



PLANNING COMMISSION

KAAINA S. HULL, CLERK OF COMMISSION

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LORI OTSUKA, MEMBER

MEMORANDUM

DATE: March 8, 2021
TO: Planning Commission
FROM: Clerk of the Commission
SUBJECT: 2nd Addition to the Planning Commission 3/9/2021 Agenda

F. HEARINGS AND PUBLIC COMMENT

2. New Agency Hearing

b. Kīlauea Old Mill, LLC

53. Letter (3/8/2021) from Kathleen Butler.
54. Letter (3/8/2021) from Paul and Ashlee Haraguchi.
55. Letter (3/8/2021) from Liann Nalani Machado.
56. Letter (3/8/2021) from Peter Morimoto, Attorney at Law on behalf of Jim and Shelly Spencer.
57. Letter (3/8/2021) from Malia Vasallo.
58. Letter (3/8/2021) from Felicia Cowden, Councilmember, Kaua'i County Council.
59. Letter (3/8/2021) from Austin Ritchie.
60. Letter (3/8/2021) from Liyna Cardinal.

I. GENERAL BUSINESS MATTERS

3. HBR Enterprises, LLC

- h. Letter (3/8/2021) from Felicia Cowden, Councilmember, Kaua'i County Council.

Shanlee Jimenez

From: Kaaina Hull
Sent: Monday, March 08, 2021 10:38 AM
To: Shanlee Jimenez
Subject: FW: Old Mill property Kilauea Use permit

-----Original Message-----

From: Kathy Butler <rwbutler@hawaiiantel.net>
Sent: Monday, March 08, 2021 10:38 AM
To: Kaaina Hull <khull@kauai.gov>
Subject: Old Mill property Kilauea Use permit

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

Aloha,

I support the approval of the Kilauea Old Mill Application. This property has been used as light industrial since the early 70's. It has businesses on all 3 sides of it. Lighthouse Rd and Oka St is a busy corner already with traffic going into Kilauea and out Liliuokalani. It does not seem conducive to residential in any way and it would make a negligible impact on any housing needs.

The other issue is there are established valuable services on the property. Longman Jiu Jitsu is offering a life changing service to the children and adults in Kilauea and the NS. I personally witnessed my son learn introspection and strength of character as a result of participating in these classes years ago as a young adult. He learned to make good decisions and believe in himself. It changed his life. In these times we need these positive influences within our community. The new commercial property across the street is not an realistic option as they seem to be unreasonable in their rent and demands. The cost of classes would become prohibitive for our families in Kilauea, the backbone of our community. I feel Bruno is key to keeping many of our kids off of drugs. We need to focus on the quality of life for our community. Keeping a bit of the Plantation values alive...and watching out for each other. Let's help keep Longman Jiu Jitsu in Kilauea because Bruno Ewald provides an option we desperately need.

Thank you,

Kathleen Butler

808-828-1415
rwbutler@hawaiiantel.net
PO Box 285
Kilauea, Hi 96754

Sent from my iPhone

F.2.b.53.
MAR 18 2021 (A)

Shanlee Jimenez

From: Kaaina Hull
Sent: Monday, March 08, 2021 12:29 PM
To: Shanlee Jimenez
Subject: FW: Regarding Kilauea Old Mill Application for Use Permit
Attachments: Jiu Jitsu Letter.pdf

-----Original Message-----

From: Ashlee Libbrecht <alibbrec@icloud.com>
Sent: Monday, March 08, 2021 11:18 AM
To: Kaaina Hull <khull@kauai.gov>
Cc: paul.ashlee711@gmail.com
Subject: Regarding Kilauea Old Mill Application for Use Permit

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F.2.6.54.
MAR 18 2021 (A)

3/4/2021

Paul and Ashlee Horaguchi
4301 Momi Street
Kilauea, HI 96754
808-639-6127
Pharaguchi@gmail.com

RE: Kilauea Old Mill Application for Use Permit

To whom it may concern,

We support the approval of the Kilauea Old Mill Application because of the positive impact it has on our community. At this time, one of our two children attends jiu jitsu and our second looks forward to the class when he is of age. Paul, the father of our children, also attended classes as a young boy back in 2003 for two years with Professor Foruno. It is Paul's dream come true for his children to have the same interest and passion for such an incredible sport and with such a wonderful instructor and team. We are blessed to have the class accessible and close by in our community. It has such a positive influence on our children and near future, and most of all our community. Please feel free to contact us if additional information or our presence for a hearing is needed.

