



Planning Commission

Larry S. Tanimoto
Mayor

25 Aupuni Street, Rm. 109 • Hilo, Hawaii 96720 • (808) 961-8288

CERTIFIED MAIL

May 14, 1990

Mr. Alfred Seabury
P.O. Box 10206
Hilo, HI 96721

Dear Mr. Seabury:

Special Permit Application (90-5)
TMK: 1-8-09:Portion of 24

The Planning Commission at its duly held public hearing on May 3, 1990, voted to approve your application, Special Permit No. 732, to allow the sale of retail items (products not produced on the premises) at the existing Hawaiian Herb and Spice Co. site situated on approximately 1.875 acres within the State Land Use Agricultural District approximately 800 feet north (Keaau side) of the 22-mile marker and along the east side of the Volcano Highway, Olaa Reservation Lots, Puna, Hawaii.

Approval of this request is based on the following:

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 agricultural use. The subject property has been developed as a herb farm. In addition to sale of agricultural products grown on the premises and farm tours, the applicant also intends to sell other local produce, refreshments and gift items. The primary intent would be to promote the agricultural activity on the property and in the

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region. The requested use would be an integral part of the applicant's agricultural endeavors. Furthermore, the sale of unrelated products will not be such a large scale intrusion that would make it inappropriate for operation within the State Land Use Agricultural District. Although the granting of this request will allow the establishment of certain non-agricultural uses on the property, it is determined that these uses will be subsidiary to the main horticultural activities on the remainder of the property.

The introduction of a produce and gift shop is not anticipated to have negative impacts to surrounding agricultural endeavors. Agricultural activity in the area is limited. In addition to sparse residential use, surrounding properties are either forested, abandoned sugar cane land, or in pasture use. The proposed use may stimulate regional agricultural activity by providing an outlet for local products. The agricultural operation of the farm will not be negatively affected by the proposed use, which is expected to contribute to the economic viability of the existing agricultural activity.

The desired use will not otherwise adversely affect the surrounding properties. This request involves the conversion of a portion of an existing farm building to a produce and gift shop. The sale of agricultural products produced on the property has been conducted since 1981. Other than driveway and parking lot improvements, no other construction is anticipated. The Volcano Highway is a primary arterial roadway. The proposed operation is not expected to significantly affect traffic along the highway. In order to mitigate visual effects of the retail structure and parking facilities from Highway 11, landscaping will be required as a condition of approval.

The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, police and fire protection. Consulted agencies had no objection to the request. The Volcano Highway, which has 24-foot wide pavement with 6-foot paved shoulders, is under the jurisdiction of the State Highways Division. Therefore, access to the highway must be approved by the Highways Division prior to establishment of the proposed activity.

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Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established. Since the adoption of the State Land Use Law, diversified agriculture has grown within the South Hilo and Puna districts while sugar production has declined, as evidenced by the closing of Puna Sugar Company. Tourism has also declined in East Hawaii, with the majority of tourism growth taking place in West Hawaii. Visitors to East Hawaii are finding agricultural/botanical garden related activities attractive. This is demonstrated by the increased number of similar special permits granted in the region such as Akatsuka Farm, Sunshine Farms, Richard Bond, Mauna Loa Macadamia Nut Corporation, and Nani Mau Gardens. This trend has played a supportive role in the development of diversified agriculture in the region.

The land upon which the proposed use is sought is unsuited for the uses permitted within the district. The area proposed for the retail use has already been improved with farm-related structures, driveway and parking area. No additional land will be taken out of existing or potential agricultural use. This application applies to only a 1.875-acre portion of the property; therefore, no public commercial activity, such as paid tours, is authorized for the remainder of the property.

The use will not substantially alter or change the essential character of the land and the present use. The rural character of the area should not be affected by the proposed produce and gift shop. The proposed retail use is on a small scale and subsidiary to the agricultural use on the property. As previously mentioned, no additional construction is anticipated. In order to minimize the commercial atmosphere and to ensure that the retail use remain subsidiary to the agricultural use, it is recommended that no signage be permitted advertising the retail use approved by this permit. With the adoption of conditions of approval, the proposed use is not expected to compete with other retail or business centers.

The request is not contrary to the General Plan. The proposed use is consistent with the following goals, policies, and courses of action of the General Plan:

Land Use Goals

Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the County.

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Protect and encourage the intensive utilization of the County's important agricultural lands.

Economic Goals and Policies:

The County shall provide an economic environment which allows new, expanded, or improved economic opportunities that are compatible with the County's natural and social environment.

The County of Hawaii shall strive for diversification of its economy by strengthening existing industries and attracting new endeavors.

Courses of Action for Puna

There is potential for limited visitor facilities in the form of small accommodations and support facilities, such as natural areas, botanical gardens, and limited commercial facilities.

Assist in the further development of diversified agriculture in the district.

Based on the above considerations, it is determined that the sale of agricultural products, pre-made food, and gift items is an unusual and reasonable use of land, 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 applicant, its successors, or assigns shall be responsible for complying with all stated conditions of approval.
2. Final Plan Approval shall be secured from the Planning Department within one year from the effective date of this permit. To assure adequate time for plan approval review and in accordance with Chapter 25-244 (Zoning Code), plans shall be submitted a minimum of forty-five days prior to the date by which plan approval must be secured. Plans shall identify structures, landscaping, and parking stalls associated with the produce and gift shop. Parking shall comply with the requirements of Chapter 25 (Zoning Code)

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and shall be paved with an all-weather, dust-free surface. No parking variance from the Code shall be applied for or granted. Parking for all functions shall be maintained on the subject property.

3. Construction of any improvements, including driveway and parking area, shall commence within one year from the date of receipt of Final Plan Approval and shall be completed within one year thereafter. The applicant shall notify the Planning Department in writing of completion of required improvements prior to establishment of the retail operation.
4. Commercial retail activities shall be limited to the existing 400+-square foot structure. Paid public tours of the farm may not be conducted.
5. A restaurant may not be operated on the property, but pre-made snacks may be served during the hours of operation of the retail shop, which shall be subordinate to the agricultural operations on the property.
6. The hours of operation of the retail shop shall be from 8:00 am to 6:00 pm daily.
7. A list of items (general categories) to be sold shall be submitted to and approved by the Planning Director prior to establishment of the retail use. The items shall supplement the agricultural theme and may include locally produced arts and crafts or provide for immediate visitor needs (i.e. camera film or post cards).
8. There shall be no signage on the premises advertising the sale of retail items.
9. Comply with applicable laws, rules, regulations, and requirements of all other State and County agencies.
10. 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.

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11. 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 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 shall initiate procedures to 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.

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

Sincerely,



Fred Y. Fujimoto
Chairman, Planning Commission

xc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
Department of Health

bcc: Plan Approval Section