

#653

CERTIFIED MAIL

December 17, 1987

Mr. Sidney Fuke
Planning Consultant
100 Pauahi Street, Suite 212
Hilo, HI 96720

Dear Mr. Fuke:

Special Permit Application
Nullification of Special Permit No. 72-132
Petitioner: Ocean View Investment Company, Inc.
TMK: 9-2-185:94, 95, 96, and portions of 92 and 93

The Planning Commission at its duly held public hearing on December 8, 1987, voted to approve the application, Special Permit No. 653, to allow a variety of commercial and industrial uses on 14.75 acres of land situated within the State Land Use Agricultural District and the nullification of Special Permit No. 72-132 at Kahuku, Ka'u, Hawaii.

Approval of this request is based on the following:

The proposed uses will not be contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations. One of the principal objectives of the Land Use Law 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 of Hawaii. In this case, the property is classified Agricultural by the State Land Use Commission, and consequently, it is important to assess this request's impact from an agricultural perspective.

In this situation, the property, although being within the Agricultural District, is not used in any material way for agricultural pursuits. In fact, since the approval of Special

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(SSP #216)

Permit 72-132 in 1972, the area under consideration has been earmarked for commercial and limited industrial uses. Since a Special Permit has previously been approved for this property, the granting of this particular request will not violate the spirit and intent of the State Land Use Law and Regulations. While it could be argued that the 14.75-acre area could have some agricultural value, it should be noted that in this case, the property does not have any unique soil or other natural characteristics to render it agriculturally significant from a resource standpoint. The Land Study Bureau's overall master productivity rating for agricultural use is Class "E" or Very Poor. Further, the property is not classified by the State Department of Agriculture's Agricultural Lands of Importance to the State of Hawaii (ALISH) system.

The immediate surrounding area is not in any active agricultural use. While the lots within the area are normally 1 to 3 acres in sizes, the basic usage of these lots have been for residential purposes. Further, the property is situated in the Alternate Urban Expansion area as depicted on the General Plan Land Use Pattern Allocation Guide (LUPAG) Map, and therefore, is scheduled for some sort of urban development.

Based on the above, approval of this request should not have any immediate or long-term agricultural impact to this area of the Ka'u District.

As noted above, the proposed use would not adversely affect the surrounding properties and their improvements. Adequate on-site and off-site improvements, as may be required by the affected governmental agencies will be provided to mitigate any potential impacts to surrounding properties. Therefore, the proposed uses will not unreasonably burden public agencies to provide these improvements.

Further, as noted earlier, the property has been identified as part of the commercial core established for this section of the Ka'u District. Unlike other proposals for commercial developments in the Ka'u District, the proposed commercial uses will be within a centralized location designated for future urban expansion. Therefore, the granting of this particular request would eventually provide a centralized commercial core with limited industrial uses, in this section of the Ka'u District which would provide the necessary services for present as well as future residents of the area. It is felt that the establishment of the proposed use on the property will result in

an easier and more convenient access to such services for the residents in the area. As such, the granting of this particular request at its location would tend to concentrate rather than proliferate or create strip service-oriented developments in the area. Furthermore, as noted earlier, the proposed uses will be ideally situated within an area with existing commercial/industrial activities.

Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established. The rate of population growth for this section of the Ka'u District have risen substantially. This added growth has resulted in an increasing demand for services which represents a significant shift in conditions, trends and needs for the area.

Finally, it should be re-emphasized that as evidenced by the previously approved Special Permit, the property has been earmarked for commercial and limited industrial uses since 1972.

Based on the foregoing, it is determined that the granting of the proposed uses will result in an appropriate land use pattern that will further the public necessity and convenience of the general public, and will promote the effectiveness and objectives of Chapter 205, HRS, as amended.

Approval of this request 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. Inclusive of the existing uses, the following uses are allowed to be developed within the various phases of the development: post office; supermarket; gift shop; laundromat; barbershop; beauty salon; insurance, legal, medical, and veterinarian offices; TV/radio appliance shop, including repairs; restaurant/drive-inn; general dry goods store; warehouse; woodcraft workshop; and mechanical repair shop.
3. Plans for the Phase I of the development, including the specific uses proposed, the required on-site parking, and landscaping, be submitted for plan approval review within one year from the effective date of approval of the Special Permit. The parking improvements shall be in accordance with the requirements of Chapter 25, (Zoning Code), Hawaii County Code, as amended.

