



PLANNING DEPARTMENT

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Mayor

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COUNTY OF
HAWAII

CERTIFIED MAIL

September 17, 1982

Ms. Sylvia C. Hessler
P. O. Box 2087
Kailua-Kona, HI 96740

Dear Ms. Hessler:

Special Permit Application (81-3)
TMK: 9-2-184:4, 5 & 6

The Planning Commission at its continued public hearing on September 16, 1982, voted on your application, Special Permit No. 521, to approve the establishment of a preschool day care center, but to deny your request to allow the establishment of a French bakery-deli, garden shop and gas station on 9 acres of land situated within the State Land Use Agricultural District at Kula Kai View Estates Subdivision, Kahuku, Hawaii.

Approval of the establishment of a preschool day care center is based on the following:

As far as the preschool day care center is concerned, and unlike the other commercial uses proposed by the petitioner, it is felt that this particular use will not be contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations. The subject property is classified Agricultural by the State Land Use Commission and Extensive Agriculture on the General Plan Land Use Pattern Allocation Guide (LUPAG) Map. The area is also zoned Agricultural by the County. Within the County's Agricultural zoned district, preschools and day care centers are "Conditionally Permitted Uses".

That approval of this particular use is not anticipated to have any adverse effect on surrounding properties. The subject property is of sufficient size to enable adequate setbacks and buffers to be established. These concerns may be addressed through conditions of approval.

Ms. Sylvia C. Hessler
Page 2
September 17, 1982

That the proposed use is consistent with the policy of the County General Plan of providing a variety of educational opportunities for the island's population. Present trends and needs have arisen recently which reflect a desire of preschool and day care center facilities in Ka'u. Although this section of the Ka'u District is designated Agricultural by the State and County, it is rapidly becoming a rural/residential neighborhood. A vast number of single family dwellings have been constructed within this area in recent years. In addition, preschool and day care centers available to residents are quite a distance away from this rapidly growing area of Ka'u. The establishment of a preschool and day care center in this general area may alleviate some of the pressures on existing facilities as well as its availability in terms of proximity to the users. Based on the rapid growth of this section of Ka'u, it is determined that unusual conditions, trends and needs have arisen since the district boundaries and regulations were established which would justify the granting of this particular request. As such, it is determined that the establishment of the proposed use at the subject location will be in the public interest as it will provide additional educational opportunities for residents in the Ka'u district.

The proposed use will not unreasonably burden public agencies to provide additional facilities and services. Although concerns were expressed regarding the lack of a public water system, these concerns can be mitigated by certain conditions of approval.

Therefore, although some increase in the need for services may be generated by the proposed use, it is not expected that the increase will be of a substantial nature. In addition, the establishment of the proposed facility will aid some public agencies by relieving them of providing certain services.

It should be noted that the subject property consists primarily of A'a lava. The Land Study Bureau has classified this land as "E" or Very Poor. Further, the property is not designated as Prime, Unique or Other Important Agricultural Land under the State Department of Agriculture's Agricultural Lands of Importance to the State of Hawaii (ALISH) classification system. Therefore, although there may be certain agricultural activities which can be undertaken on the subject property, in this particular case, it is determined that the requested use will not be detrimental to the island's agricultural resource base nor will it have an adverse impact on the overall agricultural activity of the district, region and island.

Ms. Sylvia C. Hessler
Page 3
September 17, 1982

Based on the foregoing reasons, we have concluded that the proposed preschool day care center is an "unusual and reasonable use" and would promote the effectiveness and objectives of Chapter 205, HRS, as amended.

Approval of this Special Permit request for a preschool day care center is subject to the following conditions:

1. That the petitioner or her authorized representative shall be responsible for complying with all of the stated conditions of approval.
2. That plans shall be submitted for Plan Approval within one (1) year from the effective date of the Special Permit.
3. That construction commence within one (1) year from the date of receipt of Final Plan Approval and be completed within two (2) years thereafter.
4. That the proposed facility shall be restricted to a preschool day care center and shall not be used as an overnight or summer camp facility.
5. That adequate on-site parking stalls shall be provided meeting with the approval of the Planning Department.
6. That additional water tanks for fire fighting use with access to supply fire apparatus be provided, as deemed necessary by the Fire Department, prior to the issuance of occupancy permit.
7. That no direct access shall be permitted from the Hawaii Belt Highway.
8. That Kula Kai Boulevard shall be improved with a 20-foot wide pavement from the Hawaii Belt Highway to the access point of the subject property, meeting with the approval of the Department of Public Works.
9. That all other applicable rules, regulations and requirements, including those of the State Department of Health, be complied with.

Should any of the foregoing conditions not be met, the Special Permit shall be deemed automatically void.

