

**MAUI PLANNING COMMISSION
PORTION OF REGULAR MINUTES
ITEM B.3
MAY 26, 2020**

Ms. McLean: Thank you, Chair. The next item is a Planning Department initiated Community Plan Amendment from Single-Family to Public/Quasi-Public and a Change in Zoning from R-2 Residential to P-1 Public/Quasi-Public for the Jewish Congregation of Maui property situated at 634 Alulike Street in Kihei at TMK: 3-9-048:109. Jared Burkett is the project planner.

- 3. MICHELE CHOUTEAU MCLEAN, Planning Director, transmitting a Community Plan Amendment from Single-Family (SF) to Public/Quasi Public (P) and a Change in Zoning from R-2 Residential to P-1 Public/Quasi-Public for the Jewish Congregation of Maui property situated at 634 Alulike Street, Kihei, Island of Maui, TMK: (2) 3-9-048:109. (CPA 2019/0001) (CIZ 2019/0004) (J. Burkett)**

The purpose of the land use changes is to memorialize the use that has been occurring on the parcel, that being religious services for the Jewish Congregation of Maui.

(Item B.3 begins at approximately 00:00:18 of Part 2 the audio recording.)

Mr. Jared Burkett: Good afternoon, Chair, Commissioners.

Mr. Carnicelli: Good morning.

Mr. Burkett: Good morning, oh morning, I always do that. The staff report that's before you was originally for the March 24th public hearing so it's now being heard today and that was canceled because of the Governor's stay-at-home order so in the past the Jewish Congregation of Maui has been operating with a County Special Use Permit in a residential community. There was a lapse in permitting when the permit expired but the congregation continued to operate so the Mayor requested by memorandum that the Planning Director initiate this change of zoning from R-2 Residential to P-1, Public/Quasi-Public and the Community Plan Amendment from Single-Family to Public/Quasi-Public in order to memorialize the existing use and to eliminate the congregation from needing to pursue land use permits and subsequent renewals.

Historically the parcel has only ever been used for two purposes. Initially after construction it was used for the Ka Ono Ulu Estates Subdivision office where they met with people interested in purchasing units in the subdivision. After the last unit sold, the office was sold and then new owner obtained a County Special Use Permit soon after that transaction or around the same time an order to operate services for the Maui Religious Science Church and approximately two years later in 1998, the property was sold to the Jewish Congregation of Maui.

The Congregation was granted a permit transfer and later a permit renewal. In 2010, the Congregation requested their second renewal to discover...they discovered that their permit had expired a few months before the request. The Congregation has been operating ever since while they sought what action they should pursue. There was a change in management one point and recently and that's when they started to pursue this option.

The Director initiated land use changes for the Jewish Congregation of Maui have not received any letters in protest, but this morning we received three support letters, and then...by email, so those have not been provided to you yet. I can share those with you if you'd like. We did receive calls of concern regarding parking on the road primarily because there is uncertainty on how development of the adjacent property previously known as the Maui Lu will affect those adjacent streets. However, none of the callers submitted testimony in support of in the protest to the land use changes.

The community plan amendment and change of zoning request are before for you to make your recommendation to the Maui County Council. Members of the Jewish Congregation of Maui are in attendance if you would like to hear from them and if there is any questions, I'd be happy to do that and if you'd like me to attempt to share screen to show you those support letters.

Mr. Carnicelli: I believe we did get them Jared, right? I saw something this morning. Did Carolyn forward those to us, yes?

Mr. Burkett: I'll look.

Ms. Takayama-Corden: No, I didn't.

Mr. Burkett: I don't think so, no.

Ms. McLean: Chair, I believe the testimony that Carolyn forwarded you was for the next item.

Mr. Carnicelli: Oh, right, right, right. The farm. Okay, so just to be clear before we start this, the use is not changing, nothing's changing, we're just going from a permitted thing to a codified thing. We're making the appropriate changes so where they don't have to get a permit anymore, correct?

Mr. Burkett: Correct.

Mr. Carnicelli: Got. Okay, so Director I believe there's some people that chatted or messaged you in order to want to testify on this is that correct?

Ms. McLean: Yes, Chair we have two individuals who want to testify in addition to Ellen Mortimer who is with the Jewish Congregation of Maui. I don't know if she wishes to say anything at this time. I'll go ahead and unmute her audio and video. Oh, I'm not able to unmute her audio, I think she'll have to do that herself.

Ms. Ellen Mortimer: Hello?

Mr. Carnicelli: I think we can hear you now.

