



Planning Commission

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

Lorraine R. Inouye
Mayor

CERTIFIED MAIL

January 23, 1991

Mr. Earl Russell
Box 831
Naalehu, HI 96772

Dear Mr. Russell:

Special Permit Application
Tax Map Key: 9-2-86:15 and 9-2-92:01

The Planning Commission at its duly held public hearing on January 10, 1991, voted to deny your request in the manner requested to allow the establishment of a retail nursery and garden supply center on two lots totalling 3.7 acres of land situated within the State Land Use Agricultural District at Hawaiian Ocean View Estates Subdivision, Kahuku, Ka'u, Hawaii.

The denial recommendation is based on the following:

The proposed nursery operation and the sale of plants and garden supplies produced off the premises on two lots separated by Paradise Parkway would 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 land use districts created by the State Land Use Commission being 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

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General Plan will also promote the effectiveness and objectives of Chapter 205, HRS.

It is felt that the granting of this particular request at this scale would, in fact, be inconsistent 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. The applicant has demonstrated the potential for agricultural use by the success of his potted plant operations. This denial, however, is based upon the principles of establishing effective land use patterns. It is felt that the introduction of the proposed retail and commercial-type use through the special permit process for these two lots would create an undesirable situation. The proposal includes the sale of garden supplies, tools, yard furnishings (shade screen, yard mower, tractor, sprayer pumps, gazebos, picnic tables, fountains, bird houses, ceramic items and the like) as well as cut flowers and potted plants grown off-site. The scope of this proposal, minus the 7,000 potted plants, is similar to Hilo's Farmer's or Garden Exchange or The Greenhouse in Kona. These kinds of operations are normally located in either commercial or industrial districts. This type of operation generates traffic and produces other primary and secondary impacts which are customarily absorbed within the character of that district. The intent of this proposal is to generate business and clientele to the properties and to serve as a distributor for other growers. This is why road front properties are so vital to the operation. Specifically, the nursery and full-scale retail/bulk sales of garden tools, supplies and yard furnishings on both properties would conflict with the following General Plan policies:

"Distribution of commercial areas shall be such as to best meet the demands of neighborhood, community and regional needs.

"Centralize commercial activities in existing urban centers."

The properties are over 0.8 mile to the east of the Urban Expansion Area which has had approvals for a laundromat, hardware store, postal facility, and a variety of commercial and industrial uses. The nature of the project would tend to create a strip commercial development extending for a distance of

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2 miles in the Kailua direction and almost 1-1/2 miles in the Volcano direction for a total of 3-1/2 miles.

Within this section of the Ka'u District, the State Land Use Commission and the Planning Commission have previously approved and denied several Special Permit requests relating to commercial activities over the past 15 years. Analysis shows the evolution of a distinct pattern of development approvals. At the outset, special permit approvals created three pockets of commercial activity. The first being the McKee restaurant and motel facility at the Kailua end; the second being the Darling restaurant/cocktail lounge at the Volcano end 1/2 mile east of the project site; and the third being the centralized Ocean View General Store area. Subsequent approvals such as the expansion of the Ocean View General Store complex and a hardware store/commercial office across from the Store have solidified the McKee and Ocean View General Store commercial core areas. Special permits granted in the area of the Darling restaurant/cocktail lounge have allowed a 600-square foot retail gift shop in conjunction with a botanical garden (Richard Bond) and a bed and breakfast operation. These were limited in nature and by conditions of approval. Denials have been consistently against fostering an expanded commercial pocket in the Darling cocktail/lounge vicinity. This policy decision was reinforced by the previous denial of a self-storage facility on one of the subject properties in 1990. It is also certain that approval of this particular request in its entirety would create a situation where other lands through this strip of the Ka'u District would be vulnerable to similar actions. It would definitely create a regressive situation scattering urban/commercial activities in the area through the Special Permit process. The further proliferation or scatteration of such activities will tend to debilitate the potential for a centralized urban area for the future. As such, it is felt that the area's needs would not necessarily be better served with the entire use as proposed.

From a land use standpoint, if the full-scale commercial activity is intended to capture a regional or neighborhood market, the appropriate location would be within the established "commercial core" of the Hawaiian Ocean View Estates and Ranchos Subdivisions.

Based on the foregoing, it is determined that the granting of the entire request at this location will not promote the effectiveness and objectives of Chapter 205, HRS.

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In light of your concurrence with the Planning Director to modify your request, the Commission also voted to approve your application, Special Permit No. 765. Approval of the modified request is based on the following:

In addition to what is already permitted on the property, the use on TMK: 9-2-92:01 shall be restricted to only the storage of potted plants, cut flowers, peat moss, cinder and soil. Access to and from the property shall be limited only to delivery of these items. No sales, displays or transactions shall be permitted which might generate additional pedestrian and vehicular traffic to the site. It is felt that the storage of plants, flowers, cinder and soil would be one-step removed from actually growing the products on the property. Once on the property, the plants would have a visual appearance of agricultural use.

