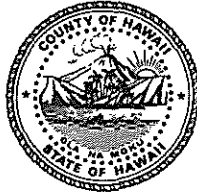


Stephen K. Yamashiro
Mayor



County of Hawaii

PLANNING COMMISSION

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

CERTIFIED MAIL

DEC - 5 1994

Mr. Jeffrey C. Rivera
HCR 1, Box 5242
Keaau, HI 96749-9514

Dear Mr. Rivera:

Special Permit Application (SPP 94-16)
Applicant: Jeffrey C. and Bonna J. B. Rivera
Request: Proposed Certified Kitchen to Supply Off-site
Lunch Wagon Operation
Tax Map Key: 1-5-45:69

The Planning Commission at its duly held public hearing on November 17, 1994, voted to approve your application. Special Permit No. 892 is hereby issued to establish a certified kitchen to prepare meals for a lunch wagon operation on approximately 1 acre of land within the State Land Use Agricultural district. The project site is located on the mauka side of the 13th Street approximately 0.7 miles on the Keaau side from its intersection with Kaloli Drive, Hawaiian Paradise Park Subdivision, Keaau, Puna, Hawaii.

Approval of this request is based on the following:

In considering a Special Permit for any proposed use, Rule 6 of the Planning Commission relating to Special Permits require that such action conform to the following guidelines:

- a. Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations;
- b. The desired use shall not adversely affect surrounding properties;
- c. Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection;
- d. Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established;

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Mr. Jeffrey C. Rivera

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- e. The land upon which the proposed use is sought is unsuited for the uses permitted within the district;
- f. The proposed use will not substantially alter or change the essential character of the land and the present use;
- g. The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans;

In addition to the guidelines detailed above, the Planning Commission must also find that the proposed use:

- a. Is an unusual and reasonable use of land situated within the Agricultural or Rural District, whichever the case may be; and
- b. Would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended.

The granting of this special permit will promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended. The State Land Use Law Rules 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 the Agricultural districts, the intent of the State Land Use Law Rules and Regulations is to preserve or keep lands of high agricultural potential in agricultural use.

The land on which the proposed use is located is not well-suited for agricultural uses. The ALISH map system recognizes the entire Hawaiian Paradise Park Subdivision as "Existing Urban Development". The Land Study Bureau rates this soil as "Very Poor" for agricultural productivity. With a lot size of one acre, the majority of the project site has already been committed to single family residential uses with the construction of two homes and related improvements. The proposed 360 square foot certified kitchen facility will occupy a portion of the project site between one of the existing dwellings and the side yard setback area. The small size of the structure will demand that only a small portion of the subject property be taken out of what little potential agricultural use is available within the project site. Therefore, it is anticipated that the proposed use will not adversely impact the agricultural land inventory within the County of Hawaii and not be contrary to the intent and purpose of the State Land Use Law.

Approval of a Special Permit to allow the establishment of a certified kitchen facility on the project site will not be contrary to the goals, policies and standards of the General Plan. The proposed use will compliment the following goals and policies of the Economic Element of the General Plan:

- o Economic development and improvement shall be in balance with the physical and social environments of the island of Hawaii.
- o 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.
- o The County shall strive for diversification of its economy by strengthening existing industries and attracting new endeavors.
- o Provide residents with opportunities to improve their quality of life.

The approval of this request would also be consistent with the policies of the Land Use Element of the General Plan which states:

- o Designate and allocate industrial areas in appropriate proportions and in keeping with the social, cultural, and physical environments of the County.
- o The county shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

The proposed use will not have any significant adverse effects on the surrounding properties. The proposed use will occupy a structure which has a floor area of only 360 square feet. According to plans submitted, the proposed certified kitchen facility will be centrally located within the one-acre parcel along its length and situated between an existing dwelling and the southeast property boundary. Since all food preparation activities will be located within the proposed facility, visual and noise impacts to surrounding properties are expected to be minimal. However, to ensure that any adverse noise or visual impacts which may be generated does not adversely affect surrounding properties, it is recommended that the proposed facility be limited to a gross floor area of 375 square feet and restricted to weekdays during the hours of 6:00 a.m. to 3:00 p.m. Odors generated by the proposed use are anticipated to be negligible.

The proposed use will not substantially alter or change the essential character of the land and the present use. Surrounding lands are predominantly in single family residential use. The proposed one-story, 360 square foot certified kitchen facility will not be so large a structure that it will detract from, or jeopardize, the residential character of the project site or its surrounding area. The applicants, who reside on the project site, states that only the two of them will be employed at the proposed facility. An employment limitation restricting employees to people residing on the project site will be incorporated as a condition of approval as a means of limiting additional traffic and its associated impacts to surrounding properties. This restriction will also preserve the residential character of the project site.