Ms. Mortimer: Okay, okay. ...(inaudible)...I'm Ellen Mortimer I'm the Executive Director of the Jewish Congregation of Maui. I just want to thank you all for meeting today and helping us get the correct zoning for our property, everything that Jared said is pretty much what I was going to say. There is nothing that we have ...(inaudible)...we just looking to get the correct zoning for

what we're doing and be happy to answer questions. We have...(inaudible)...new membership and we have some people ...(inaudible)...also who have been with the organization...(inaudible)...if there are any...(inaudible)...questions as well.

Mr. Carnicelli: Great, thank you so much. I mean that was a little bit spotty on the audio but I think we got the gist of what you were saying is basically just doubling down on what Jared had to say and that if you have any questions that we can come back to you so, I appreciate that.

Ms. Mortimer: Sure.

Mr. Carnicelli: So Director at this point in time we'll go ahead and open up the floor for public testimony and allow those with which to speak to this item do so.

Ms. McLean: Okay, Chair the first person who indicated they wish to testify is Shari Levin McNerthey.

Ms. Sheri Levin McNerthey: I don't know if my video is on. Can you hear me? This is Sheri.

Mr. Carnicelli: I can hear you. If you want to turn your video on, you can do that, but we can hear your testimony.

Ms. McNerthey: I see. Oh, here I am. Okay, great. Hi, I'm the President of the Jewish...the current President of the Jewish Congregation. I just wanted to say that we're the only Synagogue on Maui. We serve an important purpose in the community. We've been here for 20 years and we just...we want to be in compliance, you know with permitting and have the proper zoning and all that stuff so that's...we hope you approve this zoning change so we can be in compliance and we're to answer ...(inaudible)...

Mr. Carnicelli: Great, thank you. That one, did that get kind of pingy at the end for you guys as well? Yeah, okay. Must be a BlueJeans right now. Director, do we have the next person please?

Ms. McLean: Yes, Chair. The next person is Joel Richman.

Mr. Carnicelli: You gotta turn your video the other way Joel. We're looking at, we're looking at your phone.

Mr. Joel Richman: Sorry about that.

Mr. Carnicelli: Just hit, hit the flip, the camera flip.

Mr. Richman: Not even sure how to do that. Garret can you help me, one moment. Okay, thank you, is this better? Hello, is anybody there, can you hear me?

Mr. Carnicelli: We can hear Joel. We, we...oh, there you are.

Mr. Richman: Okay, well I want to thank the Commission and thank the County, I think this is an excellent idea. We've tried to comply in the past, but let me introduce myself, I'm the past President of the Jewish Congregation. I've been involved since the onset in the 80's and I just really appreciate the County taking this step and I hope you guys approve the resolution.

Mr. Carnicelli: Thank you very much. Any questions for the testifier? Thank you very much Joel, good to see you.

Mr. Carnicelli: Thank you. Same to you Lawrence, bye.

Mr. Carnicelli: Okay, aloha. Director, anybody else signed up?

Ms. McLean: Thank you, Chair. There's one other individual, Jessica Pearl Kwon who indicated she was here in support but did not wish to testify.

Mr. Carnicelli: Okay. Okay, so at this point if there's somebody that hasn't used the chat function to message the Director, please unmute yourself and step forward to speak on the issue please. Going once, going twice, so if there are no objections we're gonna go ahead and close public testimony on this item and go ahead and open up to see if anybody has any questions? Commissioners, any questions for the Director or for Jared or for the Congregation? Commissioner Pali then Commissioner Freitas.

Ms. Pali: This might be for the Director. Since there is that new development happening right adjacent to the property and someone has mentioned maybe an issue with parking if we just allow you guys to do this transfer would you still be applying updated rules to building permits and different things to making sure that they revamp whatever they're going on property to make sure that there is adequate parking for their constituents or their members?

Ms. McLean: If the—

Ms. Mortimer: So—

Mr. Carnicelli: Ellen, Ellen, Ellen let the Director answer please and then we'll go to you if we need to, is that—

Ms. Mortimer: Oh, I'm sorry. Yep, sorry.

Mr. Carnicelli: Thanks.

Ms. McLean: I think when Commissioner Pali said the Director, she meant the Planning Director not the Executive Director. Too many Directors at the meeting. If they were to come in for building permits or any changes like that then yes, current parking requirements would apply. But there is an existing structure and existing use on the property so they would fall under you know their current requirements that are in place. We wouldn't have a reason to change them. So...

