



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

APR 14 2014

Ms. Ashlin K. Jarvis
P.O. Box 5772
Hilo, HI 96720

Dear Ms. Jarvis:

Special Permit (SPP) No. 361 (Docket No. 77-264)

Applicant: Ashlin Jarvis

Request: Amend SPP 361 to Include a Retail Shop and Food Preparation Area

Tax Map Key: 1-7-010:011

The Windward Planning Commission, at its duly held public hearing on April 3, 2014, voted to approve the above-referenced request for an amendment to Special Permit No. 361, which allowed the expansion of an antique store on 8,337 square feet of land situated within the State Land Use Agricultural District. The amendment is to allow the former Tinny Fisher Antique Shop to be used as a retail shop selling a variety of items including food and beverages prepared on-site. The property is located on the south (makai) side of Volcano Highway approximately 360 feet west of Kukui Camp Road, 'Ōla'a Reservation Lots, Puna, Hawai'i.

Approval of this amendment is subject to the following conditions:

1. The applicant, successors or assigns shall be responsible for complying with all of the stated conditions of approval.
2. Within six (6) months from the effective date of this amended permit the applicant shall submit estimated maximum daily water usage calculations prepared by a licensed engineer to the Department of Water Supply. As directed by the Department of Water Supply, the applicant shall limit County water usage for the proposed use to an average of 400 gallons per day.

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3. The applicant shall install a reduced pressure type backflow prevention assembly within five (5) feet of the existing 5/8-inch water meter and have it inspected and approved by the Department of Water Supply.
4. Within one (1) year from the effective date of this amendment, the applicant shall secure and finalize any building permits required by the Department of Public Works- Building Division for the existing structures.
5. Parking along the Volcano Highway is prohibited. A minimum of eight (8) parking stalls shall be provided on the subject property.
6. The applicant shall periodically trim landscaping along the property's highway frontage in order to maintain adequate sight distances at the access driveway.
7. The applicant shall upgrade the current cesspool system to a septic system as required by the Department of Health.
8. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
9. An initial extension of time for the performance of conditions 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).
10. Should any of these conditions not be met or substantially complied with in a timely manner, the Planning Director may initiate procedures to revoke this permit.

Ms. Ashlin K. Jarvis

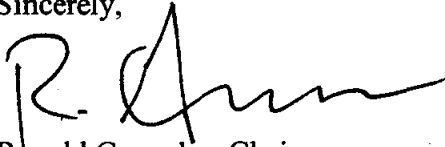
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This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

Approval of the amendment is based on the reasons given in the attached recommendation report.

Should you have any questions, please contact Daryn Arai of the Planning Department at 961-8288, ext. 8142.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Gonzales', written over a large, stylized initial 'R'.

Ronald Gonzales, Chairman
Windward Planning Commission

Lashlinjarvispp361wpc

Enclosure: PC Recommendation Report

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
State Department of Transportation
State DLNR-HPD
Mr. Gilbert Bailado

**COUNTY OF HAWAII
PLANNING COMMISSION RECOMMENDATION**

**ASHLIN JARVIS (FORMERLY CHARLES WITTIG)
AMENDMENT TO SPECIAL PERMIT NO. 361 (SPP 361, DOCKET NO. 77-001)**

The property is the site of the former Black Coral Gift Shop and Tinny Fisher Antique Shop. The Black Coral Gift Shop operated within an approximately 1,248-square foot structure on the east side of the property from 1948 to the 1960's as a nonconforming use, as it was legally established prior to the adoption of State land use law, rules and regulations. In 1977, Special Permit No. 361 was issued to Charles Wittig to allow the expansion of the gift shop to a new 1,260-square foot addition on the west (Volcano) side of the property. Mr. Wittig constructed the addition and opened the Tinny Fisher Antique Shop, which operated until the early 2000's within both structures. The amendment is to allow the former Tinny Fisher Antique Shop to be used as a retail shop known as "Honi Wai" which will sell food and beverages prepared on-site in a food preparation area and miscellaneous retail products including but not limited to jewelry, potted plants, cut flowers, clothes, books, art, packaged tea and coffee, candies, cookies, jams, honey and art. The shop would include a food preparation area where food and beverages such as coffee, tea, desserts, snacks and bento are prepared and sold for takeout. There will not be sit-down or table service in the shop. Currently the applicant is proposing to lease only the 1,248-square foot building on the east side of the property; however, if the business is successful in the future, the applicant would like to lease the building on the Volcano side of the property to expand Honi Wai. Hours of operation will be from Monday through Saturday from 6:30 a.m. to 5:30 p.m. The applicant will be the only employee. Additional parking for the uses requested in this amendment are not being recommended because the minimum number of stalls required by the zoning code were provided when Special Permit No 361 was issued in 1977 for the 2,508-square foot antique shop. This recommendation is based on the following findings:

