

A BILL FOR AN ORDINANCE AMENDING SECTION 8-26.1,
KAUAI COUNTY CODE, 1987, RELATING TO ADDITIONAL DWELLING UNIT
ON OTHER THAN RESIDENTIALLY ZONED LOTS

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII:

SECTION 1. Findings and Purpose. The Kaua'i County Council finds that Ordinance 551, the Additional Dwelling Unit (ADU) law, was passed in 1989 to create affordable housing on "Agriculture" and "Open" zoned lands. It was extended four times with various modifications. While well-intentioned, this law, in combination with State laws respecting Condominium Property Regimes, has caused the unintended consequences of residential growth on lands not primarily intended for residential use, and has thwarted one of the main goals of the Kaua'i County General Plan to "limit and control the dispersal of residential and urban use within agricultural lands." By not insuring that infrastructure would be available to qualifying lots before they were granted the privilege of an additional dwelling unit, the law has distorted the planning process and created a demand for infrastructure that is not in accordance with orderly community development. While it has created some affordable housing, the ADU law has also fueled speculation and the fragmentation of land, which has increased rather than decreased the cost of housing. It has added a potential of 3,200 units to "Agriculture" and "Open" zoned lands.

The Kaua'i County Council finds that it is critical to terminate the ADU law and stop the creation of new "Agriculture" and "Open" zoned lots entitled to additional dwelling units. To not terminate the ADU law would be to encourage land use patterns that will be expensive to service and to live in. It will generate low-density sprawl that could destroy the rural character of Kaua'i without providing affordable housing in effective and efficient ways.

In order to mitigate the lack of notice that so many have experienced under the expiring law, the Council reluctantly finds it is appropriate to create a limited right for a period of three (3) years to allow people to apply for a building permit where an ADU Facilities Clearance Form has been completed by June 15, 2007. The Council finds that the County cannot be expected to provide infrastructure for all such lots, and it was never the intention of the Council that the County provide such infrastructure. Hence, the provision of such infrastructure is a private responsibility. The Council further finds that any further extension would be detrimental and unwarranted.

SECTION 2. Section 8-26.1, Kaua'i County Code, 1987, as amended, is hereby amended as follows:

"Sec. 8-26.1 Additional Dwelling Unit On Other Than Residentially Zoned Lots.

(a) Additional Dwelling Unit. Notwithstanding other provisions to the contrary, for any lot where only one single-family residential dwelling or farm dwelling is a generally permitted use or is allowed through a use permit, one additional single-family residential dwelling unit (attached or detached) or farm dwelling may be developed, provided:

(1) All applicable county requirements, not inconsistent with Section 46-4 (c), Hawai'i Revised Statutes, and the county's zoning provisions applicable to residential use are met, including but not limited to, building height, setback, maximum lot coverage, parking, and floor area requirements.

(A) If the additional dwelling unit is to be built in a Special Treatment District or Constraint District, all requirements of such district shall be met.

(B) Notwithstanding any other provision to the contrary, for lots in the Urban and Rural State Land Use Districts which were re-zoned from Residential to Open District after September 1, 1972, the maximum lot coverage shall be the same as the residential district requirement.

(2) The provisions of this subsection shall not apply to lots developed under a project development, or other multi-family development, or similar provisions where the aggregate number of dwelling units for such development exceeds the density otherwise allowed in the zoning district.

(3) For lots on which an additional dwelling unit is developed, no guest house under Sec. 8-3.3(a)(2) shall be allowed. An existing guest house may be converted into a dwelling unit, but no additional guest house may be constructed.

(4) The following public facilities are found adequate to service the additional dwelling unit:

(A) Public sanitary sewers, an individual wastewater system (or cesspool), or a private sanitary sewer system built to County standard and approved by the Department of Health.

(B) For sewerred areas, the availability and capability of a public sewer system shall be confirmed in writing by the Department of Public Works. The availability of a private sewer system shall be confirmed in writing by the Department of Health.

(C) The availability of water shall be confirmed in writing by the Department of Water.

(D) Approval in writing from the Kaua'i Fire Department is required for all parcels.

(E) The lot must have direct access to a street which has an all weather surface (asphalt or concrete) roadway pavement continuous to the major thoroughfare, or if the street does not have such all weather surface, there shall be funds specifically appropriated in the capital improvement budget ordinance for such roadway pavement. The Planning Director and County Engineer shall apply the standards and criteria for requiring road improvements established in the Subdivision Ordinance and the "Kaua'i County Planning Commission Road Widening Policy," (as may be amended from time to time), for those roads which are considered substandard.

(5) Facilities clearance may be obtained prior to application for building permit. Forms for facilities clearance will be available from the Building Division, Department of Public Works. The form, approved by all agencies, shall be submitted with the building permit application. Where complete plans and specifications are submitted for building permit application processing, the submission of the facilities clearance form [will] shall be attached with the building permit and processed concurrently.

(6) Nothing contained in this section shall affect private covenants or deed restrictions that prohibit the construction of a second dwelling unit on any lot.

(b) Expiration. Section 8-26.1(a) is hereby repealed December 31, 2006. No building permit shall be granted for an additional dwelling unit under this Section 8-26.1(a) after such repeal date.