Ms. Pali: So if, if maybe the neighborhood speaks out and says whatever requirements were imposed years ago that's not really suiting the people on the property and use of it at what point do you look at that and say hey, maybe we need to update this or help them figure this out because what I don't want to do is keep rolling maybe a problem that might have surfaced years ago. I don't want to roll that forward. This would be a really good time to address those at the same time, that's just my two cents.

Ms. McLean: Yeah, and that could be accomplished through a condition on the zoning if it was determined that that was an issue. The Department didn't find that, but the Commission or what you're doing today is making a recommendation to the County Council so you could recommend a condition or whether you do or not the Council would take final action on it so that would be one way to address any short-fall or to mitigate any impacts.

Mr. Carnicelli: Director, while I have you, I'm unclear if that remnant road piece is included in this or not. You know there's a remnant one-way road that kinda you know, it goes between the Maui Lu and the Synagogue itself, is that included in this, and if so, can that be used for parking and/or future structure or something to that effect?

Ms. McLean: Let me flip through the staff report but maybe Jared knows and can chime in in the meantime.

Mr. Carnicelli: Jared.

Mr. Burkett: Yes, the remnant road being used is allowed...is being provided for their use at the moment. It is, but recently been found that it's a County remnant roadway instead of a State remnant roadway as both organizations usually think so it means that there will be an auction at some point and only adjacent neighbors could bid on that and that is based only...only the Maui Lu or the Jewish Congregation, so as of now the property is still...the remnant roadway can still be used for parking for the property.

Mr. Carnicelli: Does it have to be auctioned off? Can it be gifted?

Mr. Burkett: I don't know that...that's the only thing I've heard from...this was Don Couch that was talking about it.

Mr. Carnicelli: Okay, former Councilmember and former Deputy Director Couch. Okay, thank you. Commissioner Freitas I believe you had a question?

Mr. Freitas: Yes, let's see the zoning timeline as I'm reading it, it stops at 2010 and it states that the Department notified the Congregation that it was extension request that it expired in 2010 so did they get that, I don't understand that, I don't see that another one was, an extension was given to them.

Mr. Carnicelli: Jared you want to answer.

Mr. Freitas: This is to the, this is to the Director actually.

Ms. McLean: Yeah, and I would ask Jared to chime in, I think that's what he mentioned earlier that they used to have a Special Permit, County Special Permit and that that expired and probably when there was a change in leadership things like that can fall through the cracks sometimes and so they continued operating with them not knowing it, with the County not knowing it, and then when it came to the County's attention, we initiated this land use change to actually the change the zoning to make it permanent rather than having to rely on a permit that has to be renewed.

Mr. Carnicelli: And again, we're nothing more than a recommendation to the Council who actually has the authority on this, we don't have the authority, we're just, we're just a recommendation. Any other questions from the Commission? Seeing none, Jared if you would please give the...I guess the staff is it a recommendation or our options I guess it is?

Mr. Burkett: The Department's determined that the proposed use is in compliance with the State Urban District which is why we didn't mention that. The existing use does not comply with the allowed uses in the Kihei-Makena Community Plan for single-family designation but does comply with the allowed uses in the Public/Quasi-Public designation which is why this is the proposed use. The existing use does not comply with the allowed uses in the R-2 Residential County Zoning District but does comply with the allowed uses in the P-1 Public/Quasi-Public Zoning District. So the Department is recommending that the Maui Planning Commission make a recommendation to the Maui County Council that the above changes be made. Thank you.

Mr. Carnicelli: Great, can I have a motion please? Commissioner La Costa?

Ms. La Costa: I so move.

Mr. Carnicelli: Okay, moved by Commissioner La Costa, seconded by Commissioner Freitas.

Mr. Freitas: Second.

Mr. Carnicelli: To pass on our recommendation as per the staff report. Any discussion on the motion? Seeing...Commissioner La Costa.

Ms. La Costa: Thank you, Chair. I used to live two blocks from the Synagogue and never heard any kind of noise or issues and I thought it actually was a real plus for the neighborhood. They used to have some benefits there that I attended and so giving them the actual zoning so they don't have to worry about permits expiring is a great thing. Thanks.

Mr. Carnicelli: Great. Commissioner Pali and then to Commissioner Freitas.

Ms. Pali: So I'm looking at Page 15 of the packet that we were mailed and we would be recommending these six criteria is I think my assumption and I have a just a couple concerns if we can just talk it through. I definitely don't mind keeping the use you know, changing the use, but I don't, I don't want us to miss an opportunity, I think I fear just passing something that's been around just along and not having an opportunity to make sure that they are you know compliant

with current codes, that's my first concern. And now that we're talking about that extra little I don't know what you called it but like sliver of property which is –

Mr. Carnicelli: Remnant.