The proposed use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, police and fire protection. Access to the project area from the Keaau-Pahoa Highway is provided by Kaloli Drive, a privately-maintained roadway having a pavement width of 20 feet within a 60-foot wide right-of-way. Access from Kaloli Drive to the project site is along Kukui (13th) Avenue, a privately-maintained roadway having a 12-foot wide gravel surface within a 40-foot wide right-of-way. Traffic generated by the proposed use is anticipated to be minimal. As stated by the applicants and to be made a part of this approval recommendation, only persons residing on the subject property will be permitted to be employed at the certified kitchen facility. Traffic generated by the facility will be primarily limited to the lunch wagon as it makes its single daily roundtrip to and from its retail sites. Supplies transported to the subject property for use in the certified kitchen will be limited to the use of vehicles owned by the applicants. Traffic generated by the facility should not increase substantially beyond existing levels currently generated by the two single family dwellings located on-site. In addition, the general public will not be attracted to the project site. No retail activities will occur at the facility. Therefore, existing roadways which service the project site is sufficient to support the requested use. No further roadway improvements are recommended.

County-supplied water is not available to support the proposed use. Potable water is supplied to the existing single family dwellings through two water catchment tanks located on-site. The applicants will transport County water to the project site to be stored in a covered water tank. While catchment water could be used for food preparation, the Department of Health would require extensive sanitation measures, such as chlorination, to ensure a clean source of water for cooking and

cleaning. The applicants proposed use of potable water holding tanks must also meet stringent Department of Health regulations. A condition of approval would require that potable water used within the proposed facility meet with the approval of the Department of Health.

Similarly, approval from the Department of Health will be required for the disposal of wastewater generated by the proposed facility. The applicants current proposal is for wastewater disposal within an existing cesspool. Fire protection measures will also be required per Fire Department requirements. All other essential utilities and services are, or will, be made available to support the proposed use.

Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established. The State Land Use Law and Hawaii County Zoning Code allows the establishment of uses and the construction of structures within the State Land Use and County-zoned Agricultural Districts which are related to agricultural activities being conducted on a given parcel of land, with some restrictions. The applicants' proposal to establish a certified kitchen facility on the project site is not related to any agricultural activity and is therefore not a permitted use within the Agricultural District. However, the small size of parcels within the Hawaiian Paradise Park Subdivision restricts a landowner's ability to conduct extensive or intensive agricultural activities, especially when a portion of the parcel is used as a homesite. A growing trend within the County appears to be the establishment of home business as a means of providing residents with primary or supplemental incomes. While such "home occupations" are permitted within State Land Use Urban Districts, such uses are not permitted within the Agricultural District. Through the issuance of a Special Permit, residents located within the Agricultural District are now being afforded the same opportunities available to residents within the Urban District.

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. The applicant shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim or demand for the property damage, personal injury or death arising out of any act or omission of the applicant, its successors or assigns, officers, employees, contractors and agents under this permit or relating to or connected with the approval of this permit.

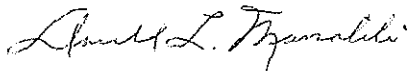
3. Final Plan Approval of the certified kitchen facility, pursuant to Section 25-243 of the Hawaii County Code (Zoning Code), shall be secured from the Planning Department. The proposed kitchen facility, which shall not exceed a gross floor area of 375 square feet, shall comply with all yard setback requirements prescribed by Chapter 25 (Zoning Code). Plans shall identify existing and proposed structures and driveway(s) associated with the proposed use.
4. Construction of the proposed certified kitchen facility shall be completed and a certificate of occupancy issued within three years from the effective date of this permit.
5. The provision of potable water and the disposal of wastewater relating to the operation of the certified kitchen facility shall meet with the approval of the Department of Health.
6. Fire protection measures shall be provided for or within the certified kitchen facility in a manner meeting with the approval of the Fire Department.
7. Operation of the certified kitchen facility shall be limited to persons residing on the subject property. The transport of products and supplies to and from the subject property shall be solely by vehicles owned by the applicant.
8. The certified kitchen facility shall be limited to the operational hours from 6:00 a.m. to 3:00 p.m., Monday through Friday.
9. No retail sales shall be conducted on the property and there shall be no visible signs or displays on the premises advertising the certified kitchen or its related business(es).
10. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings or walls be encountered, work in the immediate area shall cease and the Planning Director shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the Planning Director when it finds that sufficient mitigative measures have been taken.
11. The applicant shall comply with applicable laws, rules and regulations of the affected agencies.

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., 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 this 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 Rodney Nakano or Daryn Arai of the Planning Department at 961-8288.

Sincerely,



Donald L. Manalili, Chairman
Planning Commission

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xc: Honorable Stephen K. Yamashiro, Mayor
Planning Director
Department of Public Works
Department of Water Supply
Fire Department
Department of Health
Corporation Counsel
County Real Property Tax Division
State Land Use Commission
Department of Land & Natural Resources
Plan Approval Section