

County of Hawai'i

WINDWARD PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

JUN 22 2015

Ms. Cheriess Bugado
306 Lehua Street
Hilo, HI 96720

Dear Ms. Bugado:

Special Permit Application (SPP 15-000179) ✓
Special Management Area Use Permit Application (SMA 15-000059)
Applicant: Cheriess Bugado
Request: Allow the Construction and Operation of a Wellness Facility and Day Spa
Tax Map Key: 2-6-012:008

The Windward Planning Commission, at its duly held public hearing on June 4, 2015, voted to approve the above-referenced requests for a Special Management Area (SMA) Use Permit and a Special Permit to allow the construction and operation of a wellness facility and spa on 1.136 acres of land within the Special Management Area (SMA) and the State Land Use Agricultural District. The property is located on the makai (east) side of Wainaku Street directly across the intersection of Wainaku Street and Kulana Kea Drive, Pāpa'a, South Hilo, Hawai'i.

Approval of the SMA Use Permit and Special Permit is subject to the following conditions:

SMA Use Permit

1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval of this permit.
2. The applicant shall comply substantially with the representations made within the Special Permit and Special Management Area Use Permit applications dated received March 23, 2015.
3. Construction of the proposed development shall be completed within five (5) years from the effective date of this ordinance. Prior to construction, the applicant, successor(s) or assign(s) shall secure Final Plan Approval for the proposed development from the Planning Director in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code. Plans shall identify all existing and/or proposed structure(s), paved driveway access and parking stalls associated with the proposed development. Landscaping shall be indicated on the plans and provided along that portion of the

property's Wainaku Street and Hawai'i Belt Road frontages in proximity to the proposed vehicular parking area in accordance with Section 17-6(d) of Planning Department's Rule No. 17 (Landscaping Requirements).

4. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties.
5. All permanent lighting should be shielded in conformance with the Hawai'i County Outdoor Lighting Ordinance (Hawai'i County Code Chapter 14, Article 9). External lighting shall not directly illuminate, or directly project across property boundaries toward the shoreline and ocean waters.
6. During construction, measures shall be taken to minimize the potential of both fugitive dust and runoff sedimentation. Such measures shall be in compliance with construction industry standards and practices utilized during construction projects of the State of Hawai'i.
7. All earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control of the Hawai'i County Code, with caution taken during large cuts of 2 feet or more that could encounter subsurface remains, which would then be governed by the requirements of Condition No. 9 of this permit.
8. The applicant shall install an individual wastewater system meeting with the standards and requirements of the State Department of Health for the proposed facility.
9. Should any undiscovered remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigation measures have been taken.
10. Comply with all other applicable laws, rules, regulations and requirements of the affected government agencies for the proposed use, including those of the Department of Health and the Fire Department.
11. An initial extension of time for the performance of conditions within this permit 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 General Plan or Zoning Code.

- C. Granting of the time extension would not be contrary to the original reasons for the granting of this permit.
- D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).
- E. If the applicant should require an additional extension of time, the Planning Department shall submit the applicant's request to the Planning Commission for appropriate action.

Should any of the foregoing conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke the permit.

Special Permit

1. The applicant, successor or assigns shall be responsible for complying with all stated conditions of approval.
2. The applicant shall comply substantially with the representations made within the Special Permit and Special Management Area Use Permit applications dated received March 23, 2015.
3. The applicant shall submit estimated maximum daily water usage calculations for the proposed development, prepared by a professional engineer licensed in the State of Hawai'i, for review and approval. The water usage calculations should include the estimated maximum daily water usage in gallons per day and the estimated peak flow in gallons per minute (GPM), including all irrigation/landscaping use. The applicant shall install a reduced pressure type backflow prevention assembly within five (5) feet of the meter on private property, which must be inspected and approved by the Department of Water Supply.
4. Construction of the proposed development shall be completed within five (5) years from the effective date of this ordinance. Prior to construction, the applicant, successor(s) or assign(s) shall secure Final Plan Approval for the proposed development from the Planning Director in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code. Plans shall identify all existing and/or proposed structure(s), paved driveway access and parking stalls associated with the proposed development. Landscaping shall be indicated on the plans and provided along that portion of the property's Wainaku Street and Hawai'i Belt Road frontages in proximity to the proposed vehicular parking area in accordance with Section 17-6(d) of Planning Department's Rule No. 17 (Landscaping Requirements).

