors, and assigns;

5. That the Declaration shall become fully effective on the effective date of the zoning ordinance approving the establishment of Service Business Residential District zoning and this Declaration shall be recorded in the Bureau of Conveyances or Land Court of the State of Hawai'i;

6. That the Declarant agrees to develop said Property in conformance with the conditions set forth in Exhibit "2", which is attached hereto and made a part hereof and which shall be made a part of the zoning ordinance;

7. That the conditions imposed are reasonable and rationally relate to the objective of preserving the public health, safety and general welfare and such conditions fulfill the need for the public service demands created by the proposed use;

AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that until released in writing by the County, the conditions imposed in this Declaration shall run with the land identified hereinabove and shall bind and constitute notice to all subsequent owners, lessees, grantees, assignees, mortgagees, lienors and any other persons who claim an interest in said land, and the County of Maui shall have the right to enforce this Declaration by appropriate action at law or suit in equity against all such persons, provided that the Declarant or its successors and assigns may at any time file a petition for the removal of the conditions and terminate this Unilateral Agreement, such petition to be processed in the same manner as petitions for change in zoning.

This Declaration may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Declaration.

Each person signing this Unilateral Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Unilateral Agreement. Each party represents and warrants to the other that the execution and delivery of this Unilateral Agreement and the performance of such party's obligations hereunder have been duly authorized and that this Unilateral Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

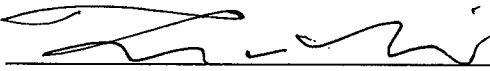
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[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the undersigned has executed this Declaration the day and year first above written.

DECLARANT:

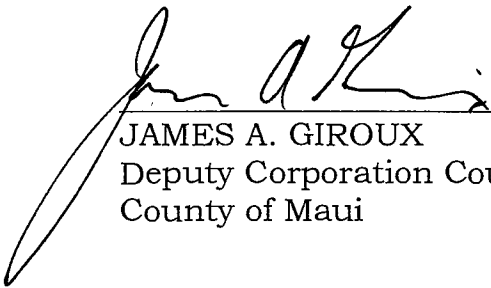
JYS Brothers & Sisters, LLC

By: 

Name: TON/MASA OTSAKI

Title: OWNER/MANAGER

APPROVED AS TO FORM AND LEGALITY:

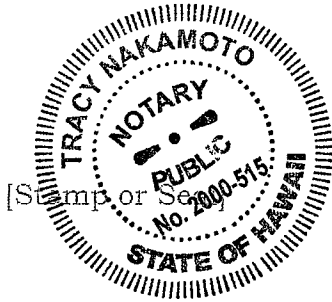


JAMES A. GIROUX
Deputy Corporation Counsel
County of Maui

STATE OF Hawaii)
)
COUNTY OF Maui) SS.

On this 8th day of February, 2017, before me personally appeared Tonymasa Sasaki, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Tracy Nakamoto

Notary Public, State of Hawaii

Print Name: Tracy Nakamoto

My Commission Expires: 10/15/2020

NOTARY PUBLIC CERTIFICATION

Doc. Date: none # Pages: 8

Notary Name: Tracy Nakamoto Judicial Circuit: Second

Document Description: Unilateral Agreement
and Declaration for Conditional Zoning

Notary Signature: Tracy Nakamoto

Date: 2/8/17

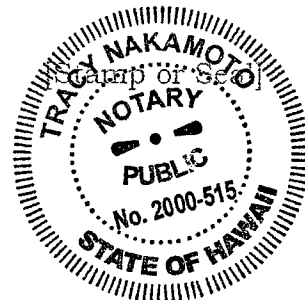


EXHIBIT "1"

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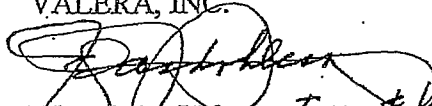
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This work was prepared by me
or under my direct supervision.

VALERA, INC.



Edgardo V. Valera *EVP #110*

Licensed Professional Land Surveyor

State of Hawaii Certificate No. 5076

End of description.

7962Lt1

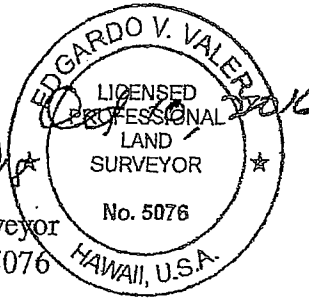


EXHIBIT "2"

CONDITIONS OF ZONING

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