

LEEWARD PLANNING COMMISSION
COUNTY OF HAWAI'I

HEARING TRANSCRIPT
JULY 24, 2009

A regularly advertised hearing on the applications of **OLU KAI, LTD. (SMA 396/SSV 654)** was called to order at 2:45 p.m. in the King Kamehameha's Kona Beach Hotel, Ballroom IV, 75-5660 Palani Road, Kailua-Kona, Hawai'i with Chairman Rodney Watanabe presiding.

PRESENT: Rodney Watanabe
Brandi Beaudet
Lani Bowman
Geraldine Giffin
Frederic Housel
Wayne Iokepa
Warren Lee, Public Works Director – Ex Officio Member

Brandon Gonzalez, Deputy Corporation Counsel
BJ Leithead Todd, Planning Director
Norman Hayashi, Planning Program Manager
Jeff Darrow, Staff Planner
Maija Cottle, Staff Planner

And two people from the public in attendance

APPLICANT: OLU KAI, LTD. (SMA 396/SSV 654)

- a. Amendment to condition relating to extension of time limit and related conditions of Special Management Area Use Permit No. 396, which allowed the expansion of the existing Hugo's Restaurant and related improvements.
- b. Amendment to condition relating to extension of time limit and related conditions of Shoreline Setback Variance No. 654, which allowed some of the restaurant improvements within the 20-foot shoreline setback area.

The properties involved are the site of the existing Hugo's Restaurant complex located on the makai side of Ali'i Drive, adjacent to the Royal Kona Resort, Kailua-Kona, North Kona, Hawai'i, TMK: 7-5-9: 14, 15, 17 and 18.

WATANABE: We are on our final agenda item, Agenda Item No. 5. This would be Olu Kai, Ltd. This is Special Management Area Use Permit No. 396, Shoreline Setback Variance No. 654. And I'll turn it over to you, Mr. Darrow.

DARROW: Thank you, Mr. Chairman. Good afternoon, Members of the Planning Commission. If I can direct your attention to the presentation. Our last agenda item is Olu Kai, Ltd. They are requesting amendments to Special Management Area Use Permit No. 396, as well as Shoreline Setback Variance No. 654. The location of this application is within the North Kona District. More specifically we are looking at Ali'i Drive that's running through the middle of the map in a north-south direction. Additionally we have Kuakini running in a

north-south direction running parallel with Ali‘i Drive. The actual area of the application is identified by a black outline, and there’re approximately four properties that are involved for this particular project. Just for reference this particular area is known as Coconut Grove Marketplace, we have the Royal Kona Resort Hotel that’s located just to the south of this project, and this is actually identified as Huggo’s Restaurant – you might be familiar with that.

This is an aerial. Again, it might be a little dark. The aerial shows Ali‘i Drive running in a north-south direction through the middle of the map. We have the Royal Kona Resort identified on the lower portion of the map, Coconut Grove Marketplace, and we have the actual area of the application identified as the existing Huggo’s Restaurant, as well as the parking area that will be referred to in this particular area. There has been some improvement in the parking area. There is going to be additional parking improvements in this particular area.

The original permits, SMA 396 and Shoreline Setback Variance No. 654, allowed the following: They allowed the expansion of the existing Huggo’s Restaurant with the construction of second and third stories above the existing single-story building; they also allowed for off-site improvements including parking area expansion from 25 parking stalls to 50 parking stalls; the extension of the shoreline promenade – right now you’ll notice along Ali‘i Drive there is a nice shoreline promenade, this would extend it to, I believe, to meet up with the Royal Kona Resort, coming through Kahakai Road through the frontage of the property, as well as improvements along Kahakai Road, which is the road that’s right in front of Huggo’s that comes from Ali‘i Drive to the entrance of Royal Kona Resort.

The applicant is requesting a five-year time extension to Condition 3 of both SMA 396 and Shoreline Setback 654. Condition 3 is the condition that is the timeline for construction; it also requires Plan Approval. So they are requesting an additional five-year time extension.

