

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

July 26, 2007

**Committee
Report No.**

_____ 07-68

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

Chair and Members:

Your Land Use Committee, having met on July 5, 2007, makes reference to County Communication No. 89-91, from the Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM R-1 RESIDENTIAL DISTRICT TO SBR-1 SERVICE BUSINESS RESIDENTIAL FOR PROPERTY SITUATED AT WAILUKU, MAUI, HAWAII".

The purpose of the proposed bill is to change the zoning from R-1 Residential District to SBR-1 Service Business Residential District (SBR) for a 17,494 square foot parcel identified as TMK: (2) 3-4-18:004, in Wailuku.

The applicants, Dr. and Mrs. Steven Moser, Dr. Jane Kocivar, and Dr. Riggs Roberts ("Drs. Moser, Kocivar, and Roberts") requested a Change in Zoning to B-2 Community Business District in order to permanently establish a medical clinic that is currently permitted through a Conditional Permit. The Conditional Permit was granted in 1985, and subsequent extensions were granted in 1989, 1990, 1993, and 1998.

Your Committee notes that the communication includes a copy of correspondence dated June 21, 1988, from the Department of Planning to the Maui Planning Commission, recommending that the property be rezoned to SBR. However, your Committee notes that SBR regulations had not been enacted.

Your Committee further notes that the Maui Planning Commission held a public hearing on the requested Change in Zoning on June 21, 1988. At the hearing, six persons testified in favor of the request and no one testified in opposition. The Maui Planning Commission unanimously voted to recommend approval of the Change in Zoning to SBR on June 21, 1988, for the following reasons:

1. Since the original Conditional Permit was approved on October 10, 1985, the Wailuku-Kahului Community Plan was adopted, designating the subject property Service Business/Single Family Residential. This designation is intended to allow residential structures to be used for

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residential as well as small-scale neighborhood-oriented business purposes. The business uses should be compatible with the physical character of the residential neighborhood.

2. Inasmuch as the proposed medical office utilizes existing structures, which are compatible with the physical character of the surrounding residential neighborhood, it appears that SBR zoning would be more appropriate than B-2 Community Business District zoning, which permits medical offices, but which also allows a higher density of use.
3. The proposed action is not expected to affect any rare or endangered species of flora or fauna, nor any critical wildlife habitat.
4. The proposed development is not expected to significantly affect any historic, cultural, recreational, or natural resources in the area.
5. Public agencies will not be burdened by the subject use in that the applicants will be responsible for providing necessary infrastructural services.
6. No complaints have been received relative to the existing operations of the medical office use.

Your Committee notes that the Council (1989-1991 Council term) referred County Communication No. 89-91 to its Planning and Land Use Committee at the Council meeting of February 3, 1989.

By correspondence dated June 5, 1989, the Planning Director requested that the Change in Zoning application be retained in Committee until the adoption of the SBR zoning district. Upon its adoption, the Council could act on the Change in Zoning request.

By correspondence dated August 24, 1989, the Chair of the Committee requested that the Department of the Corporation Counsel comment on correspondence dated August 16, 1989, from Lawrence N. C. Ing, Esq., on behalf of a client who was denied an application for a Change in Zoning on the basis that Business/Multi-Family District zoning had not been established. The Chair of the Committee requested that the

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Department recommend alternatives available to applicants who may face similar situations.

By correspondence dated September 12, 1989, the Department of the Corporation Counsel advised that if an appropriate zoning district does not exist, an applicant could wait until such zoning is established or could seek a type of business zoning currently allowed.

By correspondence dated May 22, 1990, the Chair of the Committee requested that the Planning Director comment on whether the proposed SBR zoning district is still the most appropriate zoning for the subject property, and on how Drs. Moser, Kocivar, and Roberts should proceed.

By correspondence dated August 2, 1990, the Planning Director advised that the SBR zoning district is still the most appropriate zoning for the subject property. Since the use of the property is consistent with its designation in the Wailuku-Kahului Community Plan, he stated that Drs. Moser, Kocivar, and Roberts should seek to extend their Conditional Permit until the SBR zoning district is established.

At its meeting of December 5, 1990, the Committee recommended that County Communication No. 89-91 be referred to the Council Chair for the term beginning January 2, 1991, for a recommendation as to referral or other disposition.

At its meeting of December 21, 1990, the Council referred County Communication No. 89-91 to the Council Chair for the term beginning January 2, 1991, for a recommendation as to referral or other disposition (Committee Report No. 90-276).

At its meeting of January 4, 1991, the Council (1991-1993 Council term) referred County Communication No. 89-91 to its Planning and Economic Development Committee (County Communication No. 91-10).

