

CERTIFIED MAIL

June 21, 1982

Mr. Richard Rushton
P. O. Box 321
Hilo, Hawaii 96720

Dear Mr. Rushton:

Special Permit Application (LUC 514)(12-5)
Tax Map Key 1-5-25:157

The Planning Commission at a duly held public hearing on June 17, 1982, considered your request for a special permit in accordance with Chapter 205-6, Hawaii Revised Statutes, and Rule 6 of the Planning Commission, to allow the commercial repair of automobiles on 1 acre of land situated within the State Land Use Agricultural District within Hawaiian Paradise Park Subdivision, Keaau, Puna, Hawaii.

The Commission voted to deny the special permit based on the following findings:

The need for the type of service provided by the petitioner is recognized as is the need for commercial and industrially designated properties. There are such properties within the established commercial centers of Pahoa, Keaau, and Hilo although they may not fit the petitioner's desires. It is acknowledged that expansion of such zones will be required as community growth occurs. It should, however, be kept in mind that the absence of sites desired by the petitioner is not sufficient reason to override other land use considerations.

Given the low intensity use described by the petitioner, it is not anticipated that there would be significantly increased pressures on the infrastructure and service delivery systems such as roads, water, police and fire protection. The neighborhood impacts could also be minimal although this remains uncertain. It should be noted that the automotive repair operation came to the attention of the Planning Department through a complaint from a property owner in the vicinity.

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For your information, certain type of commercial uses are permitted where single family residences are allowed through the "home occupation" definition in the Zoning Code. Home occupations are defined as, "Any use customarily conducted entirely within a dwelling and carried on solely by the inhabitants thereof, in connection with which there are: no display visible from outside the building; no mechanical equipment used except as is normally used for domestic or household purposes; and no selling of any commodity on the premises; which is clearly incidental and secondary to the use of the dwelling for dwelling purposes and does not change the character thereof. The office, studio, or occupational room of an architect, artist, engineer, lawyer or other similar professional person; business conducted entirely by phone or by mail (not involving frequent bulk shipments); and an office for doing 'homework' of a person in business elsewhere; all shall be permitted as home occupations except that no activity involving, encouraging, or depending upon frequent visits by the public and no shop or clinic of any type shall be deemed to be a home occupation" (emphasis added).

This test has been used by the Planning Department in considering Special Permit requests within subdivisions such as Hawaiian Ocean View Estates, and other areas of rural/residential character. This definition does not permit auto repair shops nor other shops primarily due to the potential neighborhood impacts of the uses. Noise and other impacts may not be consistent with the residential nature of the area involved. Should this particular request be approved, it could lead to a proliferation of other such requests as is currently being experienced with real estate-home occupation Special Permit requests. Should this happen, there is the potential for disruption of many communities.

It should be noted that within the Puna District there are more than 49,000 lots within large subdivisions such as Hawaiian Paradise Park.

While the Commission is sympathetic to the petitioner's situation and recognizes the value of the service provided to the community, the land use impacts possible through a proliferation of similar requests could be detrimental of existing communities, contrary to the purpose and intent of the land use law, and therefore not constitute an unusual and reasonable use as defined by Rule No. 6 of the Planning Commission.

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Based on these concerns, the Commission denied the Special Permit request.

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.

Should there be further questions on this matter, please feel free to contact the Planning Department at 961-8288.

Sincerely,



ALFREDO ORITA
CHAIRMAN, PLANNING COMMISSION

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cc: State Land Use Commission
Department of Public Works
Department of Water Supply

bcc: Land Use Controls Division, Planning Dept.