Approval of this request would not be contrary to the General Plan or the Zoning Code. The General Plan Land Use Pattern Allocation Guide (LUPAG) Map for this area of Mountain View designates most lands as Important Agricultural Land, except for an area extending from Ala Loop to just east of Kukui Camp Road, which is designated Low Density Urban. The subject property is located just west of the Low Density Urban area, on lands designated Important Agricultural Land. The LUPAG Map in the vicinity of the property has not changed since the Special Permit was originally granted in 1977 and it is likely that the property was interpreted to be located in the Low Density Urban area since it is too small for commercial agriculture and has been developed as a store since 1948, well before the General Plan existed. The proposed use is considered a convenience-type commercial use which is consistent with the Low Density Urban designation. Additionally, the proposed use continues to conform to the Zoning Code with regard to building heights, yard setbacks, and the number of parking stalls provided on-site. Whether the space is utilized for an antique shop or a general retail shop, both uses are considered commercial in nature. The Zoning Code recognizes this by applying a standard required parking ratio for any commercial use with no requirement to adjust required parking as the specific type of commercial uses change over time. While the Commission, through an approval of a Special Permit or its

amendment, has the ability to apply specific parking requirements above and beyond the requirements of the Zoning Code to any approved use, it must be applied with reason and justification. In this particular matter, we do not see a specific circumstance that would lead us to believe that additional parking beyond the standards used for commercial-zoned areas is necessary to accommodate the requested retail use within the same space previously occupied by an antique shop.

Approval of this request would not be contrary to the original reasons for granting the Special Permit. The use will continue to be an unusual and reasonable use of lands situated within the Agricultural District and will not be contrary to the objectives of Chapter 205, HRS, as amended. The permit was originally granted to allow the expansion of a nonconforming use (store) on the property that had been operating since approximately 1948. Approval of the proposed amendment would allow the applicant to continue to use the existing buildings for a store to sell a variety of items as well as prepare and sell food and beverages on-site for take-out.

The land upon which the existing use is sought is unsuited for the uses permitted within the district. The property is classified as "D" or "Poor" for agricultural productivity by the Land Study Bureau and unclassified by the Agricultural Lands of Importance to the State of Hawai'i (ALISH) Map.

Since the use will continue to operate entirely within the existing buildings, it is unlikely that the expanded use will have any adverse impacts on surrounding properties, particularly since the closest dwellings is situated at least 300 feet away from the subject property. To date there have been no complaints from surrounding property owners. Given that government regulations have changed since the original permit was granted over 30 years ago, the Planning Director is recommending that the original conditions be updated with the most current agency requirements. The property already has an existing commercial-standard driveway providing access as well as on-site paved parking. The existing wastewater system is no longer adequate to serve the proposed use; therefore the Department of Health recommends the cesspool be upgraded to a septic system. Additionally, the applicant will need to limit County potable water usage to 400 gallons per day on average because there is limited water availability in the area. These recommendations have been included as conditions of approval. With implementation of these recommended conditions of approval, the proposed amendment will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. Therefore, approval of the amendment request will not be contrary to the original reasons for granting the permit.

Based on the above, the amendment to Special Permit No 361 is approved to allow additional uses within the existing structures to include the sale of food and beverages prepared on-site in a food preparation area and the sale of miscellaneous retail products including but not limited to jewelry, potted plants, cut flowers, clothes, books, packaged tea and coffee, candies, cookies, jams, honey and art on Tax Map Key 1-7-010:011.

STATE OF HAWAII
LAND USE COMMISSION

MEMORANDUM

TO: Land Use Commission

June 2, 1977
9:00 a.m.