Ms. Pali: Remnant, a remnant, a remnant piece, I mean it seems it's essential for parking for the church to operate and not knowing the future of that concerns me. Director maybe I don't know how we can tandem but you know the current use with the remnant obviously hopefully makes sense if their membership grows how do we add more people because I also lived in this neighborhood. I kinda grew up in Kihei, I rode my bike down here and that's kind of a hairy corner if you're coming around, that whole area is kinda hairy for the bike riders and walkers and I just wanna make sure that we are doing our due diligence to make sure that heavier membership attendance times it's just safe for the pedestrians and so you know how do we kind of connect this to meeting that remnant and then what happens if we lose the remnant for them, what does that look like, those would be just two concerns that I would like to address in this if we can or just, just the regular laws sort of just take care of it naturally I don't want to overdo things so those are my comments.

Ms. McLean: Well, it seems that the roadway remnant isn't so much used for parking as it is used for just access really. Looking at the site plan on Exhibit 2 it doesn't seem that there's any parking spaces there but that there are...that's the way to get in and out. If hypothetically that remnant goes up for auction and they are not able to acquire it I don't know what purpose any other owner might use it for. I would imagine they could potentially lease it to them, but they, they may have to reconfigure their site plan if they are no longer able to use it.

Ms. Pali: And maybe you can help me just identify, maybe I'm not identifying the remnant correctly. So I see all these kind of diagonal parking lots and where the numbers are is that skinny sliver kind of in the beginning parts of all these parking stalls or maybe I don't understand where the remnant is.

Ms. McLean: The way that I'm looking at Exhibit 2, the remnant roadway is the actual roadway is, is this?

Ms. Pali: Oh, opposite site, got it. Okay, okay.

Ms. McLean: It looks like the arrow is pointing to that and maybe Jared can confirm that that it's labeled one-way traffic that that's the actual road remnant.

Mr. Carnicelli: Yes.

Ms. Pali: The road cutting right through the property that says one-way traffic.

Ms. McLean: Yes.

Ms. Pali: That's the remnant but this property is also on the left of that and on the right of that?

Ms. McLean: Correct.

Ms. Pali: Wow, that's super strange. Okay, got it. All right, well maybe that's probably for bigger fish later but maybe then just, just addressing if the membership has grown in the last 10 or 20 years, you know addressing off, offsite parking which is I think hazardous in this area.

Mr. Carnicelli: So I guess Commissioner Pali is, is there a...an amendment to the motion that you want to make specific, I don't know how to kinda word it right now as to what it is you would, you know you're trying to accomplish here, what it is that you want to amend to say.

Ms. Pali: Yes, so there is six conditions in our proposal that we would be agreeing to send up to the County and maybe the staff planner can help me which is the more appropriate section, but they have Number 4, you know it talks about adversely affect or interfere with public/private schools, parks, playgrounds, water system, blah, blah, blah, drainage, roadway...so it talks about roadway and so I don't know if maybe language in this section to state that before this continue—like is approved an moves forward that maybe there's just an update as to parking needs and that they're meeting current...maybe I don't know but is offsite parking allowed for this type of use or is not allowed because I think that's the point is we wouldn't want it probably allowed in this area.

Mr. Carnicelli: You're muted.

Ms. McLean: Sorry. I'm looking at the real property tax map and it does appear that what's labeled roadway remnant on that site plan, the roadway itself and the parking is on a...is not part of the subject parcel so back to Commissioner Pali's question, the roadway does not bisect the parcel it, it creates the boundary of the parcel so that the parking and the roadway are not on this parcel. So yes, that would mean that the parking is offsite today. I speculate that if the roadway remnant were acquired that it would also include that area where the parking is taking place and so it could be incorporated into the parcel where the structure is. I don't know what we would have to look into when the building permits were signed off on for the existing structure where the parking was allowed to be and it could...offsite approval could have been given, I don't know if that's what's happened but that is possible.

Ms. Pali: So this is a –

Mr. Carnicelli: Director, I have a quick question is if they did in fact own the remnant piece is that sufficient parking as per current code, I guess what is the current code for a synagogue?

Ms. McLean: I can look that up really quickly. I don't know what the square footage is of the structure.

