

STATE OF HAWAII
OFFICE OF PLANNING
Leiopapa a Kamehameha, Room 600
215 South Beretania Street
Honolulu, Hawaii 96813
Telephone: (808) 587-2846



BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

IN THE MATTER OF

DOCKET NO.: DR21-71

The issuance of a declaratory order that the number of dwellings allowed on properties in the Rural District can be more than one per one-half acre if allowed by County Zoning.

OFFICE OF PLANNING'S RESPONSE
TO PETITION FOR DECLARATORY
ORDER AND RESPONDENT
DEPARTMENT OF PLANNING,
COUNTY OF MAUI'S RESPONSE TO
PETITION FOR DECLARATORY
ORDER

OFFICE OF PLANNING'S RESPONSE TO PETITION FOR DECLARATORY
ORDER AND RESPONDENT DEPARTMENT OF PLANNING, COUNTY OF
MAUI'S RESPONSE TO PETITION FOR DECLARATORY ORDER

I. INTRODUCTION

Petitioner Andrew Grier ("Petitioner") requests the issuance of a declaratory order clarifying the number of dwellings allowed on properties within the State Land Use Rural District. The County of Maui Department of Planning ("County") filed a response to the Petition stating its position that "the State Rural district governing statutes mandate a maximum of four dwelling units on the Petitioner's lot." The Office of Planning ("OP") concurs with the County conclusions in this matter based upon a plain reading of the statutes, and in support of ensuring appropriate land use controls on increased density in areas where public infrastructure and services may not be adequate.

The issues for determination as presented in the Petition for declaratory order are (i) specific—whether more than one dwelling per half-acre is allowed on properties in the Rural District, if allowed by County zoning; and (ii) general—whether Hawaii Revised Statutes (HRS) Chapter 205 and 26 restrict a county’s ability to provide for greater density of housing units within the Rural District.

In short, to the first issue, under the appropriate factual circumstances and if appropriate ordinances are in place, under HRS Chapter 205, a county may permit one dwelling per one-half acre of lot area, but no additional accessory or ohana dwelling need be permitted if more than one dwelling had already been permitted for that lot pursuant to HRS section 46-4(c).

To the general issue, HRS Chapter 205 does restrict a county’s ability to exceed density and use standards set in HRS Chapter 205 and Chapter 15, Hawaii Administrative Rules (HAR), the Land Use Commission (“Commission”) rules, subject to the provisions of section 46-4(c), HRS.

II. RELEVANT STATUTORY PROVISIONS

Sections 205-2(a), 205-2(c), and 205-5(c), HRS, generally limit the lot size in the Rural District to one-half acre, and limit the density to one dwelling per half-acre.

Section 205-2(a) authorizes the Commission to set standards for determining the boundaries for each land use district. Section 205-2(a)(2) sets a minimum density of not more than one house per one-half acre and a minimum lot size of not less than one-half acre for lands to be included in determining the boundaries for the Rural District.

Section 205-5(a), HRS, authorizes the counties—except as provided in HRS Chapter 205—to govern zoning within the land use districts, except for the Conservation

District, pursuant to their zoning powers granted in section 46-4. The counties' zoning and standards for lands within the Rural District are circumscribed by State statute, and county ordinances must comply with the minimum standards and permissible uses set forth in HRS Chapter 205. Section 205-5(c) restates the minimum lot size and density for county zoning within the Rural District, in relevant part as follows:

In addition, the minimum lot size of any low density residential use shall be one-half acre and there shall be but one dwelling house per one-half acre, except as provided for in section 205-2.

Section 205-2(c) sets forth the character and density of not more than one dwelling house per one-half acre for residential lots in the Rural District, with limited exceptions, as follows:

(c) Rural districts shall include activities or uses as characterized by low density residential lots of not more than one dwelling house per one-half acre, except as provided by county ordinance pursuant to section 46-4(c), in areas where "city-like" concentration of people, structure, streets, and urban level of services are absent, ... except that within a subdivision, as defined in section 484-1, the commission for good cause may allow one lot of less than one-half acre, but not less than 18,500 square feet, or an equivalent residential density, within a rural subdivision and permit the construction of one dwelling on such lot, provided that all other dwellings in the subdivision shall have a minimum lot size of one-half acre or 21,780 square feet. Such petition for variance may be processed under the special permit procedure... (emphasis added)

Section 46-4(c), HRS, cited in Section 205-2(c) above, allows the construction of a second dwelling unit (often referred to as an "ohana" dwelling or "accessory dwelling unit") on any lot where a residential dwelling unit is permitted. (emphasis added). The statute states in relevant part as follows:

(c) Each county may adopt reasonable standards to allow the construction of two single-family dwelling units on any lot where a residential dwelling unit is permitted. (emphasis added).