5. Access to the subject property shall be limited to Wainaku Street, with all driveway connection(s) conforming to Chapter 22, County Streets, of the Hawai'i County Code.
6. To help minimize traffic impacts along Wainaku Street through the existing residential neighborhoods, the applicant shall inform and encourage clients to access the facility from the north by using the Hawai'i Belt Road onto Wainaku Street.
7. All earthwork and grading activity shall conform to Chapter 10, Erosion and Sediment Control of the Hawai'i County Code.
8. All development generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties.
9. The applicant shall comply with Chapter 11-55, Water Pollution Control, Hawai'i Administrative Rules, Department of Health, which requires a NPDES permit for certain construction activity.
10. The applicant shall install an individual wastewater system meeting with the standards and requirements of the State Department of Health for the proposed facility.
11. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings or walls be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-State Historic Preservation Division (DLNR-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-SHPD when it finds that sufficient mitigative measures have been taken.
12. Comply with all other applicable laws, rules, regulations and requirements of the affected government agencies for the proposed use, including those of the Department of Health and the Fire Department.
13. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:
 - A. 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 General Plan or Zoning Code.

- C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
- D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).
- E. If the applicant should require an additional extension of time, the Planning Department shall submit the applicant's request to the Planning Commission for appropriate action.

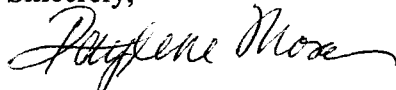
Should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke the permit.

These approvals do not, however, sanction the specific plans submitted with the applications as they may be subject to change given specific code and regulatory requirements of the affected agencies.

Approval of the permits is based on the reasons given in the attached Findings Reports.

Should you have questions regarding this matter, please contact Jeff Darrow of the Planning Department at 961-8158.

Sincerely,



Raylene Moses, Vice-Chair
Windward Planning Commission

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Enclosures – PC Findings Reports

cc: Richard Alderson Trust
Department of Public Works
Department of Water Supply
County Real Property Tax Division – Hilo
Department of Land & Natural Resources – HPD
State Department of Health
State DOT – Highways, Honolulu
Mr. Gilbert Bailado

COUNTY OF HAWAI'I
PLANNING COMMISSION FINDINGS

CHERIESS BUGADO

SPECIAL PERMIT APPLICATION NO. 15-000179 (SPP 15-000179)

The applicant, Cheriess Bugado, is requesting a Special Permit to allow the construction and operation of a wellness facility and spa on 1.136 acres of land situated within the State Land Use Agricultural District. This is designed to be a 3-story facility (2 main stories with a cupola) built into the slope of the hillside of the property. The two main stories will be approximately 2,000 sf each and the cupola will be approximately 700 sf in size. There will be an approximately 800 sf dwelling unit for a live-in security manager. The property is located on the makai (east) side of Wainaku Street directly across the intersection of Wainaku Street and Kulana Kea Drive, Pāpa'a, South Hilo, Hawai'i, TMK: 2-6-012:008.

The facility will offer the following services and amenities:

Services Offered

Massage therapy, massage therapy training, chiropractic treatment, esthetics/personal grooming/hygiene including hair, facials, waxing, manicures, pedicures, etc., diet/nutritional counseling, and personal fitness including sports injury recovery/rehabilitation, strength training and personal coaching.

Amenities Offered

Sauna, steam room, tanning bed, sensory deprivation tank, private lockers, showers, hot tub, private indoor/outdoor swimming pool, certified kitchen to provide unique refreshments for clients, executive gym and a live-in, on-site security manager.

The facility will also include a retail outlet for the sale of exclusive health and beauty products produced with some onsite plants and herbs, and a meeting place for local writers developing film and TV proposals, and for display of local and native artwork.

