

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

December 19, 2006

Committee
Report No.

06-165

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

Chair and Members:

Your Land Use Committee, having met on November 14, 2006, makes reference to County Communication No. 06-248, from the Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE GRANTING EDWIN YOUNG A CONDITIONAL PERMIT FOR THE OPERATION OF NAHIKU MARKET PLACE, FKA BLUE POOL MARKET PLACE, WITHIN THE COUNTY AGRICULTURAL DISTRICT FOR PROPERTY SITUATED AT NAHIKU HOMESTEAD, HANA, MAUI, HAWAII".

The purpose of the proposed bill is to grant a request from Edwin Young for a two-year Conditional Permit to allow for the continued operation of the Nahiku Market Place (formerly known as the Blue Pool Market Place) on approximately one acre of land at Nahiku Homestead, Hana, Maui (TMK: (2) 1-3-02:012 (por.)).

Your Committee notes that the Maui Planning Commission held a public hearing on the Conditional Permit application on April 11, 2006.

Your Committee further notes that the Maui Planning Commission, after reviewing the findings presented in the document entitled "MAUI PLANNING DEPARTMENT'S REPORT TO THE MAUI PLANNING COMMISSION APRIL 11, 2006 MEETING", and the conclusion and recommendations presented in the document entitled "MAUI PLANNING DEPARTMENT'S RECOMMENDATION TO THE MAUI PLANNING COMMISSION APRIL 11, 2006 MEETING", voted to recommend approval of the Conditional Permit on April 11, 2006.

By correspondence dated November 6, 2006, the Chair of your Committee requested that the Department of the Corporation Counsel transmit a revised proposed bill incorporating nonsubstantive revisions.

By correspondence dated November 14, 2006, the Department of the Corporation Counsel transmitted a revised proposed bill entitled "A BILL FOR AN ORDINANCE GRANTING EDWIN YOUNG A CONDITIONAL PERMIT FOR THE OPERATION

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OF NAHIKU MARKET PLACE, FORMERLY KNOWN AS BLUE POOL MARKET PLACE, WITHIN THE COUNTY AGRICULTURAL DISTRICT FOR PROPERTY SITUATED AT NAHIKU HOMESTEAD, HANA, MAUI, HAWAII”, incorporating the requested revisions.

At its meeting, your Committee met with the Planning Program Administrator, Current Planning Division, Department of Planning; a Deputy Corporation Counsel; Edwin Young, the applicant; and Rory Frampton, formerly of Chris Hart & Partners, Inc., the applicant’s consultant.

Your Committee received public testimony from one individual in support of the application, who praised the products for sale and the sense of place created there.

Mr. Frampton provided background information concerning the application and the project site, noting that it occupies less than one acre of a 105-acre parcel. He described the history of uses on the subject property, from the origination of a lunch wagon in 1977; to an expanded snack shop approved by the Maui Planning Commission for two years in 1983; to uses including an agricultural product stand, a small café serving prepared foods, an arts and crafts gallery, and a portable barbecue wagon known as “Up in Smoke”. Mr. Frampton informed your Committee that the applicant seeks a Conditional Permit for existing uses, and that no expansion of those uses is being proposed.

Mr. Frampton further noted that the two food establishment operations on the property are in compliance with State Department of Health (DOH) regulations for food establishments. He advised that the State DOH had requested that the cesspool on site be inspected by an engineer, and that the inspection had been conducted and approved by the State. He further advised that there are no public restrooms on the property.

Mr. Frampton noted that the Nahiku Market Place had not received any complaints, and requested that consideration be given to granting the Conditional Permit for a term greater than two years.

The Planning Program Administrator distributed photographs of the site that had been submitted by the applicant, and summarized the proceedings before, and conditions recommended by, the Maui Planning Commission.

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Your Committee questioned whether a Change in Zoning request had been considered as an option. The Planning Program Administrator noted other roadside stands, neighborhood stores, and art galleries that had been permitted through the Special Use Permit or Conditional Permit process. He advised that, given the agricultural nature of the area, the Department supports the Conditional Permit route, as opposed to urbanizing the property. He noted that the scales may tip in favor of rezoning property when a project would, for instance, generate traffic and be fairly urban in nature. If, on the other hand, the project in part promotes agricultural activity and is of a lower intensity, the Special Use Permit or Conditional Permit route is generally preferred.

The Planning Program Administrator noted that commenting agencies had not commented negatively on the location of the site. He also advised that, if the applicant wanted to expand the intensity of use or the square footage of the buildings, and the proposed activities were not outright permitted uses, the applicant would need to return for an amendment to the Special Use Permit and/or the Conditional Permit.