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4. Construction of the improvements within Phase I shall commence within one year from the date of receipt of final plan approval and be completed within three years thereafter.
5. Plans for the subsequent phase(s) shall be submitted within one year from the date of completion of the improvements within the previous phase(s). Construction of each phase shall commence within one year from the date of receipt of final plan approval for the affected phase and be completed within three years thereafter.
6. No use may be established on the property unless written approval is first obtained from the Planning Director.
7. No access shall be permitted from the Hawaii Belt Road. Access shall be from Prince Kuhio Boulevard.
8. The Fire Department shall be consulted as to the minimum requirements for the provision of water for fire fighting purposes. The applicant, successors or assigns shall be responsible for the construction of a water system for fire fighting purposes as may be required by the Fire Department, as part of Phase I of its development. Further, should the Fire Department determine that the water system provided during Phase I is insufficient to provide for the fire fighting needs of the entire development, then the construction of additional improvements may be required.
9. A drainage system in accordance with the requirement of the Department of Public Works be installed.
10. All other applicable laws, rules, regulations and requirements be complied with, including those of the State Department of Health and the Fire Department.
11. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the approval of the permit. The report shall include, but not be limited to, the status of the development, the uses established on the property, and to what extent the conditions of the permit are being complied with. This condition shall remain in effect until all of the conditions of approval have been complied with, and the Planning Director acknowledges that further reports are not required.

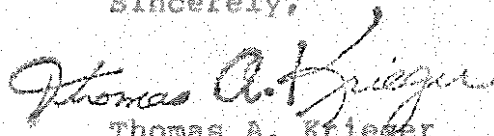
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12. An initial extension of time for the performance of conditions within the ordinance may be granted by the Planning Director upon the following circumstances: a) the non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicants, 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; and 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). Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to nullify the permit.

With the approval of this request, as presented earlier, the Planning Commission has also voted to nullify SP 72-132 since it is being replaced with the new Special Permit.

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

Sincerely,

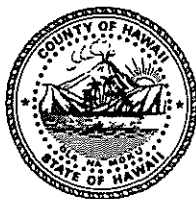


Thomas A. Krieger
Chairman, Planning Commission

cc: Lewis Sterry
Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission

bcc: Plan Approval Section

Stephen K. Yamashiro
Mayor



County of Hawaii

PLANNING COMMISSION

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 Fax (808) 961-9615

CERTIFIED MAIL
P 021 737 127

May 23, 1995

Kenneth Asato, President
Ocean View Investment Co., Inc.
75-170 Hualalai Road, Suite A-100
Kailua-Kona, HI 96740

Dear Mr. Asato:

Special Permit No. 653(87-13)

Applicant: Ocean View Investment Co., Inc.

Request: Amendments to Condition No. 5 (Submit Plans and Commence Construction for Subsequent Phases) and Condition No. 12 (Extension of Time)

Tax Map Key: 9-2-185:94,95,96 and Portions of 92 and 93

The Planning Commission at its duly held public hearing on May 11, 1995, voted to approve the above-mentioned amendment request. The property is located at the western corner of the Hawaii Belt Road-Prince Kuhio Boulevard intersection and includes the existing Ocean View Store Complex, Kahuku, Ka'u, Hawaii.

Approval of this request is based on the following:

The reasons for the delay could not have been foreseen and were beyond the control of the applicants. Litigation has diverted finances, time and attention to things other than the project itself. The applicant has been advised by its legal counsel that the lawsuit could take as long as one year to finalize.

Approval of an amendment to Condition Nos. 5 and 12 would not be contrary to the General Plan or Zoning Code. Upon settlement, the applicant intends to proceed with the project as planned and granted through the Special Permit.

C6070

MAY 23 1995

The granting of the time extension would not be contrary to the original reasons for granting Special Permit No. 653. If the time extension is approved, the applicant intends to continue constructing the remaining phases of the project.

