

CERTIFIED MAIL

May 20, 1988

Mr. Richard Bond
SR Box 46A
Capt. Cook, HI 96704

Dear Mr. Bond:

Special Permit Application (88-3)
TMK: 9-2-198:12

The Planning Commission at its duly held public hearing on May 18, 1988, voted to approve your application, Special Permit No. 663, to allow the establishment of a retail produce and gift shop on a 3-acre parcel within the State Land Use Agricultural District at Kahuku, Ka'u, Hawaii.

Approval of this request is based on the following:

1. The granting of this request would promote the effectiveness and objectives of Chapter 205, Hawaii 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 Hawaii. In the case of agricultural districts, the intent is to preserve or keep lands of high agricultural potential in agriculture use. The purpose of this Special Permit is to allow the establishment of a retail produce and gift shop as an accessory to the existing agricultural activities which are being conducted on the property. At the public hearing, the applicant stated that approximately two acres of land are planted in fruits, vegetables or flowers known as Likeke's Ka Lae Garden. This Garden is presently open to the public free of charge and has served to educate and inform the public of Hawaii's tropical plants. The proposed retail produce and gift shop would supplement, not diminish, the established agricultural uses on the property. Further, the sale of unrelated products

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is not a large scale intrusion that would inappropriately be placed within the State Land Use Agricultural District.

While soils of the area have been rated as having poor productivity potential, the applicant has overwhelmingly demonstrated that such soils can indeed be cultivated. These efforts should be encouraged and would not be contrary to the General Plan.

2. The granting of this request should not adversely affect surrounding properties. The subject property virtually fronts the Hawaii Belt Road and is surrounded on three sides by undeveloped parcels of land. The proposed project was supported by 26 property owners within the Hawaiian Ocean View Ranchos Subdivision as well as the adjacent landowners of Parcel 13 to the west (Kailua side). Access will be gained via Kohala Boulevard and the 40-foot wide roadway easement which runs parallel to Hawaii Belt Road. The private roadway situation is felt to be adequate to accommodate any additional traffic generated by the project. As recommended by the Department of Public Works, this permit contains a condition stating that access to the property shall not be directly from Hawaii Belt Road. During a site inspection by the Planning Department staff, it was noted that a driveway crossing the divider strip between the private easement road and Hawaii Belt Road had been delineated by white rocks immediately across from the subject property. With the inclusion of this condition, access shall not be across such unlawfully established points.

Testimony was also received from Ocean View Investment Company, Inc., who raised objections to the project citing that its approval would result in a scatteration of commercial activities and an undermining of the existing commercial core. Given the limited nature and scope of the applicant's proposal as an accessory to the agricultural pursuits on the property, it is felt that the granting of this request would have negligible impact on the existing commercial area. At the public hearing, the applicant modified the proposed gift shop from 1,350 to 600 square feet of gross floor area. The amount of retail activity being less than half of what was originally proposed is a significant reduction. Conditions, relating to the size of the retail shop and the type of items sold, are being recommended to ensure preservation of the existing

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commercial core and to maintain the proposal as an accessory to the main agricultural use on the property.

3. The proposed retail produce and gift shop will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. As stated previously, the intent of this request is to accommodate visitors who would normally be visiting the property. Therefore, unlike the introduction of a new use to the area, the amount traffic is not expected to be substantially greater by the establishment of the proposed use. The nature and scale of the produce and gift shop will not generate additional demands or expansion to those services and facilities already available to the subject property.
4. The land upon which the proposed use is sought is unsuited for the uses permitted within the district. Again, the applicant has demonstrated the agricultural potential of lands generally rated as very poor in productivity. These efforts would be augmented by the small scale shop that is being proposed. Furthermore, no existing agricultural areas will be curtailed or diminished as a result of this approval. It should be noted that the State Department of Agriculture had no negative comments to the applicant's request.
5. The proposed use will not substantially alter or change the essential character of the land and the present use. The essential character of the subject property is primarily agricultural. Since public tours are presently conducted on the property, there would be little alteration or change to what exists.

In view of the foregoing, it is determined that the proposed retail produce and gift shop is an unusual and reasonable use, which would not be contrary to the objectives sought to be accomplished by the Land Use Law Rules and Regulations.

Approval of this request is subject to the following conditions:

1. The petitioner shall be responsible for complying with all stated conditions of approval.
2. Plans for the proposed 600-square foot structure, including parking for cars and buses, shall be submitted for plan

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approval review within one year from the effective date of this permit. Parking shall comply with the requirements of Chapter 25 (Zoning Code). No parking variance from the Code shall be applied for or granted.

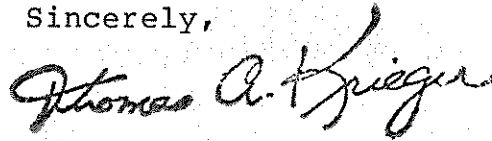
3. Construction shall commence within one year from the date of receipt of final plan approval and shall be completed within two years thereafter.
4. There shall be no signage on the premise advertising the new approved retail use.
5. A list of items (general categories) to be sold shall be submitted to and approved by the Planning Department prior to the issuance of the occupancy permit. The items shall supplement the agricultural theme of the Gardens or provide for immediate visitor needs (i.e. camera film or postcards).
6. No direct access from the subject property onto Hawaii Belt Road shall be permitted.
7. All other applicable laws, rules, regulations and requirements shall be complied with.
8. 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 and to what extent the conditions of approval are being complied with. This condition shall remain in effect until all of the conditions of approval have been complied and the Planning Director acknowledges that further reports are not required.
9. An extension of time for the performance of conditions within the 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 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

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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.

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

Sincerely,



Thomas A. Krieger
Chairman, Planning Commission

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
Planning Office - Kona
State Land Use Commission
Sharon Hannon, SR Box 20 D, Capt. Cook, HI 96704
Kenneth Asato, Box 803, Kealahou, HI 96750
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bcc: Plan Approval Section