This is the site plan of the makai portion of the properties. We have Kahakai Road that’s on the upper portion of the map. So this portion of the site plan only shows the existing Huggo’s building, as well as Huggo’s On The Rocks which is not part of this application. The red line is the actual identified shoreline, certified shoreline area. We have some other colors which identify the different stories. The purple color is the first story which is existing at this time. There is also a second story which is the blue dotted line, which is proposed, as well as the third story which is the green line, which is proposed. And so these kind of overlay; you are looking at a bird’s eye view here.

This is the portion on the mauka side of Kahakai Road that shows the parking improvements that will be added, as well as improvements to the Kahakai Road, and also the promenade that will be extended.

This is an aerial photo to give you a little bird’s eye view of the area. We have the existing Huggo’s Restaurant, as well as Huggo’s On The Rocks, Ali‘i Drive and the Royal Kona Resort.

This is on Kahakai, looking at the entrance to Huggo’s, facing north. It appears that they started what looks like stairs going up to what could be the future second story. But the entrance to the restaurant is right in this area and the restaurant is right to the left side of the photo. This is on the ocean side of the existing restaurant, so you can see the story. There’s, this was all

constructed in the late '60's and at that time the shoreline was outside; and so this was built at that time within its land where a portion of the shoreline certifi-, shoreline. This is the existing two-story structure that's in the parking area that will be removed in the future and this area will be all used for parking. There is an access to the parking area onto Ali'i Drive. Again, another photo.

The Planning Director is recommending approval of these amendment requests by the Planning Commission. Are there any questions?

WATANABE: Fellow Commissioners, any questions of staff? Yes, Ms. Bowman.

BOWMAN: I just have a question. I know that the certified shoreline was done long, long, long time ago. Was there -? And I think maybe because it's like up to, it's a berm? Can you see why there wasn't a more recent one?

DARROW: Well, the actual shoreline was done in 1998 and recertified in 1999. This shows the shoreline at that time. If you'll notice, it also follows an existing wall. That wall becomes the stabilized shoreline until the wall is removed; so the shoreline remains intact until that wall is removed. There are portions that you can see that come outside of that, but again, when this was constructed, it was constructed, the shoreline was outside of that area. There also is a portion here identified with a crosshatch; this is an existing DLNR easement that they were able to get from DLNR. They were planning on extending the improvements out to this area, but that would require another easement so they brought back to second- and third-story, not to go beyond that area.

BOWMAN: Thank you. And just, and the existing pillars that hold up the building – and I guess the applicant can answer this – I assume, are strong enough and, yeah, engineering-wise strong enough to hold up two more stories.

DARROW: I believe in the application, the original application, it said that the second and third stories would be constructed independently of the existing story. And again, the applicant can confirm that. But it sounded like it wasn't going to be depended on these particular supports.

BOWMAN: Thank you. That's right. Thank you.

WATANABE: Mr. Housel.

HOUSEL: Yes. Now, what we are looking at here is the first story, is that correct?

DARROW: Correct.

HOUSEL: And then we are talking about going two more stories up then, right?

DARROW: Correct.

HOUSEL: Okay. Just trying to get an idea of the profile. It's obviously right next to the Royal Kona, and my guess is it looks like the Royal Kona is, what, six floors?

DARROW: I'm not sure but I believe it's even higher than that. But I -.

HOUSEL: Okay. So it certainly is going to be less than that.

DARROW: Correct.

HOUSEL: Thank you.

WATANABE: Any further questions? No? Then -.

GIFFIN: Mr. Chairman?

WATANABE: Yes.

GIFFIN: Jeff, can you tell me how many additional parking stalls there will be?

DARROW: Currently there are 25 parking stalls. The improvements will double that to 50 including loading and handicap parking.

GIFFIN: Okay.