By correspondence dated January 14, 1991, the Chair of the Committee requested that the Mayor provide a timetable for the development and transmittal of the SBR zoning district ordinance, as well as other proposed zoning ordinances to implement the land use categories of the community plans. The Chair also asked for an indication as to whether the proposed Comprehensive Zoning Ordinance (CZO) would be submitted independently or as part of a package, and a timetable for the submittal of legislation to establish each zoning district.

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By correspondence dated February 22, 1991, the Mayor stated that the Department of Planning's first priority is to transmit bills for proposed zoning districts that currently do not exist but that are designated by the community plan land use maps. These are the SBR, Business/Multi-Family, Business/Industrial, Rural, Park, and Open Space districts. The Mayor further stated that a complete schedule would be forwarded to the Committee after it had been discussed with the planning commissions.

The Mayor transmitted a tentative schedule of proposed changes to the CZO. She advised that the revisions would be transmitted to the Council independently, by sections, within a month after the planning commissions' public hearings.

At its meeting of December 3, 1992, the Committee voted to recommend that County Communication No. 89-91 be filed.

By correspondence dated December 11, 1992, the Chair of the Committee requested that the Department of the Corporation Counsel opine whether the filing of County Communication No. 89-91 would require Drs. Moser, Kocivar, and Roberts to resubmit their application to the Maui Planning Commission in the event they decided to pursue their Change in Zoning.

By correspondence dated December 17, 1992, the Department of the Corporation Counsel advised that the filing of County Communication No. 89-91 would be the equivalent of disapproving the proposed bill. Accordingly, Drs. Moser, Kocivar, and Roberts would be required to resubmit their Change in Zoning application.

At its meeting of December 18, 1992, the Council referred County Communication No. 89-91 to the Council Chair for the term beginning January 2, 1993, for a recommendation as to referral or other disposition (Committee Report No. 92-299, as amended).

At its meeting of January 4, 1993, the Council (1993-1995 Council term) referred County Communication No. 89-91 to its Planning Committee (County Communication No. 93-11).

At its meeting of November 29, 1994, the Committee recommended that County Communication No. 89-91 be referred to the Council Chair for the term beginning January 2, 1995, for a recommendation as to referral or other disposition.

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At its meeting of December 16, 1994, the Council referred County Communication No. 89-91 to the Council Chair for the term beginning January 2, 1995, for a recommendation as to referral or other disposition (Committee Report No. 94-320).

At its meeting of January 6, 1995, the Council (1995-1997 Council term) referred County Communication No. 89-91 to its Planning Committee (County Communication No. 95-15).

Your Committee notes that the Planning Director transmitted, through County Communication No. 96-246, a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE, TO ESTABLISH A SERVICE BUSINESS RESIDENTIAL DISTRICT". The purpose of the proposed bill is to establish a Service Business Residential zoning district in Title 19, Maui County Code. However, the bill did not provide for the specific SBR-1 zoning district recommended for the subject property. County Communication No. 96-246 was referred to the Planning Committee for separate consideration.

At its meeting of December 2, 1996, the Committee recommended that County Communication No. 89-91 be referred to the Council Chair for the term beginning January 2, 1997, for a recommendation as to referral or other disposition.

At its meeting of December 18, 1996, the Council referred County Communication No. 89-91 to the Council Chair for the term beginning January 2, 1997, for a recommendation as to referral or other disposition (Committee Report No. 96-202).

At its meeting of January 9, 1997, the Council (1997-1999 Council term) referred County Communication No. 89-91 to its Land Use Committee (County Communication No. 97-4).

At its meeting of December 1, 1998, the Committee recommended that County Communication No. 89-91 be referred to the Council Chair for the term beginning January 2, 1999, for a recommendation as to referral or other disposition.

At its meeting of December 18, 1998, the Council referred County Communication No. 89-91 to the Council Chair for the term beginning January 2, 1999, for a recommendation as to referral or other disposition (Committee Report No. 98-235).

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Your Committee notes that County Communication No. 96-246 was filed on December 18, 1998, and a Service Business Residential zoning district was never established.

At its meeting of January 11, 1999, the Council (1999-2001 Council term) referred County Communication No. 89-91 to its Land Use Committee (County Communication No. 99-11).

At its meeting of November 16, 2000, the Committee recommended that County Communication No. 89-91 be referred to the Council Chair for the term beginning January 2, 2001, for a recommendation as to referral or other disposition.

At its meeting of December 1, 2000, the Council referred County Communication No. 89-91 to the Council Chair for the term beginning January 2, 2001, for a recommendation as to referral or other disposition (Committee Report No. 00-239).