The Planning Director has been recommending an overall project performance condition to permits and ordinances instead of timed phasing of different aspects of the project (submit plans, secure final plan approval, commence construction, complete construction). It is felt that as long as a project is completed within a projected period of time, the intricacies of different approvals by the Planning Department should remain more flexible. Such a position acknowledges the variables a project is faced with throughout its construction life ranging from economic hardships to delays in government review. Therefore, Condition No. 5 should contain the more recent language being imposed on other similar projects, and Condition No. 12 should be amended as follows in the restated conditions of the permit (bracketed material to be deleted with underscored material to be added):

1. The applicant, successors, or assigns shall be responsible for complying with all of the stated conditions of approval.
2. Inclusive of the existing uses, the following uses are allowed to be developed within the various phases of the development: post office; supermarket; gift shop; laundromat; barbershop; beauty salon; insurance, legal, medical and veterinarian offices; TV/radio appliance shop, including repairs; restaurant/drive-inn; general dry goods store; warehouse; woodcraft workshop; and mechanical repair shop.
3. Plans for [the] Phase I of the development, including the specific uses proposed, the required on-site parking, and landscaping, be submitted for plan approval review within one year from the effective date of approval of the Special Permit. The parking improvements shall be in accordance with the requirements of Chapter 25, (Zoning Code), Hawaii County Code, as amended.
4. Construction of the improvements within Phase I shall commence within one year from the date of receipt of final plan approval and be completed within three years thereafter.
5. [Plans for the subsequent phase(s) shall be submitted within one year from the date of completion of the

improvements within the previous phase(s).] Construction of [each phase shall commence within one year from the date of receipt of final plan approval for the affected phase and] the balance of the project shall be completed within [three] five years [thereafter] from the date of approval of this amendment.

6. No use may be established on the property unless written approval is first obtained from the Planning Director.
7. No access shall be permitted from the Hawaii Belt Road. Access shall be from Prince Kuhio Boulevard.
8. The Fire Department shall be consulted as to the minimum requirements for the provision of water for fire fighting purposes. The applicant, successors or assigns shall be responsible for the construction of a water system for fire fighting purposes as may be required by the Fire Department, as part of Phase I of its development. Further, should the Fire Department determine that the water system provided during Phase I is insufficient to provide for the fire fighting needs of the entire development, then the construction of additional improvements may be required.
9. A drainage system in accordance with the requirements of the Department of Public Works be installed.
10. All other applicable laws, rules, regulations and requirements be complied with, including those of the State Department of Health and the Fire Department.
11. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the approval of the permit. The report shall include, but not be limited to, the status of the development, the uses established on the property, and to what extent the conditions of the permit are being complied with. This condition shall remain in effect until all of the conditions of approval have been complied with, and the Planning Director acknowledges that further reports are not required.
12. An [initial] extension of time for the performance of conditions within the [ordinance] 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 applicants, successors or assigns, and that are not the


Kenneth Asato, President
Ocean View Investment Co., Inc.
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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; and 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). Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiated procedures to [nullify] revoke the permit.

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.

Should you have any questions, please feel free to contact Connie Kiriu of the Planning Department at 961-8288.

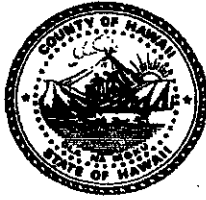
Sincerely,



Wilton K. Wong, Chairman
Planning Commission

CRK:syw
LOcean01.PC

xc: Honorable Stephen K. Yamashiro, Mayor
Planning Director
Department of Public Works
Department of Water Supply
County Real Property Tax Division
West Hawaii Office
State Land Use Commission
Plan Approval Section



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

DEC 30 2013

Mr. Bradley Westervelt
Oceanview Partners LLC
331 Mehau Lane
Hilo, HI 96720

Dear Mr. Westervelt:

Special Permit No. 653 Issued to Ocean View Investment Company, Inc.
Initiator: Planning Director
Request: Assessment and Appropriate Action on Applicant's Response/Action
Regarding Condition No. 10
Tax Map Key: 9-2-185:094, 095, 096 and Portions of 092 and 093

The Windward Planning Commission at its duly held public hearing on December 5, 2013, reviewed the Planning Director's request for the Commission to assess and take appropriate action on the applicant's response/action regarding Condition No. 10 of Special Permit No. 653 which was issued to Ocean View Investment Company, Inc., on December 8, 1987, allowing a variety of commercial and industrial uses and a farmers' market on 14.75 acres of land within the State Land Use Agricultural District. The property is located at the western corner of the Hawai'i Belt Road-Prince Kūhiō Boulevard, intersection and includes the existing Ocean View Store complex known as Pōhue Plaza, Kahuku, Ka'u, Hawai'i.