WATANABE: Okay? Any further questions? Then I have one person who signed up from the public to testify: Janice Palma-Glennie.

LEITHEAD TODD: Not here.

WATANABE: Not here anymore? Okay, okay. Well, let the record show we tried to call on her. With that, then let's have you come up. I'd like to swear you in, please. Would you raise your right hand? Do you swear or affirm to tell the truth now before the Planning Commission?

VON PLATEN LUDER: Yes, I do.

WATANABE: Thank-, would you speak into the mike? And would you state your name and address for the record and then you may -.

VON PLATEN LUDER: Yes. Eric von Platen Luder and my -. My residence or business?

WATANABE: Residence.

VON PLATEN LUDER: Residence is 75-638 Makalauna Place, Kailua-Kona, Hawai'i 96740. And -.

WATANABE: Okay. Mr. von Platen, have you had a chance to review the recommendations by the Planning Director and are you comfortable with the conditions as proposed?

VON PLATEN LUDER: Yes, I am. We are asking for a condi-, just, all we're really asking for is just to have a time extension of SMA Permit that was then granted already. It was time that we obviously, we were supposed to be starting construction this past April, last September we halted all, all construction plans, and in November of this year is when our Permit will expire. So we are really kind of under the gun and that's why we are asking for a time extension on this, because economically it just wasn't feasible for us to go ahead with our construction plans as planned.

WATANABE: Okay, thank you. Now, we had some Commissioners -. Lani, you had a question for the applicant?

BOWMAN: No, I think it was answered; I had forgotten that the two stories will be independent of the, of your original building, right?

VON PLATEN LUDER: Yes, the building as it stands there will not support the, you know, the new construction. And so even though it will appear that it does, it's been designed so that it's not structurally part of, you know, holding up the rest of the building.

BOWMAN: I did have just a question. Historically looking back, I know you had applied quite a while ago to put on the second and third stories back in '99 and again in 2004, and then you mentioned that just you were planning to do it in April. Were there reasons why you didn't -?

VON PLATEN LUDER: Well, there was a, kind of the reasons are we were, the real reasons were there wasn't, you know, I was waiting for business to really warrant doing the expansion. And so I had two things that were playing: one, when is business going to warrant it, when will we have enough funds available to be able to take on the expansion, and at the last possible time before our Permit runs out, of course, because I, you know, we couldn't, we had to perform within a specified amount of time. So I really was waiting until the end of the Permit so that we would be in the best financial position to do it. And unfortunately, the end of the Permit came. There was time with, you know, the economic situation that doesn't allow us to, doesn't make sense for us to do it right now. So I guess, to answer your, I don't know if I've answered you question, but I was kind of waiting, I was waiting until the last probable, possible moment to make the investment. One thing is that, you know, with making investment, of course, then we have to start paying for the investment, and I didn't want to take that kind of financial responsibility on until I really had all of our ducks in a row. And for a small company like ours, ten years to prepare for a \$5,000,000 project was, was a long time, but I really didn't start preparing for it until about three years ago when we started all the serious planning and finalizing with all of our, all the negotiations that we had to do with the State and the Department of Land and Natural Resources with regard to the area of easement, also with engineers, and we, we'd even selected contractors and they had been having weekly meetings with our contractors, we had all of our bids in, our subcontractors had been selected; and all of this was being done last

summer in preparation for the April groundbreaking. But as I said, then the economic conditions changed and they made it not feasible to do it at this time. So that's why we are asking for another time extension.

BOWMAN: Does five years seem feasible to you?

VON PLATEN LUDER: Well, you know, when I looked at it today, re-read the recommendations, I was thinking, you know, gosh, is five years going to be enough time to get out of this economic condition, restart, and because, you know, as the economic, the longer the economic slump goes on, the more our funds and our ability to borrow money, you know, that changes daily depending on our, you know, on the success of financial condition of the business. But I understand from, that five years is what we, is the most we can ask for at this time – I may be wrong. But if that's all we can ask for right now, then that's what we need, and then I'll have to, you know, do my best not to be in the same position right now, not in five years.

