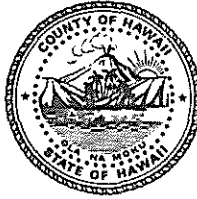


Stephen K. Yamashiro
Mayor



Virginia Goldstein
Director

Norman Olesen
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
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CERTIFIED MAIL

September 1, 1994

Mr. Rodney K. Burgess III
75-5834 Melelina Street
Kailua-Kona, Hawaii 96740

Dear Mr. Burgess:

Special Management Area (SMA) Use Permit Assessment Application
(SMMA 94-42) & Special Management Area Minor Permit No. 20 (SMM
20).

Applicant: Rodney K. Burgess, III (Banyan Tree Market Place)
Proposed Banyan Tree Market Place (Retail Carts Business)

Tax Map Key: 7-5-06: 012

We have reviewed your SMA Use Permit Assessment Application for the proposed Banyan Tree Market Place consisting of not more than 20 retail carts, maintenance building, walkways and landscaping. Under Planning Commission Rule 9, SMA Rules and Regulations, the proposal requires a Special Management Area Minor Permit before you can proceed. Enclosed please find Special Management Area Minor Permit No. 10 with conditions to allow the establishment of the proposed Retail Carts Business.

PROJECT DESCRIPTION

1. Rodney K. Burgess III has requested an SMA Minor Permit to allow the development of a Retail Carts Business, with grading, paving and landscaping improvements on the subject property.

The applicant's property is located on the mauka side of Alii Drive between the Hukilau Restaurant and Hotel complex and the Banyan Tree Shopping Center complex in Kailua Village, Kailua-Kona, Hawaii, TMK: 7-5-06: 12.

2. The applicant proposes to create an open courtyard retail cart business with not more than 20 carts which will offer locally made products as well as other businesses serving the visitor industry. The carts would be evenly located within the development in balance with the walkway and

landscaping design. The retail carts would be not higher than 9 feet in height, 24 and 48 square feet in size respectively. The proposed maintenance building will be approximately 100 square feet in size.

3. The subject parcel which is presently vacant, overgrown with vegetation, unimproved and is an eyesore to the Community. The proposal will be to beautify the area with a meandering lighted walkway system, the installation of paved areas for the retail carts and landscaping improvements of the entire property to enhance its compatibility with the outdoor retail cart business.

STATE AND COUNTY PLANS

4. The subject property is situated within the State Land Use Commission "Urban" and County's Resort (V-.75) zone districts. The General Plan Land Use Pattern Allocation Guide (LUPAG) map designates the subject area for "Resort" uses. The parcel is also situated within the Kailua Village Special District and the Kailua Village Design Commission at their meeting of January 26, 1993 meeting voted to forward a favorable recommendation on the establishment of the proposed use on the subject property. In a letter dated March 23, 1993 to the applicant, the Planning Director approved the proposed use on the subject property subject to the conditions stipulated by the Commission. At their July 19, 1994 meeting, the Commission voted to forward a favorable recommendation to the Planning Director on the development and the variance application from the off-street parking requirements with the condition that the County be responsible for identifying the 18 parking stalls required for the development.
5. The parcel is located within the Special Management Area; therefore, the applicant's proposal requires SMA review.

DESCRIPTION OF THE PROPERTY AND SURROUNDING AREA

6. The subject property is rectangular in size with approximately a 10 foot change in elevation from the Alii Drive frontage to the mauka boundary property line. The 3 adjacent developments to the subject property are the Hukilau Hotel & Restaurant complex to the north, the County of Hawaii Municipal Parking lot to the east and the Banyan Court Shopping complex to the south and Alii Drive to the west. The property fronts on both Alii Drive and Likana Lane. However, only the Alii Drive frontage has a sidewalk system.

7. The subject property is presently vacant and overgrown and in an undeveloped and unsightly state. The applicant intends to improve the entire parcel to create the open landscaped courtyard atmosphere.
8. There are no known rare or endangered species inhabiting or growing of the subject property.

PUBLIC UTILITIES AND SERVICES

9. There is no available vehicular access from Alii Drive. Vehicular access to the property for loading/unloading purposes shall be from Likana Lane. A condition of approval of the loading and unloading space shall be imposed to ensure that this activity and ingress and egress movements are conducted entirely on the property. Pedestrian access however, will be permitted from both roadways.
10. Water, electricity, telephone and other essential utilities and services are available to the subject property.

ASSESSMENT

The purpose of Chapter 205A, Hawaii Revised Statutes and Planning Commission Rule 9, Special Management Area Rules and Regulations of the County of Hawaii, is to preserve, protect, and where possible, to restore the natural resources of the island's coastal zone area. Special controls on development within these areas have been enacted, to prevent permanent loss of valuable resources. Upon review of the applicant's request for a Special Management Area Minor Permit, the Planning Director finds that the proposed development will not have any significant adverse environmental effect and that it is consistent with State and County SMA policies, as, outlined below.

a) Recreational resources:

The proposed development will not interfere with recreational uses of the coastal area, since it will be well located across and on the mauka side of Alii Drive. The proposed improvements will in fact, enhance the pedestrian experience from Alii Drive to Likana Road. The present unimproved conditions is hazardous and unsafe, but is heavily utilized.

b) Historic Resources:

The proposed development will not have any effect on any historical sites and/or the natural resources on the subject property. The large banyan tree will be maintained on the property with additional landscaping to be installed to create the open courtyard atmosphere.

c) Scenic and Open Space Resources:

The proposed development will be on the mauka side of Alii Drive. The proposed development of not more than 20 retail carts at a height of not more than 9 feet and 24 and 48 square feet in floor area dispersed throughout the property with the walkway system and new landscaping will allow for the view of Kailua Bay from the mauka portion of the property. The pedestrian pathway and open courtyard design concept of the proposal will further enhance the coastal view plane in this area. Existing access to and from the shoreline area will remain during daylight hours.

d) Coastal Ecosystems:

The proposed development should not have any significant impact on the coastal ecosystem, since grading will be limited to constructing the walkway systems, loading and unloading area, cart pads, and the landscaping improvements. The applicant will be required to take precautions to ensure that all development generated runoff shall be properly disposed of on site, and not allowed to contaminate adjacent properties or coastal waters. The proposed development does not have any proposed wastewater disposal because of the nature of the open outdoor cart retail business.

e) Economic Uses:

The applicant's proposal is consistent with the County General Plan LUPAG designation of Resort and County zoning designation of "Resort" (V-.75) for the area. The proposed open courtyard retail cart business has been determined by the Planning Director to be a permitted use on the subject property.

f) Coastal Hazards:

The Department of Public Works, FIRM map designates the subject property within the AE (Flood Zone with base elevation that has been determined). A sliver of the frontage of the property is within the VE (Tsunami Inundation Zone). The Kailua Seawall is

situated directly across the street from the subject property which has provided protection from high waves during storm conditions. However, it is noted that the entire area along Alii Drive is subject to these kinds of hazards. The proposed open air outdoor retail cart business is setback from the Seawall and should be protected. If in the event of a Tsunami, the property could be easily evacuated to minimize the cost of damage to the people and property.

DETERMINATION

Based on the preceding assessment, the Planning Director has determined that construction of the proposed development will not be contrary to State and County policies governing the Special Management Area. The Planning Director hereby approves a Special Management Area Minor Permit, subject to the following conditions:

1. The applicant, its successors or assigns shall be responsible for complying with all stated conditions of approval.
2. The applicant, its successors or assigns shall comply with all other applicable County, State and Federal Regulations.
3. Final Plan Approval for the proposed retail cart business shall be secured from the Planning Department within two years from the effective date of this permit. To assure adequate time for plan approval review and in accordance with Chapter 25-244 (Zoning Code), plans for the retail cart business shall be submitted a minimum of forty-five days prior to the date by which plan approval must be secured. Plans shall incorporate all elements stated in the conditions of approval including identifying structures, landscaping, cart locations, maintenance building and loading stall associated with the proposed use. The proposed loading/unloading area shall comply with the requirements of the Zoning Code off-street parking requirements and all loading/unloading and ingress and egress to this space shall be located on site. No direct back up into Likana Road will be permitted. All buildings and/or structures shall comply with the minimum 8 foot sideyard and 20 foot front yard setback requirements. A detailed landscaping plan with planting schedules, irrigation systems, etc. shall be submitted with the plans for Final Plan Approval. The architectural drawings of the proposed carts, the proposed material, colors building design and signage must be included in the submittal for Final Plan Approval.

4. Revised plans for Final Plan Approval submittal and review shall also be presented to the Kailua Village Design Commission for their recommendation to the Planning Director prior to the granting of Final Plan Approval.
5. Construction of the proposed improvements shall commence within one year from the effective date of receipt of Final Plan Approval and shall be completed within two years thereafter.
6. There shall not be more than 20 retail carts placed on the subject property for the proposed use. The proposed fencing at both of the Alii Drive and Likana Lane frontages shall not be higher than 6 feet in height from the finish grade or if to be placed on a CRM wall, the overall height of the CRM wall and the fences shall not exceed 6 feet in height. The gates to the property shall be open between the hours of 7:00 A.M. to 10 P.M..
7. The applicant secure the variance from the off-street parking from the Planning Department prior to submittal of any plans for Final Plan Approval review.
8. The applicant shall be responsible to institute and enforce the Rules and Regulations of the Banyan Tree Market Place.
9. An annual monitoring report shall be submitted to the Planning Director prior to the anniversary date of the approval of the permit. The report shall include, but not be limited to, the status of the development and to what extent the conditions of approval are being complied with. This condition shall remain in effect until all of the conditions of approval have been complied and the Planning Director acknowledges that further reports are not required.
10. An extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances: a) the non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence; b) granting of the time extension would not be contrary to the general plan or zoning code; c) granting of the time extension would not be contrary to the original reasons for the granting of the permit; and d) the time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

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11. The applicant, its successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for property damage, personal injury, or death arising out of any act or omission of the applicant, its successors or assigns, officers, employees, contractors, and agents under this permit or relating to or connected with the granting of this permit.

Should any of these conditions not be met or substantially complied with in a timely fashion, the Planning Director shall initiate procedures to revoke this permit.

Please feel welcome to contact Royden Yamasato of my staff at 329-4878 if you have any further questions.

Sincerely,


VIRGINIA GOLDSTEIN
Planning Director

RHY:rld
1089Q

xc: DPW, Chief Engineer
Planning Commission
SMA Section
West Hawaii Office