Ms. Sylvia C. Hessler

Page 4

September 17, 1982

With regards to your request for the establishment of a French bakery-deli, garden shop and gas station, the Commission concluded that the commercial use portion of this Special Permit application is quite similar to that which the Planning Commission previously denied in 1981. Although the types of proposed commercial uses have been substantially reduced from that of the previous application, the land area has in fact increased from 3 to 9 acres. The Commission feels that this particular request should be denied for the following reasons:

That the proposed use will not promote the effectiveness and objectives of Chapter 205, HRS, as amended. Through the passage of Chapter 205, HRS, known as the Land Use Law, the State Land Use Commission was established. It called for the classification of all lands in the State and authorized the adoption of rules of practice and procedures and regulations for land use within the various land use districts. The four land use districts created by the State Land Use Commission, Agricultural, Rural, Urban, and Conservation, provide the basic legal framework of land uses in the State of Hawaii and help implement the long-range land use objectives of the State and Counties. The intent of these statutory provisions is 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 in Hawaii.

At the County level, these broader statewide objectives are articulated through the County General Plan. In that respect, consistency with the goals, objectives and policies of the General Plan will also promote the effectiveness and objectives of Chapter 205, HRS.

It is felt that the granting of this particular request would, in fact, be incongruous with the objectives sought to be accomplished by the Land Use Law and Regulations, as well as the County General Plan.

The General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the area for Extensive Agricultural uses. Although it could be argued that the soil or character of the land may not be immediately conducive for agricultural usage, we are basically reviewing the proposed uses from a land use pattern standpoint. It is felt that the introduction of the proposed commercial-type uses through the Special Permit process for this particular location may create an undesirable situation.

Ms. Sylvia C. Hessler

Page 5

September 17, 1982

Within this section of the Ka'u District, the State Land Use Commission and the Planning Commission have previously approved several Special Permits relating to commercial activities. Two (2) of these permits did allow the establishment of restaurant and cocktail lounges, of which one is already in operation. All these permits also allow the establishment of real estate offices of which two have been established. One of the Permits also allowed, among others commercial-type uses, the establishment of a convenience store and a service station, including fuel pumps. The distances of these facilities range from approximately less than a mile to two (2) miles. It is felt that to allow yet another commercial-type complex would definitely create an undesirable land use pattern. By allowing this particular request, we would be creating four (4) "pockets" of commercial establishments through the Special Permit process over a distance of approximately two miles. Preferably, from a land use perspective, it would be a definite benefit to concentrate these types of commercial and commercially-related activities in given locations. Recognizing this, the General Plan LUPAG Map does provide for an Alternate Urban Expansion (AUE) designation within this section of Ka'u in a centralized location which includes the Ocean View Store area. The subject property is slightly over one-half mile from this AUE designated area.

It is also undeniable that approval of this particular request at its requested location could create a situation wherein other lands through this section of the Ka'u District would be in a vulnerable position for similar actions. It would definitely create an undesirable situation of a scatteration of urban/commercial activities in the area through the Special Permit process. The further proliferation or scatteration of such activities may tend to debilitate the potential for a centralized urban area for the future in this general area of Ka'u. As such, it is felt that, in this particular case, the area's needs would not necessarily be better served with the proposed uses being situated at the requested location.

Further, inasmuch as the proposed uses are commercial in nature, it should be pointed out that the granting of this particular request would also be in conflict with the Commercial Element of the General Plan. One (1) of the stated policies in the General Plan is to discourage "strip" commercial developments and to promote the cluster concept utilized in designing commercial areas. As presented earlier, the granting

Ms. Sylvia C. Hessler

Page 6

September 17, 1982

of this particular Special Permit request for commercial purposes would create a "strip" or "strung out" development in this area of Ka'u over a distance of approximately two miles. As is, the other Special Permits previously granted do "string" out along the Mamalahoa Highway for a distance. Therefore, approval of this request at its particular location will further extend the desired limits of a concentrated or centralized commercial core.

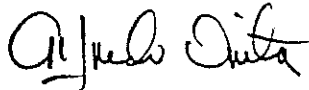
We do concur that this section of Ka'u has grown in terms of population, and that unusual conditions, trends and needs have arisen since the district boundaries and regulations were established that may justify some of the proposed uses. As pointed out earlier, however, a more centralized location has been provided on the General Plan LUPAG Map to establish such uses. To grant such a request at the subject location, at this particular time, would definitely alter and change the essential character of the land. The granting of this request would also adversely affect the surrounding properties and their improvements.

Based on the above, it is determined that the commercial portion of this Special Permit request should be denied.

A denial by the Commission of the desired use shall be appealable to the Circuit Court in which the land is situated and shall be made pursuant to the Hawaii Rules of Civil Procedure.

Please feel free to contact the Planning Department if there are any questions on this matter.

Sincerely,



ALFREDO ORITA
CHAIRMAN, PLANNING COMMISSION

lgv

cc: Mr. Andrew Levin
State Land Use Commission
Department of Public Works
Department of Water Supply
County of Hawaii Kona Office

bcc: Land Use Controls Division, Planning Dept.
LUC No. 484✓