(c) Upon expiration of Sec. 8-26.1(a), any additional dwelling unit built pursuant to a valid building permit obtained under Sec. 8-26.1(a) and (d) shall thereafter be considered a conforming structure and use, notwithstanding Article 23 of the Comprehensive Zoning Ordinance relating to non-conforming structures and uses.

(d) Notwithstanding the expiration of Section 8-26.1(a), and subject to compliance with all applicable legal requirements and conditions, a building permit for an additional dwelling unit shall be granted for a lot in existence as of December 31, 2006 which, up to December 31, 2006, was eligible to apply for an additional dwelling unit under Section 8-26.1(a) and for which an ADU Facilities Clearance Form is certified as complete by the Planning Director as of June 15, 2007 or for which an ADU Facilities Clearance form was signed by the authorized employees of all agencies or departments listed in the ADU Facilities Clearance Form and submitted with a building permit application prior to the adoption of this ordinance, provided that:

(1) The term "lot in existence as of December 31, 2006," as used in Section 8-26.1(d) shall not apply to any lot created by the relocation of a kuleana lot by consolidation and resubdivision pursuant to the provisions of

Chapter 9, Kaua'i County Code 1987, as amended ("Subdivision Ordinance"), where such consolidation and resubdivision occurs after December 31, 2006.

(2) All applicable county requirements not inconsistent with Section 46-4(c), Hawai'i Revised Statutes, and the county's zoning provisions applicable to residential use are met, including, but not limited to, building height, setback, maximum lot coverage, parking, and floor area requirements.

(A) If the additional dwelling unit is to be built in a Special Treatment District or Constraint District, all requirements of such district shall be met.

(B) Notwithstanding any other provision to the contrary, for lots in the Urban and Rural State Land Use Districts which were re-zoned from Residential to Open District after September 1, 1972, the maximum lot coverage shall be the same as the residential district requirement.

(3) The provisions of this subsection shall not apply to lots developed under a project development, or other multi-family development, or similar provisions where the aggregate number of dwelling units for such development exceeds the density otherwise allowed in the zoning district, or where additional dwelling units are specifically prohibited by zoning ordinance.

(4) For lots on which an additional dwelling unit is developed, no guest house under Sec. 8-3.3(a)(2) shall be allowed. An existing guest house may be converted into an additional dwelling unit, but no additional guest house may be constructed.

(5) The following public facilities are found adequate to service the additional dwelling unit:

(A) Public sanitary sewers, an individual wastewater system (or cesspool), or a private sanitary sewer system built to County standards and approved by the Department of Health.

(B) For sewerred areas, the availability and capability of a public sewer system shall be confirmed in writing by the Department of Public Works. The availability of a private sewer system shall be confirmed in writing by the Department of Health.

(C) The availability of water (including, but not limited to, source, transmission, and storage lines/facilities) shall be confirmed in writing by the Department of Water.

(D) Approval in writing from the Kaua'i Fire Department is required for all parcels.

(E) The lot must have direct access to a street which has an all weather surface (asphalt or concrete) roadway pavement continuous

to the major thoroughfare, or if the street does not have such all weather surface at the time of application for a building permit, there exist funds specifically appropriated in the capital improvement budget ordinance for such roadway pavement. The Planning Director and County Engineer shall apply the standards and criteria for requiring road improvements established in the Subdivision Ordinance and the "Kaua'i County Planning Commission Road Widening Policy" (as may be amended from time to time), for those roads which are considered substandard.

(6) An ADU Facilities Clearance Form as prescribed by the Planning Director shall be completed prior to application for a building permit and shall be submitted with the building permit application. Completion of the ADU Facilities Clearance form shall not guarantee the issuance of a building permit. All requirements and conditions on the completed ADU Facilities Clearance Form shall be met prior to issuance of a building permit based on legal requirements at the time of building permit issuance. The Planning Director shall certify the ADU Facilities Clearance Form as complete, only if every signature blank on the form has been signed by the respective department or agency, and the applicant has signed an affidavit prescribed by the Planning Director verifying 1) that there is no restriction or covenant applicable in any deed, lease, or other recorded document which prohibits the construction or placement of an additional dwelling unit on the applicable lot, and 2) that the applicant understands that completion of an ADU Facilities Clearance Form does not guarantee or vest any right to a building permit, and that all conditions and requirements in existence at the time of building permit application shall be met before a building permit can be issued. The Planning Department shall keep a record of all ADU Facilities Clearance Forms that are issued and shall retain the original affidavits and the original ADU Facilities Clearance Forms that are certified as complete by the Department.

(7) Nothing contained in this section shall affect private covenants or deed restrictions that prohibit the construction of a second dwelling unit on any lot.

(8) Notwithstanding any law to the contrary, no building permit for an additional dwelling unit shall be issued pursuant to this Section after December 15, 2009."

SECTION 3. If any provision of this ordinance or application thereof to any person, persons, or circumstances is held invalid, the invalidity does not affect the other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are severable.

SECTION 4. Ordinance material to be repealed is bracketed. New ordinance material is underscored. When revising, compiling, or printing this ordinance for inclusion in the Kaua'i County Code 1987, as amended, the brackets, bracketed material, and underscoring shall not be included.

SECTION 5. This ordinance shall take effect upon its approval.

Introduced by: /s/ Jay Furfaro

DATE OF INTRODUCTION:

September 13, 2006

Līhu'e, Kaua'i, Hawai'i

jft/ao 2173d2 adu 11/22/2006 8:22 AM

