

County of Hawai'i

PLANNING DEPARTMENT

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
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Special Management Area Minor Permit No. 11-000191

Project: Expansion of the Restaurant's Seating Area
Applicant: Charles Lipps, Jr.
Land Owner: IWF KKH LLC
Location: Kailua Village, North Kona, Hawai'i
TMK: 7-5-6:20 **Land Area:** 5.434 acres
TMK: 7-5-6:32 **Land Area:** 1.616 acres

Applicant's Request

1. Project Description:

This application is for the expansion of the seating area makai of the restaurant on the subject parcels. According to our files, the restaurant was constructed over portions of two parcels. The project area, however, is only on Parcel 32.

The project area will be at the same grade as the grass around the seating area and the restaurant's finished floor. Surrounding the concrete pad will be a short lava rock wall less than 42" and taller than 22" in height. On the concrete and inside the small barrier wall will be two small fire pits with seating around them.

2. Purpose of Project:

The applicant is proposing to expand the seating area on the makai side of the restaurant.

3. Project Valuation: \$80,000.

4. Determination:

Hawaii Revised Statutes Chapter 205A and Planning Commission Rule 9-4(e)(B) and (E) states that "Development" includes "*Grading, removing, dredging, mining, or extraction of any materials*" and "*Construction, reconstruction, demolition, or alteration of the size of any structure*", respectively. Therefore, the expansion of the restaurant's seating area requires a Special Management Area (SMA) Minor Permit.

State and County Plans

1. State Land Use District: Both parcels are designated Urban.

2. **General Plan:** The General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates Parcel 20 as Resort Node and Medium Density Urban while Parcel 32 is designated Resort Node and Open.
3. **County Zoning:** Parcel 20 is zoned Resort-Hotel (V-.75) while Parcel 32 is zoned Resort-Hotel (V-.75) and Open (O).
4. **Special Management Area (SMA):** Although both parcels are in the SMA, only Parcel 32 has frontage along the coastline. However, the project area is approximately 163 feet from the ocean. Therefore, it is not located in a "shoreline area" as defined by Section 205A-41, Hawai'i Revised Statutes (HRS).
5. **Flood Zone:** "VE"

<p style="text-align: center;">Compliance with Objectives and Policies of Chapter 205A, Hawaii Revised Statutes (HRS), Regarding the Special Management Area</p>

Only Parcel 32 has frontage along the coastline. However, the project area is approximately 163 feet from the ocean and would not affect the recreational resources available to the public. .

Check all objectives and policies found to be consistent with proposed improvement. Issuance of SMA Minor Permit requires that activity be consistent with all objectives & policies.

The proposed development is consistent with the following objectives and policies:

- ☒ Development will not have any significant adverse environmental or ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interest. Such adverse effect shall include, but not be limited to, the potential cumulative impact of individual developments, each one of which taken in itself might not have a substantial adverse effect and the elimination of planning options.
- ☒ The proposed development is consistent with the Hawaii County General Plan and the Zoning Code.
- ☒ The proposed development does not conflict with the following objectives of Chapter 205A, HRS, to:
 - ☒ Provide coastal recreational opportunities accessible to the public.
 - ☒ Protect, preserve, and where desirable, restore those natural and man-made historic and pre-historic resources in the coastal zone management area that are significant in Hawaiian and American history and culture.
 - ☒ Protect, preserve, and where desirable, restore or improve the quality of coastal scenic and open space resources.
 - ☒ Protect valuable coastal ecosystems from disruption and minimize adverse impacts on all coastal ecosystems.
 - ☒ Provide public or private facilities and improvements important to the State's economy in suitable locations.
 - ☒ Reduce hazard to life and property from tsunamis, storm waves, stream flooding, erosion, subsidence and pollution.

- ☒ Improve the development review process, communication, and public participation in the management of coastal resources and hazards.
- ☒ Stimulate public awareness, education, and participation in coastal management.
- ☒ Protect beaches for public use and recreation.
- ☒ Promote the protection, use, and development of marine and coastal resources to assure their sustainability.
- ☒ The proposed development is consistent with the following policies of Chapter 205A, HRS, relating to:
 - ☒ Recreational Resources
 - ☒ Historic Resources
 - ☒ Scenic and Open Space Resources
 - ☒ Coastal Ecosystems
 - ☒ Economic Uses
 - ☒ Coastal Hazards
 - ☒ Managing Development
 - ☒ Public Participation
 - ☒ Beach Protection
 - ☒ Marine Resources
- ☒ The proposed development conforms to the requirements of Chapter 343, HRS, regarding Environmental Impact Statements.

Findings

As discussed above, the proposed development will not have any significant adverse environmental or ecological effect, except as such adverse effect is minimized to the extent practicable and clearly outweighed by public health, safety, or compelling public interest.

The proposed development is consistent with the Hawaii County General Plan and Zoning Code.

The proposed development is consistent with the objectives, policies, and SMA guidelines of Chapter 205A, HRS.

The estimated cost of approximately \$80,000 is not in excess of \$500,000.

Upon review of the enclosed September 1, 2011 memorandum, the Department of Public Works, Engineering Division stated the following:

"We reviewed the subject application and our comments are as follows:

We have determined that the subject improvements (restaurant lanai addition) are located within Flood Zone "VE" according to the Flood Insurance Rate Map (FIRM) by the Federal Emergency Management Agency (FEMA).

Our records indicate we signed building permit application that included the subject development, along with tsunami damage repairs, on July 20, 2011 as an exempt improvement under Chapter 27 of Hawai'i County Code. Upon further consideration, the proposed lanai addition with perimeter wall is a floodplain encroachment that is subject to Section 27-18 (3). We request that the required documentation under that regulation be a condition of any SMA permit approval"

Should there be any questions concerning this matter, please feel free to contact Kiran Emler of our Kona Engineering Division office at 327-3530."

Pursuant to Planning Commission Rule Section 9-10(E), **Special Management Area Minor Permit No. 11-000191** is hereby approved to allow for the expansion of the restaurant's seating area, subject to the applicant's compliance with the conditions of approval as specified below.

Conditions of Approval

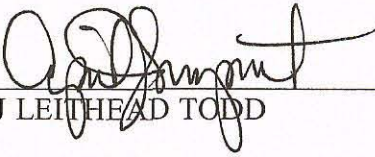
The Planning Director has approved **SMA Minor Permit No. 11-000191** subject to the following conditions:

1. The applicant, its successors or assigns shall be responsible for complying with all stated conditions of approval.
2. Applicant shall secure Final Plan Approval for the proposed expansion of the restaurant's seating area within one (1) year from the approval date of this permit.
3. The applicant shall comply with all applicable requirements of the State Department of Health, the County Department of Public Works and applicable requirements of other affected agencies.
4. Prior to obtaining a building permit, submit documentation from the Department of Public Works, Kona Engineering Division that the proposed improvements comply with Chapter 27, Floodplain Management, Section 23, Standards for coastal high hazard areas.
5. At the project area, a construction barrier shall be erected mauka of the concrete walkway.
6. Use of water spray or other measures to control dust must be utilized to protect the visitors and the anchialine pond on the adjacent parcel.
7. An extension of time for the performance of the conditions contained herein 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 original reasons for the granting of the permit; and

- c) The time extension granted shall be for a period of not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended up to one additional year).
8. Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director shall initiate procedures to revoke the permit.

Should you have questions, please contact Esther Imamura of this office at 961-8139.

APPROVED:


for BJ LEITHEAD TODD

SEP 08 2011

Date