Nothing in this exception allows more than one additional dwelling on the same lot of the single-family dwelling.

Section 15-15-23, HAR, of the Commission rules, generally defines permissible uses for the land use districts, but specifically allows county ordinances or regulations of uses to be more restrictive than set forth by rule or statute. It reads in relevant part as follows:

§15-15-63 Permissible uses, generally. Except as otherwise provided in this chapter, the following land and building uses are compatible and permitted within the following land use districts, except when applicable county ordinances or regulations are more restrictive. Except as otherwise provided in this chapter, uses not expressly permitted are prohibited.

III. ANALYSIS

Petitioner, County of Maui, and the OP all agree that the maximum allowable density in the Rural District is restricted by State statute. Counties may impose additional restrictions to lower the density or to further restrict the uses within the Rural District.

Chapter 205 sets the maximum density at one residential unit per one-half acre, except as provided in section 46-4(c). The County interprets section 46-4(c) as allowing one additional ohana residential unit only if there is no other additional dwelling on the lot. In the Petitioner's case, the property is a two-acre lot, zoned by the County as RU-.5 with one single-family dwelling per one-half acre. The Petitioner was issued four dwelling permits by the County for the property based on the Rural District allowable

density of one dwelling unit per half-acre of lot size and underlying County zoning of same density.¹

The County reasons that Section 46-4(c) does not allow additional ohana units because there are already multiple dwellings on the same lot. Stated differently, under a plain reading of section 46-4(c), only two single-family dwellings—one being the additional ohana unit—are allowed on a lot “where a residential dwelling unit is permitted.” (emphasis added). The term “a residential dwelling unit” is singular. In this instance, Petitioner’s lot has already been permitted for multiple dwelling units based on the size of the lot. Therefore, section 46-4(c) does not apply—and no additional ohana unit is allowed—because the lot has already yielded more than two single-family dwellings for the lot. See Citizens Against Reckless Development v. Zoning Bd. Of Appeals of City & County of Honolulu, 114 Hawaii 184, 193, 159 P.3d 143, 152 (2007) (“First, the fundamental starting point for statutory interpretation is the language of the statute itself. Second, where the statutory language is plain and unambiguous, our sole duty is to give effect to its plain and obvious meaning.”)

Provided the underlying county zoning is not more restrictive, under HRS Sections 205-2 and 46-4(c), the number of dwellings in the Rural District can only exceed one per half-acre when the lot size is between one-half acre and one acre and there is no more than one dwelling unit on the lot. In only that case, one dwelling would be permitted as right for the lot and one additional ohana or accessory dwelling would be allowed pursuant to section 46-4(c), yielding up to two dwellings per half-acre.

¹ This and all other examples assume that the action is also permissible under county ordinance. The county has the zoning power to impose additional restrictions and the discretion to deny individual permits.

As discussed in Petitioner's brief, the ohana zoning provision in section 46-4(c) was subsequently amended in recognition of the need for the counties to have greater control in determining what areas and zoning districts would be suitable for ohana zoning. The provision has the effect of doubling density through the issuance of ministerial building permits, without a reasonable way to ensure that capacity of public roads, schools, and other infrastructure can adequately accommodate or service the more intensive land use. The County's interpretation of section 46-4(c) is well within the county's authority to adopt reasonable standards by which to manage the impacts of increased density in areas where infrastructure may not be adequate.

IV. CONCLUSION

For the aforementioned reasons, the Office of Planning recommends that the Land Use Commission issue a decision affirming that density in the Rural District must be no greater than one dwelling per half-acre, except where there is not more than one legal dwelling on a lot of less than one acre. Further, the Commission should also clarify that the additional ohana provision under section 46-4(c) does not apply to a lot where more than one residential dwelling exists on the lot.

OP concurs with the County of Maui's position that, relative to the Petitioner's lot, the maximum number of dwelling units allowed is four dwellings.

DATED: Honolulu, Hawaii, April 5, 2021.

Mary Alice Evans

MARY ALICE EVANS
Director
Office of Planning

Facsimile: (808) 587-2824

DATED: Honolulu, Hawaii, April 5, 2021.

OFFICE OF PLANNING
STATE OF HAWAII

Mary Alice Evans

MARY ALICE EVANS
Director