After review of the record and hearing testimony on this matter, in accordance with Hawai'i Revised Statutes, Chapter 205-6, the Windward Planning Commission hereby amends the conditions of Special Permit No. 653 as follows. Material to be deleted is bracketed and stricken; material to be added is underscored.

1. The applicant, successors, or assigns, shall be responsible for complying with all of the stated conditions of approval.

Hawai'i County is an Equal Opportunity Provider and Employer

DEC 30 2013

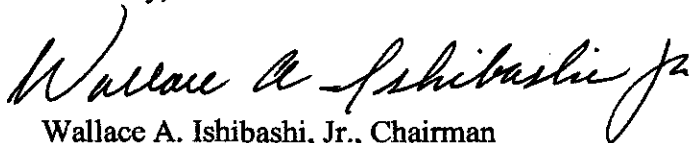
2. Inclusive of the existing uses, all uses permitted in the Industrial-Commercial Mixed (MCX) district of the County Zoning Code shall be permitted on the 14.75 acres on TMK: 9-2-185: 94, 95, 96 and Portions of 92 and 93, with the exception of cemeteries, mausoleums, "big box" retail centers such as COSTCO and Home Depot, and telecommunications lattice towers and monopoles. Telecommunications antennas using stealth technology will be permitted.
3. Final Plan Approval from the Planning Director shall be required prior to the construction of any new structure or the establishment of any use on the subject properties. Plans shall identify existing and proposed structures, signage, fire protection measures, parking stalls and driveway and other improvements associated with the proposed uses. Landscaping and irrigation in accordance with Planning Department Rule 17's requirements for the Industrial-Commercial Mixed (MCX) District shall also be indicated on the plans and be provided for the purpose of mitigating any adverse noise or visual impacts to adjacent properties.
4. Setbacks for all structures shall be consistent with setbacks applied within the Agricultural District (30 feet front and rear yard setback and 20 feet side yard setback). Maximum height for any structure shall be 45 feet.
5. No access shall be permitted from the Hawai'i Belt Road. Access shall be from Prince Kūhiō Boulevard.
6. The applicant shall provide traffic control attendant(s) to actively manage traffic flow and parking associated with the farmers market/swap meet so that vehicles do not park or back up onto Prince Kūhiō Blvd.
7. The applicant shall provide signage indicating where vendors and visitors may park on-site.
8. All parking associated with the farmers market/swap meet shall be provided within the special permit area. Parking on Prince Kūhiō Blvd and Maile Drive is prohibited.
- [6-]9. The Fire Department shall be consulted as to the minimum requirements for fire apparatus access roads and the provision of water for firefighting purposes. The applicant, successors or assigns shall be responsible for the construction and maintenance of a water system and fire apparatus access roads for firefighting purposes as may be required by the Fire Department, as part of Phase I of its development and as part of all subsequent developments. Further, should the Fire Department determine that the water or road system provided during Phase I is insufficient to provide for the fire fighting needs of the entire development, then the construction of additional improvements may be required.

- [7-]10. All development generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties, in accordance with the requirements of the Department of Public Works.
- [8-]11. Any exterior signs shall meet with the approval of the Department of Public Works.
- [9-]12. All other applicable laws, rules, regulations and requirements be complied with, including those of the State Department of Health and the Fire Department.
- [10-]13. If the applicant fails to comply with the conditions of approval or is unable to resolve any public complaint(s), the Planning Director shall investigate and, if necessary, enforce the appropriate conditions. The Planning Director may, as part of any enforcement action, refer the matter to the Planning Commission for review. Upon appropriate findings by the Planning Commission, that the applicant has failed to comply with the conditions of approval or has caused an unreasonable adverse impact on surrounding properties, the permit may be suspended or revoked.

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.

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

Sincerely,



Wallace A. Ishibashi, Jr., Chairman
Windward Planning Commission

IPDInitiatedOceanviewInvSPP653

cc: Mr. John Aickin
South Point U-Cart, Inc.
Department of Public Works
Department of Water Supply
Real Property Tax Division
Planning Department – Kona
State Land Use Commission
DOT-Highways, Honolulu
Mr. Gilbert Bailado