FROM: Staff

SUBJECT: SP77-264 - Charles Wittig

The petitioner, Charles Wittig, is requesting a Special Permit to allow the expansion of a nonconforming use (store) within the State Land Use Agricultural District at Olaa Reservation Lots, Puna, Hawaii, Tax Map Key 1-7-10: 11. The subject parcel is located along the southeast or makai side of the Volcano Highway, approximately 1.3 miles Hilo side of Mountain View School.

The property under consideration is approximately 8,337 square feet in size. It is the present site of the Tinny Fishers Antique Shop (formerly Black Coral Gift Shop).

The existing store structure was constructed in 1948 and has been in commercial use since that time. The structure is approximately 1,248 square feet (52' X 24') in size. A living unit was also included in the original structure.

In June of 1963, the Planning and Traffic Commission granted an Interim Zoning Variance Permit to allow an addition (1,260 square feet, 42' X 30') to the structure. The owner of the subject property at that time began but did not complete the addition. Although the frame, walls, and roof of this addition are in place, it has not been completed for commercial use. The petitioner, who is the present owner of the parcel, is now seeking a Special Permit to complete the addition.

In support of his request, the petitioner has, in part, stated the following:

"My wife and I bought the buildings in January of 1976. As soon as internal repairs on the old store were completed, we opened for business which gave us the income to complete the existing incomplete addition, paint and restore both the old store and the addition to respectability.

"The addition will be used to display fine pieces of furniture, lighting devices, sterling silver, china, works of art, rugs and carpets, jewelry, etc., all from the last century and before.

"The old plantation will have a country store effect. Using turn of the century furnishings, model A and T parts,

barrels trunks, clocks, etc., the things you could find in a general store in 1895 to 1920 on Hawaii in Mountain View.

"My business provides the people a place where they can sell articles they no longer need or want. People were reluctant to destroy old usable pieces that they feel have value. I provide a place these pieces can be sold. We value these articles and restore them when needed and resell them for a profit which we use to buy more articles. Our customers cover a very wide income range and so do our purchases. We buy all our merchandise locally.

"A lot of our customers use our knowledge for authentication and appraisals of articles they treasure and do not wish to sell. Verbal appraisals are free likewise refinishing and restoration information to those who wish to do their own work, referrals to those who do not.

"Tourist trade uses us for a source of travel information and free emergency phone use any time of day or night.

"Our business here is the same as it was since 1966 on Oahu. Though we are primarily for the collector, investor, and dealer, we are used as a kind of museum. We give everyone that wants to look, a view of the multi-cultured past of Hawaii and an opportunity of returning home with a piece of that past.

"It is a real pleasure to sell a hand-painted Bavarian plate which I bought from J. Nakamura in Kurtistown, to a visiting plate collector that can brag to her friends in Newark, New Jersey that she found it on Hawaii.

"When we moved to the Big Island, many of our old customers stayed with us. We also find that our Honolulu competitors now send their visiting customers on to Hawaii to visit Tinny Fishers Antiques, something they rarely did the eight years we were open in Kailua, Oahu. New customers tell their collector friends to visit the Big Island and Tinny Fishers Antique Shop because they have what you are looking for.

"Almost everyone coming to Hawaii goes to the Volcano and passes our shop. A lot of these people are interested enough to stop because we are convenient. A lot of these people return and I feel that I have helped to make them do that.

"Our shop gives the visitor a Hawaiian past that he can compare with a past he is familiar with and realize that Hawaii is very much a part of his United States and has been for a long time."

The General Plan Land Use Pattern Allocation Guide Map designates the subject area for low density urban uses. This designation allows

single family residential uses at a maximum density of four (4) units per acre, as well as ancillary public and community uses. The County Zoning designation is Agricultural 20-acres (A-20a).

The Land Study Bureau's master productivity rating for the area under consideration is "D" or poor.

Lands surrounding the subject property are in sugar cane cultivation.

Pertinent comments from governmental agencies:

1. DEPARTMENT OF WATER SUPPLY

The Department of Water Supply had no objections to the subject permit request. However, it did remark that the existing shop is serviced with a 5/8-inch meter from the 6-inch waterline along the Volcano Road.

2. DEPARTMENT OF PUBLIC WORKS

The Department of Public Works noted that the proposed building addition had been checked by the Building Department and found to be in conformance with the Uniform Building Code.