Mahalo,

ST REGIS
PRINCEVILLE

Ashlee Horaguchi + Paul F. Horaguchi

Shanlee Jimenez

From: Planning Department
Sent: Monday, March 08, 2021 12:30 PM
To: Shanlee Jimenez
Subject: FW: Public Hearing March 9,2021, #2 Class IV Zoning permit and use permit Old Mill Building, Kilauea: Opposition letter
Attachments: Dear Kauai Planning Department.docx

From: Nalani M <nalani78@msn.com>
Sent: Monday, March 8, 2021 12:23 PM
To: Planning Department <planningdepartment@kauai.gov>
Subject: Public Hearing March 9,2021, #2 Class IV Zoning permit and use permit Old Mill Building, Kilauea: Opposition letter

CAUTION: This email originated from outside the County of Kauai. Do not click links or open attachments even if the sender is known to you unless it is something you were expecting.

Dear Kauai Planning Department,

Please find my letter of opposition attached for tomorrows hearing. March 9, 2021. Regarding the permit/use permits for the Old Mill Building, Kilauea.

Kindly confirm receipt of this email and letter,
Mahalo,
Liann Nalani Machado

F.2.6.55.
MAR 18 2021 (A)

RE: Class IV Zoning Permit Z-IV-2021-7 and Use permit U-2021-6, Old Mill Building, Kilauea. 2430-A Oka Street, TMK 5-2-014:049

Dear Kauai Planning Department,

I am writing to express my strong opposition to the consideration of class IV zoning permit and use permit to allow a juice bar operation at the Old Mill Building, in Kilauea. This will cause traffic and safety problems, that are already over-capacity, on an already very busy portion of the street, where vehicles back up traffic flow 50-100 feet onto Oka Street's main entrance. Because there is already not enough parking and too much traffic, vehicles circle about in our neighborhood looking for parking where our children are out and about and/or riding their bikes to and from school.

Traffic and safety of pedestrians are major areas of concern. Traffic backs up the area of the pharmacy and the Old Mill building during business hours of the existing health club. This new establishment will make traffic worse. In general, the area traffic is continuing to increase, and heavy traffic with no parking is already common during business hours.

Kilauea already has ample commercial space to fit the need of our community and new business opportunities. Kilauea already has 4 well established businesses serving our community a wide variety of juice bar items. Kauai Juice Co, Trilogy Coffee, Kai bar and Pau Hana pizza, all within a 1-mile radius. While we may have room for more local businesses, this building and area is in an urban neighborhood and has maxed out its capacity in our little community.

Thank you for your continued service and support of our communities.
Best regards,

Liann Machado
Multi-generational native Kauai resident.
Kilauea home owner, resident
4320 Oka Place
Kilauea, HI 96754

Peter Morimoto
Attorney at Law

PO Box 408
Lihue, Hawaii 96766
Tel. (808) 482-1451

Kauai Planning Commission
c/o County of Kauai Planning Department
4444 Rice Street, Suite A473
Lihu'e, Kauai 96766

RE: Class IV Zoning Permit Z-IV-2021-7 and Use Permit U-2021-6

Dear Planning Commission,

I represent Jim and Shelly Spencer, who live at 4315 Oka Place and own properties located at 2394 Oka Street, 4319 Oka Place and 4277 Kilauea Road.

The Spencers received the public hearing notice regarding the Planning Commission's March 9, 2021 meeting and the above-referenced use permit. The notice (1) violates the Planning Commission Rules, (2) is misleading (3) fails to provide the Spencers and all the owners of adjoining properties with adequate notice of the Agency Hearing that is scheduled on the March 9, 2021 Planning Commission Agenda, and (4) is evidence of a violation of the County's Code of Ethics.

- I. The Public Hearing Notice for the March 9, 2021 Planning Commission Agenda conflicts with the Planning Commission's Rules regarding intervention.

Rule 1-4-3 of the Commission's rules reads as follows:

1-4-3 Method of Filing: Timing. Petitions to intervene shall be in writing and in conformity with these Rules. The petition for intervention with certificate of service shall be filed with the Commission at least seven (7) days prior to the *Agency Hearing* for which notice to the public has been published pursuant to law. Untimely petitions for intervention will not be permitted except for good cause shown.