Your Committee discussed the conditions of the Special Use Permit, including the conditions relating to State Department of Transportation approvals. Your Committee also discussed hours of operation, any existing improvements in the State right-of-way, and the State DOH requirement that catchment water not be used to meet the potable water needs of the food establishments. The Planning Program Administrator informed your Committee that the applicant has addressed the concerns of the State DOH.

Your Committee discussed the lack of public restroom facilities on the property. Mr. Frampton informed your Committee that an average of 50 to 100 patrons visit the Nahiku Market Place on a daily basis. He further advised that no government agency had requested that the applicant provide public restroom facilities, and that the nearest facility is approximately three miles away, at either Wainapanapa State Park or the Hana Airport. Your Committee requested that the applicant consider accommodating a portable restroom facility. Mr. Frampton advised that the applicant did have a portable facility at one time, but that the amount of traffic on the highway led to heavy usage, and the facility was sometimes vandalized, making maintenance difficult.

Mr. Frampton informed your Committee that formal fire protection requirements were not triggered due to the limited size of the operations and the materials used. He noted that the only establishment that prepares food is the portable barbecue stand, which has a fire extinguisher, and that the portable stand is removed daily.

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Your Committee discussed land designations in the vicinity, and whether it might be appropriate for the general plan or community plan advisory committee to consider providing for diversified uses in the area. The Planning Program Administrator noted that he was not aware of any urban designations in the area. He advised that a criterion for business zoning is that the property is adjacent to urbanized lands, and that urbanizing one area could lead to a proliferation of urbanized lands and the creation of an urban center.

Your Committee noted a gap in the historical information provided by the Department of Planning, relating to permits and commercial uses on the property. Mr. Frampton advised that the permit issued in 1983 had expired in 1985, and that the snack shop operation continued despite its expiration. He also advised that the art gallery use started in approximately 1997.

Your Committee questioned the impact on the real property tax rate that would apply to the one-acre portion of the property, if the Conditional Permit is granted. Your Committee also questioned what tax rate had been applied to the property, given the admitted ongoing commercial use of the property since at least 1983. The Planning Program Administrator explained that the Department of Finance had not been asked to comment on the application. Your Committee requested that an inquiry be sent to the Department of Finance, seeking an evaluation of the applicable tax rate and any adjustments that would be appropriate under the Maui County Code.

A Committee member distributed the following proposed revision to Condition No. 5 of the revised proposed bill, to substitute for the existing language: "5. That no further development or expansion of the Nahiku Market Place, other than those uses permitted by Chapter 19.30A, Maui County Code, shall occur without an amendment to the Conditional Permit. Failure to comply may result in the revocation of the Conditional Permit pursuant to Section 19.40.080, Maui County Code."

Your Committee noted that Condition No. 5, as originally proposed, would require Mr. Young to "develop the property in substantial compliance with the representations made to the Maui County Council". The condition is a standard condition recommended by the planning commissions for Conditional Permits. However, your Committee had been informed that the uses covered by the Conditional Permit are already occurring on the property, and therefore, your Committee expressed the view that a condition relating to developing the property was not entirely appropriate.

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The Planning Program Administrator noted that excepting only those uses permitted by Chapter 19.30A, Maui County Code (MCC), would not take into account the special uses authorized under Section 19.30A.060, MCC, which would only require the approval of the Maui Planning Commission.

Your Committee recommended instead that Condition No. 5 of the revised proposed bill be revised to replace the word “develop” with “maintain” in both instances; and to replace the phrase “substantial compliance” with the word “accordance”, to read as follows: “That Edwin Young shall maintain the property in accordance with the representations made to the Maui County Council in obtaining the Conditional Permit. Failure to so maintain the property may result in the revocation of the Conditional Permit pursuant to Section 19.40.080, Maui County Code.”

Your Committee voted to recommend passage of the further revised proposed bill and filing of the communication.

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

Your Land Use Committee RECOMMENDS the following:

1. That Bill No. _____ (2006), as revised herein and attached hereto, entitled “A BILL FOR AN ORDINANCE GRANTING EDWIN YOUNG A CONDITIONAL PERMIT FOR THE OPERATION OF NAHIKU MARKET PLACE, FORMERLY KNOWN AS BLUE POOL MARKET PLACE, WITHIN THE COUNTY AGRICULTURAL DISTRICT FOR PROPERTY SITUATED AT NAHIKU HOMESTEAD, HANA, MAUI, HAWAII”, be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication No. 06-248 be FILED.

Adoption of this report is respectfully requested.