The applicant currently operates a business called "Spa Vive – Hilo Massage Clinic and Day Spa" that was established in 2009. The business has grown each year as a result of the increased demand. The reason for the request is that the applicant is at a point where they need to move to a larger facility to meet these increased demands and growing clientele.

The amount of clients anticipated at the new facility is approximately 18 clientele per day, which will consist of approximately 70% of local residents and 30% of visitors. There are 4 staff members employed at the current facility and it is anticipated that this will increase to 8 employees at the new facility. The proposed hours of operation are weekdays from 10 a.m. to 6:00 p.m. and weekends from 10:00 a.m. to 4:00 p.m.

The grounds for approving a Special Permit are based on Rule 6-6 in the Planning Commission Rules. It states that the Planning Commission shall not approve a Special Permit unless it is found that the proposed use (a) is an unusual and reasonable use of land situated within the Agricultural or Rural District, whichever the case may be; and (b) the proposed use would promote the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes, as amended.

The granting of the proposed request would be consistent with the objectives sought to be accomplished by the Land Use Law and Regulations, and is an unusual and reasonable use of land situated within the State Land Use Agricultural District. The granting of this request will promote the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes, as amended. The State Land Use Law and Regulations are intended to

preserve, protect and encourage the development of lands in the State for those uses to which they are best suited in the interest of the public health and welfare of the people of the State of Hawai'i. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use. In recognizing that lands within the Agricultural Districts may not be best suited for agricultural activities and yet classified as such, and in recognition that certain types of uses may not be strictly agricultural in nature, yet reasonable in such districts, the legislature has provided for the Special Permit process to allow certain unusual and reasonable uses within the Agricultural District.

The property is situated on land that maintains an overall master productivity rating of "C" or "Fair" soils according to the Land Study Bureau's Detailed Land Classification-Island of Hawai'i. The Agricultural Lands of Importance to the State of Hawai'i (ALISH) Map identifies the property as prime agricultural land.

The property is 1.136 acre in size and is triangular in shape, as it is sandwiched between Wainaku Street and the Hawai'i Belt Road. At its greater width, the property is only 120 feet wide and narrows towards the north end of the property as Wainaku Street intersects with the Hawai'i Belt Road. Additionally, the property has differing topography which presents challenges to utilize portions of the property for any intensive agricultural activities. The applicant is proposing to construct a multi-tied facility on the sloped portion of the property and use the remainder to grow fruits, vegetables, herbs and medicinal plants that will be used in products made for the health and wellness/spa business.

The property is currently covered in California grass, which is mowed on a regular basis. The surrounding areas have been historically used for sugar cane cultivation. The applicant will introduce non-agricultural uses to the property but will also be introducing new agricultural uses that were previously not occurring.

The General Plan identifies this property for Low Density Urban uses, which may include residential uses with ancillary community and public uses, and neighborhood and convenience-type commercial uses. The proposed wellness and spa facility does not conform well to the prescribed uses within this Low Density Urban. But it strikes a reasonable compromise by offering a level of commercial-type use that can be, as represented by the applicant, defined as a low impact which best utilizes a property whose configuration, topography and location limits optimal use of the property for intensive agricultural activities. The type of services offered by the applicant can be best promoted by its location since we imagine it would be difficult to promote wellness when the property and surrounding area do not offer the same characteristics. The opportunity that the property provides by accommodating a wellness and spa facility along with the cultivation and integration of edible and medicinal plants into their food and wellness service would be consistent with the objectives of the State Land Use Law and the General Plan by blending together several distinct uses that will mutually benefit each other.

Therefore, the proposed use would promote the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes, as amended, and is considered an unusual and reasonable use of land situated within the Agricultural District.

In addition to the above listed criteria, the Planning Commission shall also consider the criteria listed under Section 6-3(b)(5) (A) through (G). In considering the criteria, the Planning Director recommends as follows:

(A) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. The applicant has met this criterion based on the previous discussion listed above, mainly that the request is considered an unusual and reasonable use and

it is not contrary to the State Land Use Law and Regulations, which are intended to preserve, protect and encourage the development of lands in the State for those uses to which they are best suited in the interest of the public health and welfare of the people of the State of Hawai'i. The approval to allow a wellness facility and spa on 1.136 acres of land is not anticipated to have a significant adverse effect on the County's agricultural land inventory and will preserve or keep lands of high agricultural potential in agricultural use.