However, the Public Hearing Notice states that:

Petitions for intervenor status must be submitted to the Commission and the applicant at least seven days *prior to the date of the hearing advertised herein* and shall be in conformance with Chapter 4 of the Rules of Practice and Procedure of the Planning Commission. A copy of the proposal will be emailed to any

F.2.b.56.
MAR 18 2021 (A)

interested person who requests a copy. Please submit your request to the Planning Department. KAUAI PLANNING COMMISSION, Donna Apisa, Chairperson, By Kaaina S. Hull, Clerk of the Commission.

The "hearing advertised herein" is a "Public Hearing". The notice does not state that an "Agency Hearing" is taking place on March 9, 2021.

Under the Planning Commission's rules, a "Public Hearing" serves a very different purpose from an "Agency Hearing":

- (i) "Agency Hearing" refers only to such hearing held by the Commission immediately prior to a judicial review of a contested case as provided in Section 91-14 HRS, including but not limited to Class IV, Use, and Variance Permits pursuant to the Comprehensive Zoning Ordinance of the County of Kaua'i and other applicable laws.
- (ii) "Public Hearing" means a quasi-legislative hearing regarding the adoption, repeal, and amendment of rules and ordinances *and a means to solicit general public input on matters before the Commission* pursuant to the HRS and Kaua'i County Code, as Amended, 1987.

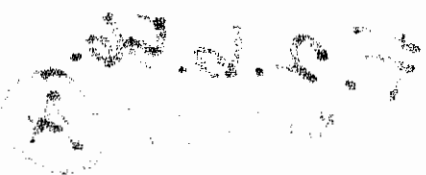
In other words, a Public Hearing is to elicit testimony regarding the concerns of the general public regarding permit applications. It is not the decision-making "Agency Hearing" that generally takes place after public input is received. As such, its directive that the petition to intervene must be filed before the Public Hearing and not the Agency Hearing is contrary to the Rule.

II. The Public Hearing Notice for the March 9, 2021 Planning Commission Agenda is misleading and conflicts with the actual March 9, 2021 Planning Commission Agenda.

Section F.4. of the March 9, 2021 Planning Commission Agenda is entitled "New Public Hearing". That section does not list any of the development projects referenced in the March 9, 2021 Public Hearing Notice.

Section F.2. of the March 9, 2021 Planning Commission Agenda is entitled "New Agency Hearing". That section lists the development projects referenced in the March 9, 2021 Public Hearing Notice.

In other words, the Public Hearing Notice misleads the reader into thinking that the Planning Commission is only soliciting the general public's input when in reality, the Planning Commission will be engaging in decision-making on the projects. This is inadequate notice to the people who will be directly impacted by the development and is a violation of their right to due process.



Handwritten signature and date stamp: 3/8/21

III. The Public Hearing Notice is evidence of a violation of the Kauai County Code of Ethics.

The Kauai County Code reads in part as follows:

Sec. 3-1.7 Conflicts of Interest.

- (a) No employee shall take any official action directly affecting:
- (1) A business or other undertaking in which he or she has a substantial financial interest.

The notice directs intervention petitions to be submitted to Donna Apisa as Chairperson of the Planning Commission. As a Planning Commissioner, Ms. Apisa is bound by the Code of Ethics. It prohibits Ms. Apisa from taking any official action directly affecting a business in which she has a substantial financial interest. Ms. Apisa is a member of the company that is applying for the use permit but the notice directs intervention petitions to be sent to her as Chair of the Planning Commission. However, the ethics code prohibits Ms. Apisa from receiving or processing intervention petitions regarding her own project, no matter what the notice provides.

Clearly, the Public Hearing Notice violates the Planning Commission's Rules, the County's Code of Ethics and the neighborhood's due process rights to be properly notified about the development.

For the foregoing reasons, Jim and Shelly Spencer object to the Planning Commission considering the Class IV Zoning Permit Z-IV-2021-7 and Use Permit U-2021-6 for the property located at 2430-A Oka Street and identified by Tax Map Key: 5-2-014:049. The Spencers demand that a valid public hearing notice be provided as required by the Rules and due process of law.