3. U.S. DEPARTMENT OF AGRICULTURE SOIL CONSERVATION SERVICE

"This parcel contains soil of the ... Ohia series as indicated in the Soil Survey of Hawaii. It consists of extremely stony well-drained silty clay loams of 0 to 20 percent slopes. The dominant slope is 10 percent. This soil is shallower than typical of the series ranging from 20 to 36 inches over fragmental Aa lava. Stones cover from 3 to 15 percent of the surface.

"Permeability is rapid, runoff slow to medium, and the erosion hazard slight to moderate.

"Features affecting foundations for low buildings are low bearing capacity, high compressibility, low shear strength, subject to sliding, high shrinkage, and high organic matter content. Bedrock is generally at depth of 1½ to 3 feet."

4. FIRE DEPARTMENT

The Fire Department commented that fire hydrants are located along the Volcano Road and that fire protection is provided by the Keaau Fire Station.

5. STATE DEPARTMENT OF TRANSPORTATION

The Highways Division of the State Department of Transportation had the following comments and recommendations:

- "1. Parcel 83-A, 663 sq. ft., acquired by the State on 9/15/76.
- "2. On site parking shall be provided for.
- "3. A driveway access shall be constructed for ingress and egress. Asphalt concrete curbing will be required also to restrict parking along highway rights-of-way.
- "4. Submit plans for review and approval."

All other cooperating agencies, including the Hawaii County Department of Research and Development, Hawaii County Police Department and Hawaii Electric Light Company had no comments on or objections to the subject permit request.

At the public hearing held by the Hawaii County Planning Commission on March 14, 1977, the only person to testify on the subject request was the applicant.

On April 14, 1977, the Hawaii County Planning Commission voted to recommend approval of the Special Permit as it was found:

"That approval of the subject request will not be contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations. 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. The purpose of the subject request is to allow an existing commercial use to be expanded into an incomplete addition. The existing use was established in 1948. In 1963 the County Planning and Traffic Commission granted an Interim Zoning Variance Permit to allow an addition to be made to the existing store building. The owner of the subject property at that time began construction of the addition but never completed it. Substantial construction of the addition has been undertaken, but not to the extent which would allow the commercial use to be extended to it. The petitioner's intent is to finalize the construction. Inasmuch as the existing use and the addition have been extant for some time, the expansion of the nonconforming commercial use into the addition will not substantially interfere with the agricultural potential of the subject property. The property itself consists of 8,337 square feet of land and it is unlikely that agricultural use, other than home gardening, would be undertaken on it. In addition, soils on the subject property are rated "D", or poor, by the Land Study Bureau and are in the Soil Conservation Service's capability class VII.

"Further, the approval of the subject request will not substantially alter or change the essential character of the land and its present use. Although the existing use and the

uncompleted addition are situated within the State Land Use Agricultural District, they have been established since 1948 and 1963, respectively, and are deemed nonconforming. The State Land Use Law and Regulations state that a nonconforming use or structure shall not be expanded or increased in intensity of use. However, it is determined that the expansion of the nonconforming use into the incomplete addition will not, to a great degree, intensify the nonconforming use. The structural expansion has, in essence, been established already.

"In addition, adjacent lands are in sugar cane production and approval of the subject request will not adversely affect such use. The proposed expansion will not encroach into lands which are in cultivation and will not interfere with the cultivation of sugar in the area.

"Approval of the subject request will also not generate an unreasonable demand for the provision of public services and facilities. All essential utilities and services are already available to the subject property and the expansion of the existing use will be of such a nature that services and facilities beyond what is now required is unlikely."

The favorable recommendation was also subject to the following conditions:

- "1. That construction of the addition shall commence within one (1) year of the effective date of the Special Permit and be completed within one (1) year thereafter.
- "2. That a minimum of eight (8) parking stalls shall be provided on the subject property.
- "3. That a driveway access for ingress and egress shall be constructed. Plans for the access shall be submitted to the Department of Transportation Highways Division for review and approval prior to receipt of a building permit for the proposed addition.
- "4. That all other applicable rules and regulations, including the plan approval process, shall be complied with."

It was further stated by the Planning Commission that:

"Should any of the foregoing conditions not be met, the Special Permit may be deemed null and void."