While soils within the property are classified as "fair" for agricultural productivity, approval of this request will allow for a unique opportunity to blend agricultural uses with the proposed health and wellness activities. The State Land Use Law asks that we protect, preserve and encourage the development of lands for uses which best suit the interest of the public health and welfare of the people in this state. Extensive or intensive cultivation of good agricultural land is not the sole solution toward the implementation of this mandate, especially on smaller agricultural properties. The applicant brings forth an opportunity where agricultural activities can be introduced to support the proposed use. Agriculture is not always the direct act of providing food for our tables. Here is an opportunity to incorporate agriculture with products that will promote health and wellness.

(B) The desired use would not adversely affect surrounding properties. . The subject property is 1.136 acres in size and is shaped and is triangular in shape. The property is located on the makai (east) side of Wainaku Street directly across the intersection of Wainaku Street and Kulana Kea Drive. Currently, the property is vacant of uses and structures and is covered with California grass.

Surrounding properties are zoned A-20a, FA-5a, RA-1a, RS-7.5, RS-15 and Open. The adjoining property to the south is zoned A-20a, which is vacant, and further south are smaller properties zoned RS-7.5 consisting of single family dwellings. To the west across Wainaku Street are larger properties zoned A-20a, FA-5a and RA-1a, which consist of vacant lots and several newly constructed dwellings. To the north on the mauka (west) side of the Hawai'i Belt Road are larger properties zoned A-20a, which consist of farming and the Alae Cemetery. On the makai (east) side of the Hawai'i Belt Road are properties zoned RS-15 and consist of single family dwellings. To the east of the subject property are several properties zoned Open, which are vacant. The nearest dwelling is approximately 400 feet mauka (west) across Wainaku Street.

There may be some negative noise and traffic impacts generated by the proposed request, but it is anticipated that these uses will not be significant and will not adversely affect the surrounding properties. Regarding possible noise impacts, the proposed structure will be required to meet all setback and height requirements to minimize noise and visual impacts to the surrounding properties. Additionally, the property is sandwiched between Wainaku Street and the Hawai'i Belt Road, which also provides separation to the surrounding properties. Regarding possible traffic impacts along Wainaku Street, a condition of approval has been added requiring the applicant to notify the patrons to access the facility by using the Hawai'i Belt Road to access Wainaku Street from the north instead of from the south along Wainaku Street that winds through existing neighborhoods. Landscaping will be required as a condition of approval along Wainaku Street and the Hawai'i Belt Road to minimize any possible visual impacts.

Lastly, the Planning Department has not received any letters of objection or concern regarding the proposed request as of the date of this writing. Several letters of support were submitted along with the application.

Therefore, it is not anticipated that the proposed use will adversely affect the surrounding properties. Based on the above discussion, the applicant has met this criterion.

(C) Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection.

Access to the subject property is from Wainaku Street, which is a County owned and maintained road with a 20-foot pavement within an approximately 75-foot right-of-way. The property also adjoins the Hawai'i Belt Road (Highway 19). A condition of approval will restrict access from the highway to the subject property as mentioned above. The property is serviced by County water from a 6-inch waterline within Wainaku Street.

The applicant will engineer an individual wastewater system meeting with the requirements of the Department of Health as there is no municipal sewer in the area. The Department of Health commented that the use of individual wastewater systems is allowed. The type and number of individual wastewater systems to be used will be determined by the wastewater rules in effect at the time of building permit application.

All other essential utilities and services are or will be made available to support the proposed facility. Based on the above discussion, the applicant has met this criterion.