At its meeting of January 12, 2001, the Council (2001-2003 Council term) referred County Communication No. 89-91 to its Land Use Committee (County Communication No. 01-21).

At its meeting of January 10, 2003, the Council (2003-2005 Council term) referred County Communication No. 89-91 to its Planning and Land Use Committee (County Communication No. 03-10).

At its meeting of January 21, 2005, the Council (2005-2007 Council term) referred County Communication No. 89-91 to its Land Use Committee (County Communication No. 05-13).

Your Committee notes that Dr. Steven Moser passed away on March 13, 2005.

By correspondence dated December 27, 2005, the Chair of the Committee asked Drs. Kocivar and Roberts whether they remained interested in pursuing their request, given the passage of time and the lack of activity on the application since 1992.

By correspondence dated January 18, 2006, Lawrence N. C. Ing, Esq., informed the Committee that he intended to meet with his clients, Drs. Kocivar and Roberts, on January 29, 2006, at which time they would decide whether to pursue their request or withdraw the pending application.

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By correspondence dated January 30, 2006, Lawrence N. C. Ing, Esq. advised the Committee that Dr. Roberts had purchased Dr. Moser's and Dr. Kocivar's interests in the subject property and is now the sole owner. He noted that the proposed SBR zoning district had been discussed for almost 20 years and had not been acted upon, and that Dr. Roberts was, therefore, renewing his original request for B-2 Community Business District zoning. He further advised that Dr. Roberts is willing to limit the use of the property to its existing use as professional offices and its height to two stories.

By correspondence dated April 25, 2006, the Chair of the Committee requested that the Planning Director provide an update on the status of the Conditional Permit, and confirmation as to whether the property is still being used for a medical clinic.

By correspondence dated April 25, 2006, the Chair of the Committee outlined the relevant procedural history of the application, and requested that the Department of the Corporation Counsel respond to several questions concerning alternatives available to the Committee, including whether B-2 Community Business District zoning is consistent with the current Community Plan designation for the property and how the Committee might pursue the establishment of an SBR zoning district at this juncture.

By correspondence dated May 16, 2006, the Planning Director provided the chronology of time extensions for the Conditional Permit, noting that the last extension is valid until October 31, 2008. He confirmed that, according to the applicant's attorney, the property is still being used for a medical clinic.

In his correspondence, the Planning Director advised that, without an SBR zoning district ordinance, the Maui Planning Commission's previous recommendation to the Council is not appropriate. He further advised that a similarly situated property on Kaohu Street was conditionally zoned B-2 Community Business District to meet the intent of the Service Business/Single Family Residential Community Plan designation (Ordinance No. 3151 (2003)). The zoning was conditioned upon uses being limited to business and service offices, any new building and parking improvements retaining the residential character of the existing neighborhood, and conformance with residential zoning standards. He recommended that similar action be taken on the subject application.

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By correspondence dated June 9, 2006 and July 21, 2006, the Chair of the Committee requested that the Department of the Corporation Counsel respond to the April 25, 2006 request.

At its meeting of January 5, 2007, the Council (2007-2009 Council term) referred County Communication No. 89-91 to your Land Use Committee (County Communication No. 07-5).

By correspondence dated February 23, 2007, the Chair of your Committee requested that the Department of the Corporation Counsel respond to the April 25, 2006 request by May 1, 2007.

By correspondence dated February 27, 2007, the Council Chair transmitted a copy of correspondence dated February 26, 2007, from the Department of the Corporation Counsel to Lawrence N. C. Ing., Esq., noting that the Department anticipated completion of its opinion by May 1, 2007.

By correspondence dated May 1, 2007, the Department of the Corporation Counsel opined that, in the absence of an SBR zoning district ordinance, B-2 Community Business District zoning for the property would be consistent with the Community Plan designation of Service Business/Single Family Residential, provided that the zoning is conditioned to: (1) limit the permitted uses of the property to medical and professional offices; (2) require that building and parking improvements retain the residential character of the existing neighborhood; and (3) require yard setbacks consistent with those in residential districts.

By correspondence dated May 10, 2007, the Chair of your Committee transmitted a copy of a metes and bounds description for the subject property from Lawrence N. C. Ing, Esq.

By correspondence dated May 22, 2007, the Chair of your Committee requested that the Department of the Corporation Counsel prepare and transmit a proposed conditional zoning bill, based on its May 1, 2007 opinion, that would enable your Committee to make an appropriate recommendation.