Sincerely,



Peter Morimoto

cc: clients

Shanlee Jimenez

From: Kaaina Hull
Sent: Monday, March 08, 2021 2:42 PM
To: Shanlee Jimenez
Subject: FW: REGARDING: Kilauea Old Mill Application for Use Permit

From: malia kenney <maliakenney@yahoo.com>
Sent: Monday, March 08, 2021 12:57 PM
To: Kaaina Hull <khull@kauai.gov>
Subject: REGARDING: Kilauea Old Mill Application for Use Permit

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Aloha,

I am writing in support of the approval of the Kilauea Old Mill Application because my children who are now adults started taking Jiu Jitsu from Bruno Ewald 15 years ago. When his academy moved to Kilauea there were no spaces on the north shore where he could hold classes and it was a blessing that he found the space he's in now. What he does for our children and community is beyond what any of the retail shops in Kilauea provide for the community.

While I understand that this property is zoned residential this property has been used for commercial business for a very long time. There are also clinics and pharmacies on the same street and the community views them as an asset. I believe many community members like myself also view Jiu Jitsu and physical therapy as an asset to the community.

My family are also patients at the Physical Therapy office on this property as well. It makes sense that these businesses are in this area, as I mentioned above there are doctors offices and a pharmacy right next to this property.

Being born here and raising my own family on the north shore in Kilauea we all recognize the need for affordable housing. I strongly believe that this small piece of property is not the answer to our housing crisis. The businesses that are there now should be granted use permits because they are a valuable asset to the community.

Thank you,
Malia Vasallo
Hanalei, Hawai'i

Sent from Yahoo Mail for iPhone

F.2.6.57.
MAR 18 2021 (A)

COUNTY COUNCIL
Arryl Kaneshiro, Chair
Mason K. Chock, Vice Chair
Bernard P. Carvalho, Jr.
Felicia Cowden
Bill DeCosta
Luke A. Evslin
KipuKai Kualii



OFFICE OF THE COUNTY CLERK

Jade K. Fountain-Tanigawa, County Clerk
Scott K. Sato, Deputy County Clerk

Telephone: (808) 241-4188
Facsimile: (808) 241-6349
E-mail: cokcouncil@kauai.gov

Council Services Division
4396 Rice Street, Suite 209
Lihu'e, Kaua'i, Hawai'i 96766

March 8, 2021

TESTIMONY OF FELICIA COWDEN
COUNCILMEMBER, KAUAI COUNTY COUNCIL
ON
PLANNING COMMISSION AGENDA ITEM F.(2.) (b.)
CLASS IV ZONING PERMIT Z-IV-2021-7 AND USE PERMIT U-2021-6
Tuesday, March 9, 2021
9:00 a.m.
Via Teleconference

Dear Chair Apisa and Members of the Planning Commission:

Thank you for this opportunity to provide testimony in SUPPORT of "Class IV Zoning Permit Z-IV-2021-7 and Use Permit U-2021-6, to allow operation of an athletic health club within an existing warehouse building and operation of a commercial kitchen & retail business within the existing Old Mill Building on a parcel situated at the Oka Street/Aalona Street intersection in Kilauea Town." This testimony is being submitted as an individual Councilmember of the Kaua'i County Council.

As a community member living roughly two blocks from the Old Mill Building in Kilauea, I strongly SUPPORT a Class IV Zoning Permit Z-IV-2021-7 and Use Permit U-2021-6 for an athletic health club (Longman Jiu-Jitsu) at the Oka Street/Aalona Street intersection. This building was originally an industrial site known as the "poison house" for Kilauea Sugar. In the past few decades, it has had a range of light industrial uses including small engine repair for motorcycles, lawnmowers, etc. The Jiu-Jitsu application has substantially cleaned up the industrial environment to a well-spring of youth and adult empowerment in the center of Kilauea Town, which is walking distance from the surrounding neighborhood homes. World Champion Bruno Ewald has instructed at that location for roughly a decade. Prior to that, he had a location at his Princeville home. Longman Jiu-Jitsu has created positive role-modeling, physical activity, and social strengthening of our youth; my own son has benefitted from this. Kilauea has been a more resilient community from the plague of substance abuse because of this resource.

Mahalo for considering my testimony. Should you have any questions, please feel free to contact me or Council Services Staff at (808) 241-4188 or via E-mail to cokcouncil@kauai.gov.