Ms. Pali: I'm comfortable with just adding language that you guys would just revisit that one more time you know prior to this and I definitely think that we should consider now that we have identified the remnant which is what I thought but I wasn't sure, I guess my concern is the person mentioned, the director that it had...they bought it from someone else. We don't know the future but if they...if this congregation were to sell let's say in a few years by changing the zoning it means that now we're subjected to this type of continued use and so those are just things that we

all have to kinda take into consideration. I definitely support these type of, you know, activities and I think they're very healthy for our community but I just want to make sure that we're not...by doing one action we're not overlooking other things that would make it very difficult in the future and not as safe as we should make it, so that's all.

Mr. Carnicelli: So here, I got a, I got a just a thought that I've got here is because again, we're commending to the Council so how do we essentially explain to them what our concerns are and possibly what we could do is add a seventh condition and the seventh condition just be that acquisition of the remnant piece is the part of the ... you know it may be a condition of the change in zoning, you know it kind of ...and I mean, it forces the County's hand, right if the Council is going to approve a change in zoning and a change in zoning is you know dependent upon the County selling them that piece you know, I mean, obviously we can't do that, but if we and it may logistically put them in a pickle but at least it explains to the Council what our concerns are is saying hey, listen you know whether it's a condition of the change in zoning or whether or not we'd say hey listen you know, something to that effect, I don't know Director, you're usually pretty good scribbling notes and coming up with a condition as we're fumbling over ourselves.

Ms. McLean: Chair, I first want to point out that the six that list of six items those are the criteria by which a change of zoning can be granted, those are not conditions.

Mr. Carnicelli: Okay, got it.

Ms. McLean: So just to make sure that we're clear on that.

Mr. Carnicelli: Okay.

Ms. McLean: What I scribbled down was, the property owner shall work with the County to provide adequate off-street parking. So off-street means it can be onsite or it can offsite but it's not using the street. That doesn't have many teeth in it, but that's sort of the concept. What we're worried about is adequate off-street parking being provided.

Mr. Carnicelli: I think that...that I don't know if you're good with that Kelly but that to me I think expresses to the Council what our concern is.

Ms. Pali: Yeah, I'm comfortable with that. I almost feel like I do want to conclude though that we're not okay with...'cause it gives it a little bit more teeth so yes, you can figure out offsite parking, yes, you can look at onsite parking, but definitely on the street, curbside parking because again, that corner is pretty, pretty crazy.

Ms. McLean: That's what off-street parking is.

Mr. Carnicelli: Yeah, she said off-street instead of offsite if that makes sense.

Ms. Pali: Okay, so off-street and offsite okay.

Mr. Carnicelli: Well, no, no, no is again, is as I'm understanding it off-street okay, you know and then offsite, okay, right so it's just like...no, I mean on street bad, offsite okay. So, if there are no objections we're going to go ahead and amend the motion to include whatever language we just came up with. Is there any objections to that? Commissioner La Costa.

Ms. La Costa: I would like to amend my motion pursuant to Commissioner Pali.

Mr. Carnicelli: Okay, and who was the second, Kawika were you the second on that? So, Commissioner Freitas are you accepting the amendment to the motion?

Mr. Freitas: Yes.

Mr. Carnicelli: Okay, so motion is now amended to include such. Any further discussion on the motion? Seeing none, Director.

Ms. McLean: The motion is to recommend approval of the two land use changes to the County Council with a condition on the zoning that the property owner shall work with the County to provide adequate off-street parking.

Mr. Carnicelli: All those in favor please raise your hand. That is...let the record show that that is five affirmative and that Commissioner Tackett actually had to leave the meeting prior to the vote so unanimous 5-0 with Commissioner Tackett I guess not being present for the vote.

(Motion was made at approximately 00:18:18 of Part 2 of the audio recording.)

It was moved by Ms. La Costa, seconded by Mr. Freitas, then

(Vote was taken at approximately 00:32:29 of Part 2 of the audio recording.)

VOTED: To Recommend Approval to the County Council of the Community Plan Amendment and Change in Zoning, as Recommended by the Department, as Amended.
(Assenting – P. D. La Costa, K. Freitas, K. Pali, D. Thompson, S. Castro)
(Excused – C. Tackett)
(Absent – T. Gomes)

Mr. Carnicelli: So, thank you everyone and good luck moving forward to the Jewish Congregation and work with the County on that parking stuff. I'd love to see the County just grant you stuff, grant you that remnant piece and just make it right. So, good luck at the Council. Director.

Respectfully Submitted by,

CAROLYN TAKAYAMA-CORDEN
Secretary to Boards and Commissions II