By correspondence dated June 26, 2007, the Department of the Corporation Counsel transmitted a revised proposed bill entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM R-1 RESIDENTIAL DISTRICT TO B-2

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COMMUNITY BUSINESS DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT WAILUKU, MAUI, HAWAII”, along with a revised Land Zoning Map No. L-373. The revised proposed bill contains five conditions of zoning, as follows:

- “1. That the maximum height of any building on the property shall be two stories or thirty (30) feet.
2. That the building and parking improvements shall retain the residential character of the existing neighborhood.
3. That uses shall be limited to medical or professional offices.
4. That any new buildings shall maintain a front yard setback of fifteen (15) feet; side and rear yard setbacks of six (6) feet for single-story buildings and ten (10) feet for two-story buildings. Landscaping shall be of a residential character.
5. That signage on the property shall not exceed a total sign area of eight (8) square feet.”

By correspondence dated July 3, 2007, the Planning Director provided your Committee with a chronology of the application.

At its meeting of July 5, 2007, your Committee met with the Deputy Planning Director; the Deputy Director of Public Works; a Deputy Corporation Counsel; Dr. Riggs Roberts; and Lawrence N. C. Ing, Esq., the attorney for Dr. Roberts.

There was no public testimony.

The Deputy Planning Director provided a historical summary of the application and the uses of the property, advising your Committee that the Department supports B-2 Community Business District zoning with the conditions reflected in the revised proposed bill. She also reiterated that Dr. Roberts’ Conditional Permit is valid until 2008.

Mr. Ing distributed copies of photographs of the structure on the subject property.

The Deputy Corporation Counsel explained the Department’s May 1, 2007 opinion.

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Your Committee discussed other Community Plan designations for which applicable zoning districts had never been established. Your Committee also discussed actions that had previously been taken to similarly rezone to B-2 Community Business District two other Kaohu Street properties with Service Business/Single Family Residential Community Plan designations (Ordinance Nos. 2747 (1998) and 3151 (2003)). The Deputy Corporation Counsel noted that he had reviewed those two ordinances and incorporated conditions that mirrored the ones imposed therein. Further, if Dr. Roberts wanted to use the property in the future for a different purpose that would be compatible with B-2 Community Business District zoning, he would need to apply for a Change in Zoning.

Your Committee discussed other alternatives that might be available, such as pursuing a Council-initiated amendment to the Community Plan designation, considering a resubmitted proposal for an SBR zoning district, or waiting until the General Plan update process is completed. Your Committee deliberated upon the proposed conditions and how they compared to what might otherwise have been implemented, had the SBR zoning district bill been passed, or if B-2 Community Business District zoning were approved without conditions.

Mr. Ing informed your Committee that at this time, the limited use of the subject property is for medical and professional offices. He assured your Committee that it would stay that way for the foreseeable future. He also noted that if any change were sought by Dr. Roberts, it would be to use the vacant portion of the parcel to add a home for one of the doctors. He acknowledged that the proposed conditions would require Dr. Roberts to return for a Change in Zoning request should he wish to add a home, and advised that Dr. Roberts finds the proposed conditions acceptable. Mr. Ing also noted that the parcel is comprised of 17,494 square feet; the existing structure is approximately 1,500 square feet; and the existing 12 parking spaces on the subject property exceed the requirement of 7 spaces.

Your Committee discussed on-site parking requirements, and height and use restrictions. Your Committee questioned whether the Conditional Permit could be renewed indefinitely, or for the life of the property. Mr. Ing opined that approving a Conditional Permit in perpetuity would likely run counter to the intent of Chapter 19.40, Maui County Code, relating to Conditional Permits.

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Your Committee recommended that Condition No. 3 be revised to read as follows: “That uses shall be limited to medical or professional offices with possible residential use.”

Your Committee voted to recommend passage of a revised proposed Change in Zoning bill that incorporates the revisions to Condition No. 3, recordation of the unilateral agreement, and filing of the communication.

Your Committee is in receipt of a revised proposed Change in Zoning bill, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee’s requested revisions and a nonsubstantive revision.

Your Committee is in receipt of an agreement entitled “Unilateral Agreement and Declaration for Conditional Zoning” executed by Dr. Roberts.

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

1. That Bill No. _____ (2007), as revised herein and attached hereto, entitled “A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM R-1 RESIDENTIAL DISTRICT TO B-2 COMMUNITY BUSINESS DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT WAILUKU, MAUI, HAWAII”, be PASSED ON FIRST READING and be ORDERED TO PRINT;
2. That the County Clerk RECORD the “Unilateral Agreement and Declaration for Conditional Zoning”; and
3. That County Communication No. 89-91 be FILED.

Adoption of this report is respectfully requested.