Sincerely,

Felicia Cowden

FELICIA COWDEN
Councilmember, Kaua'i County Council

CT:lc

AN EQUAL OPPORTUNITY EMPLOYER

F. 2. 6. 58.

MAR 18 2021

A

Shanlee Jimenez

From: Kaaina Hull
Sent: Monday, March 08, 2021 4:28 PM
To: Shanlee Jimenez
Subject: FW: Kilauea old mill application for permit use

-----Original Message-----

From: Autumn Ritchie <aritchie277@icloud.com>
Sent: Monday, March 08, 2021 3:26 PM
To: Kaaina Hull <khull@kauai.gov>
Subject: Kilauea old mill application for permit use

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Aloha Mr. Hull,

I support the approval of the Kilauea Old Mill application because it has had a profound impact on the community and my family. As of right now, three of my four children train Ju Jitsu three days a week. This is not a hobby it is a commitment and way of life. They are learning life lessons, discipline, and respect at a very young age. It is a place where the community gathers and relationships are more important than what belt you are or where you come from. I challenge anyone to take the time and explore the statements I have made for themselves. This is why I support the Special Use Permit at Kilauea Old Mill.

Aloha,

Austin Ritchie
808-639-4949

Sent from my iPhone

F. 2. 6. 59.
MAR 18 2021 (A)

Shanlee Jimenez

From: Kaaina Hull
Sent: Monday, March 08, 2021 4:27 PM
To: Shanlee Jimenez
Subject: FW: Support of Longman Jujitsu in Kilauea

From: Liyna Cardinal <liynashaloma@hotmail.com>
Sent: Monday, March 08, 2021 3:36 PM
To: Kaaina Hull <khull@kauai.gov>
Subject: Support of Longman Jujitsu in Kilauea

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Aloha,

I am writing in Support of Longman Jujitsu in Kilauea. I have been informed that the property owner is in the process of updating their zoning. Kilauea is home and I have always been involved in the community. Longman Jujitsu has been a pillar in our community, giving children an opportunity to learn self defense, creature and nurture life long friendship's and most importantly respect. It supports adults with fitness, connectivity, positivity and togetherness.

Bruno's school and personal guidance and teaching has help shape my life in many ways, as well as given me opportunities that I otherwise would have never been able to obtain on my own.

As long as I can remember the location that he is currently at has always been a place of business and should continue to be so, serving the community.

It would be a hardship on many families if he is forced to move to the new shopping center as that may possibly trigger monthly class rates to be increased.

Mahalo,

Liyna Cardinal
808-53-1362
Liynashaloma@hotmail.com
4421Aalona St.,
Kilauae, HI, 96754

COUNTY COUNCIL
Arryl Kaneshiro, Chair
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Felicia Cowden
Bill DeCosta
Luke A. Evslin
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Council Services Division
4396 Rice Street, Suite 209
Lihu'e, Kauai, Hawaii 96766

March 8, 2021

TESTIMONY OF FELICIA COWDEN
COUNCILMEMBER, KAUAI COUNTY COUNCIL
ON
PLANNING COMMISSION AGENDA ITEM I.(3).(a.)
HBR ENTERPRISES, LLC'S PETITION FOR A DECLARATORY ORDER RE:
NONCOMPLIANCE WITH THE CZO AND VARIANCE APPLICATION PERMIT
V-7-11; EXHIBITS 1-6
Tuesday, March 9, 2021
9:00 a.m.
Via Teleconference

Dear Chair Apisa and Members of the Planning Commission:

Thank you for this opportunity to provide testimony in OPPOSITION of Planning Commission Agenda Item I.(3).(a.), regarding HBR Enterprises, LLC's Petition for a Declaratory Order Regarding Noncompliance with Comprehensive Zoning Ordinance and Variance Application Permit V-7-11; Exhibits 1-6. My testimony is being submitted as an individual Councilmember of the Kauai County Council.

The core effort is to allow for greater partitioning of these units through lockouts that have been repeatedly found to be an inappropriate application for the property. There is an inadequate number of parking spaces even for the undivided number of units in a parking lot design that is regularly overburdened and barely safe for fire engine turnarounds. Our recent Kauai Destination Management Plan is further looking to reduce the concentration of visitors. The neighborhood, including Liholiho Road, is overburdened with the spillover parking and the restaurants are being denied parking, which should be available. Even in the 1980's parking was a challenge on this property.

Over the decades, five planning directors have determined this lockout use to be misaligned with the intention of the condominium complex. It sets a bad precedent to reverse that decision.

Mahalo for considering my testimony. Should you have any questions, please feel free to contact me or Council Services Staff at (808) 241-4188 or via E-mail to cokcouncil@kauai.gov.

Sincerely,

FELICIA COWDEN
Councilmember, Kauai County Council

CT:lc

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I.B.H.

MAR 18 2021