(D) Unusual conditions, trends, and needs have arisen since district boundaries and regulations were established. The property and some of the surrounding areas are designated for agricultural uses by both State and County land use laws. Through the issuance of a Special Permit, a community may establish various "non-agricultural" services that may not be available or allowed by zoning for its residents. The request to allow a wellness/spa facility in this area is in line with the intent for allowing the issuance of a Special Permit. Based on the above discussion, the applicant has met this criterion.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. Soils within the property are classified as "C" or "Fair" for agricultural productivity and are identified as Hilo silty clay loam, 0 to 10 percent slopes (HoC). The Agricultural Lands of Importance to the State of Hawai'i (ALISH) Map identifies the project site as prime agricultural lands.

As previously mentioned, the property is 1.136 acre in size and is triangular in shape, which allows only the wider area of the property to be reasonably developed. Additionally, the property has differing topography which presents challenges to utilizing portions of the property. The applicant is proposing to construct a multi-tied facility on the sloped portion of the property and use the remainder to grow fruits, vegetables, herbs and medicinal plants that will be used in products made for the health and wellness/spa business. Based on the above discussion, the applicant has partially met this criterion.

(F) The use will not substantially alter or change the essential character of the land and the present use. The proposed request will alter the land and its present use, which is currently vacant of uses and structures, but the change is not anticipated to be substantial. Some changes would occur mainly by the addition of the facility and the associated traffic for the proposed use, but these changes are not anticipated to be substantial. Based on the above discussion, this criterion has partially been met.

(G) The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans. The Land Use Pattern Allocation Guide (LUPAG) Map component of the General Plan is a representation of the document's goals and policies to guide the coordinated growth and development of the County. It reflects a graphic depiction of the physical relationship among the various land uses. The LUPAG Map establishes the basic urban and non-urban form for areas within the County. The area where the proposed request would be located is designated as Low Density Urban, which

allows for residential uses with an overall residential density up to six units per acre, with ancillary community and public uses, and neighborhood and convenience-type commercial uses. Although the General Plan LUPAG designation differs from the actual zoning in the area, the proposed request allows the opportunity that the property provides by accommodating a wellness and spa facility along with the cultivation and integration of edible and medicinal plants into their food and wellness service, which would be consistent with the objectives of the State Land Use Law and the General Plan by blending together several distinct uses that will mutually benefit each other.

The approval of the subject request will be consistent with the following goals and policies of the Economic, Land Use and Historic Sites Elements of the General Plan:

Economic

- Provide residents with opportunities to improve their quality of life through economic development that enhances the County's natural and social environments.
- Provide an economic environment that allows new, expanded, or improved economic opportunities that are compatible with the County's cultural, natural and social environment.
- Encourage the development of a visitor industry that is in harmony with the social, physical, and economic goals of the residents of the County.

Land Use Element

- Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural and physical environments of the County.

The proposed use is not contrary to the objectives sought to be accomplished by Chapter 205A, Hawai'i Revised Statutes, relating to coastal zone management program. Given the fact that the property has been previously cleared and mowed on a regular basis, it is unlikely that any archaeological features and threatened species of plant or animal are present on the property.

The property is located within the Special Management Area and is approximately 300 feet from the nearest shoreline, which is located across the Hawai'i Belt Road. Therefore, the proposed use will not adversely impact any recreational resources, including access to and along the shoreline, scenic and open space nor visual resources, coastal ecosystems, and marine and coastal resources. Further, the property will not be affected by any coastal hazards or beach erosion.

Lastly, this approval is made with the understanding that the applicant remains responsible for complying with all other applicable governmental requirements in connection with the approved use, prior to its commencement or establishment upon the subject properties. Additional governmental requirements may include the issuance of building permits, the installation of approved wastewater disposal systems, compliance with the Fire Code, installation of improvements required by the American with Disabilities Act (ADA), among many others. Compliance with all applicable governmental requirements is a condition of this approval; failure to comply with such requirements will be considered a violation that may result in enforcement action by the Planning Department and/or the affected agencies.

Based on the above findings, Special Permit No. 15-000179 is approved to allow the construction and operation of a wellness facility and spa on 1.136 acres of land situated within the State Land Use Agricultural District on TMK: 2-6-012:008.