The use of TMK: 9-2-86:15 shall be restricted to the sale of potted plants, cut flowers and accessory agricultural products. Accessory agricultural products could include locally handcrafted flowers, pots, vases and baskets. It shall not include garden tools and supplies, yard furnishings, picnic tables, fountains, gazebos and art paintings.

Approval of the modified nursery request would, in some ways, be similar to the botanical gardens approved in the vicinity. A difference would be in the amount of off-site plants brought onto and sold on the properties. The applicant intends to supplement his nursery with plants produced elsewhere. Therefore, as long as the applicant continues to grow plants for his nursery, the added plant stock should provide additional benefits to the applicant as well as farmers/growers in Ka'u.

The granting of this modified request would promote the effectiveness and objectives of Chapter 205, HRS, as amended. The proposed retail plants would supplement, not diminish, the established agricultural use on one of the properties. The storage of plants would be similar to growing the products on the premises. The plants will have to be cared for during storage and will have the visual affect of an agricultural farm.

The sale of unrelated products such as flower pots, handcrafted baskets and vases is not a large scale intrusion

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that would inappropriately be placed within the State Land Use Agricultural District. The sale of unrelated products, such as picnic tables, gazebos, sprayers and shade screens, signify a change in the character of the operation. It would then resemble a store similar to Build and Grow or Farmer's Exchange. These are more appropriately directed to the County's Urban Expansion Area.

The granting of the request should not adversely affect surrounding properties. With the provision of landscaping, visual impacts of the activities and structures to surrounding properties and the Hawaii Belt Road will be effectively mitigated. Paradise Parkway from Hawaii Belt Road to the driveways will require paving to a width of 20 feet. This is to accommodate the anticipated heavier traffic that can be expected for both properties.

The proposed modified nursery will not burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, police and fire protection. As mentioned previously, the road leading to the project site will be paved meeting with the approval of the Department of Public Works. Consulted agencies had no objections or comments on the application.

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 import of plants grown off-site. Furthermore, no existing agricultural areas will be curtailed or diminished as a result of this approval, provided that this approval is not used to expand a second commercial core.

The proposed use will not substantially alter or change the essential character of the land and the present use. With the modifications, the essential character of the subject properties are primarily agricultural.

In view of the foregoing, it is determined that the proposed nursery, as modified, 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.

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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 of the proposed development on both lots 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 paved parking stalls associated with the proposed use. Landscaping shall buffer the activities and structures from the Hawai'i Belt Road and from neighboring properties.
3. Construction of improvements shall commence within one year from the date of receipt of Final Plan Approval and shall be completed within two years thereafter. The applicant shall notify the Planning Department in writing of completion of required improvements prior to establishment of the nursery operation.
4. In addition to those uses permitted by law, the use on TMK: 9-2-92:01 shall be restricted to the storage of potted plants, cut flowers, peat moss, cinder and soil. Access to and from the property shall be limited only to delivery of these items. Sales, displays and related transactions shall not be permitted on the property.
5. In addition to those uses permitted by law, the use on TMK: 9-2-86:15 shall be restricted to the sale of potted plants, cut flowers and accessory agricultural products such as cinder, peat moss, soil and locally-crafted items (flower vases, pots and baskets). The sale and storage of the accessory agricultural products and locally-crafted items shall be limited to a 600-square foot area. A list of items to be sold on TMK: 9-2-86:15 shall be submitted to and approved by the Planning Department prior to issuance of a certificate of occupancy for any portion of the development. The items offered for sale shall not compete with commercial, retail and industrial uses in the vicinity.

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6. Paradise Parkway from the Hawaii Belt Road intersection to the furthest point of the driveway access shall be improved to a width of 20 feet with 6-foot shoulders to a standard meeting with the approval of the Department of Public Works. These improvements shall be in place prior to the issuance of a certificate of occupancy for any portion of the development.
7. There shall be no signage on the premises advertising the sale of retail items.
8. The hours of operation shall be from 8:00 am to 5:00 pm, Mondays through Saturdays and from 12:00 noon to 5:00 pm on Sundays.
9. No direct access from the properties onto Hawaii Belt Road shall be permitted.
10. Comply with all other laws, rules, regulations and requirements.
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 amount of agricultural products produced on-site and off-site, 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.
12. 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.,

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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 will 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,

Mike Luce

Mike Luce, Chairman Pro Tem
Planning Commission

xc: Department of Public Works,
Department of Water Supply
County Real Property Tax Division
West Hawaii Office
State Land Use Commission
DLNR
State Dept. of Transportation, Highways Division
Department of Agriculture