WATANABE: If I might add that you are correct in your assumptions; we would be strain to extend beyond the five years. So I think this would be the best that you could hope to, I think, okay, and we review that at, or some other commission would review that at that time.

BOWMAN: Maybe – correct me if I'm wrong – have there been cases where we did five years and then a five-year extension with the -?

WATANABE: Planning Director's -.

BOWMAN: With the Planning Director's -.

WATANABE: Yes, and that is typically when the project first comes on board.

BOWMAN: Okay.

WATANABE: So typically what you would have is like a five-year period to construct, etc. with, if you need an extension of time, at the discretion of the Director they can match that initial five-year period; that's the typical language. However, subsequent to that once you come in for an extension any future extensions would be subject to the approval of the Planning Commission, and that's the standard we've been applying.

BOWMAN: Okay, thank you.

WATANABE: Okay? Any further questions of the applicant? Okay, thank you for your testimony. You may be seated.

VON PLATEN LUDER: Thank you, Commissioners.

WATANABE: Do we need to discuss this any further or would someone care to make a motion?

BOWMAN: I move -.

WATANABE: Ms. Bowman.

BOWMAN: Yes. I'd like to make a recommendation.

WATANABE: Yes.

BOWMAN: I move that we -.

WATANABE: Let's take it separately then, yeah, cause we have two.

BOWMAN: Okay. So I move that we – let's see – amendment to the condition relating to the extension of time and relating conditions of Special Management Area Use Permit No. 396, which allows the expansion of the existing Huggo's Restaurant and related improvements, that we favorably -.

WATANABE: No, it's an approval.

BOWMAN: Approval, that we approve -.

WATANABE: Yeah, we have the authority on an SMA so -.

BOWMAN: Yes, favorably approve it. How's that?

WATANABE: Okay. Subject to the conditions?

BOWMAN: Subject to the conditions.

WATANABE: Okay, thank you very much.

HOUSEL: And I'll second that.

WATANABE: Okay, thank you. If there is no need for further discussion, and it doesn't look there is, Mr. Darrow?

DARROW: Thank you, Mr. Chairman. Commissioner Bowman?

BOWMAN: Aye.

DARROW: Commissioner Housel?

HOUSEL: Aye.

DARROW: Commissioner Beaudet?

BEAUDET: Aye.

DARROW: Commissioner Giffin?

GIFFIN: Aye.

DARROW: Commissioner Iokepa?

IOKEPA: Aye.

DARROW: And Mr. Chairman?

WATANABE: Aye.

DARROW: The motion passes, six to zero.

WATANABE: Okay, so we've got a half of it done. Now we still have Olu Kai, Ltd., amendment to Shoreline Setback Variance No. 654. And would you care to continue or -?

BOWMAN: Sure, I'll continue since you -. Okay, so I move that we approve the amendment to condition relating to the extension of time limit and related conditions of Shoreline Setback Variance 654, which allows some of the restaurant improvements within the 20-foot shoreline setback area.

WATANABE: Thank you. Mr. Housel?

HOUSEL: Second.

WATANABE: Thank you. Mr. Darrow?

DARROW: Thank you, Mr. Chairman. Commissioner Bowman?

BOWMAN: Aye.

DARROW: Commissioner Housel?

HOUSEL: Aye.

DARROW: Commissioner Beaudet?

BEAUDET: Aye.

DARROW: Commissioner Giffin?

GIFFIN: Aye.

DARROW: Commissioner Iokepa?

IOKEPA: Aye.

DARROW: And Mr. Chairman?

WATANABE: Aye.

DARROW: The motion passes, six to zero.

WATANABE: Okay, thank you very much.

The discussion ended at 3:05 p.m.

Respectfully submitted,

Noriko Sauer, Secretary
Leeward Planning Commission