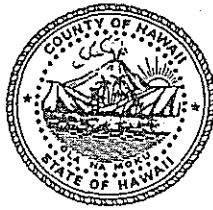


Harry Kim
Mayor



County of Hawaii
PLANNING COMMISSION

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • Fax (808) 961-8742

July 26, 2004

Mr. Kenneth Lee
Lamocalm, LLC dba Kona Seafood
83-5308A Mamalahoa Highway
Captain Cook, HI 96704

Dear Mr. Lee:

Special Permit (SPP 903)

Applicant: Lamocalm, LLC dba Kona Seafood

Request: Amendment to Special Permit No. 903: Sale of Beer and Wine
Within the Existing Seafood Outlet

Tax Map Key: 8-3-13:portion of 10

The Planning Commission at its duly held public hearing on July 16, 2004, voted to approve the above-referenced request. Special Permit No. 903 allowed the establishment of a wholesale and retail seafood outlet on approximately 14,000 square feet of land situated within the State Land Use Agricultural District. The request is to allow the sale of beer and wine within the existing establishment. The property is the site of the existing Kona Seafood facility situated on the mauka side of Mamalahoa Highway, Keeki 2nd, South Kona, Hawaii.

Approval of this request is based on the following:

Lamocalm, LLC dba Kona Seafood has submitted an application for an amendment to Special Permit No. 903, which allowed the establishment of a wholesale and retail seafood outlet and related improvements on approximately 14,000 square feet of land, to allow the sale of beer and wine within the existing establishment.

The land on which the proposed use is located is unsuited for agricultural uses. The approved wholesale and retail seafood operations utilizes an existing structure which currently occupies a 14,000 square foot project site which has been extensively developed to accommodate a former wholesale seafood operation. The amendment request to allow the sale of beer within the existing approved establishment will not commit additional agricultural land for non-agricultural uses. Soils within the project site not affected by previous development are classified as "Unique Agricultural Land" according to the ALISH map system and "E" or "Very Poor" by the Land Study Bureau for agricultural productivity.

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The request is not contrary to goals, policies and standards of the General Plan. Approval of the proposed use would compliment the following goals and policies of the Economic Element of the General Plan:

- Economic development and improvement shall be in balance with the physical and social environments of the island of Hawaii.
- 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 shall strive for diversification of its economy by strengthening existing industries and attracting new endeavors.

The amendment request will not have any significant adverse effects on the surrounding properties. The amendment request to sell beer and wine will be conducted within the structure utilized as a wholesale/retail seafood operation. Over the many years the present and former wholesale seafood establishment was in operation within the project site and the applicant's former wholesale and retail seafood operation located across the highway, the Planning Department has not received any complaint from surrounding property owners. The Director anticipates that the proposed request will also be accepted within the community. By allowing the sale of beer and wine in the seafood outlet, it will lessen the amount of stops and travel time a patron will need to make to purchase these items.

The amendment request will not substantially alter or change the essential character of the land and the present use. The amendment request will be conducted entirely within the existing structure. Therefore, the character of the subject property will not be altered.

The amendment request will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, police and fire protection. The sale of beer and wine will be conducted entirely within the existing structure. Access to the project site from the Mamalahoa Highway, which has a pavement width of approximately 20 feet within an approximately 60-foot right-of-way, is adequate to accommodate all traffic which may be generated by the proposed use. No increase of traffic is anticipated. The patrons who purchase seafood at the existing establishment will have the option of purchasing beer and wine rather than having to make another stop at another store.

County water is available to the subject property. Wastewater disposal will be accommodated within two existing cesspools. All other utilities and services to support the proposed use are or will be made available.

Based on the above considerations, it is determined that the amendment request to allow the sale of beer and wine within the existing Kona Seafood establishment 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, nor is it contrary to the original reasons for granting the Special Permit.

The amendment request is approved with the following added condition:

6. The sale of beer and wine is allowed within the premises.
- 7.[6.] 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).
- 8.[7.] 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.

Mr. Kenneth Lee

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Should you have any questions, please contact Norman Hayashi of the Planning Department at 961-8288.

Sincerely,

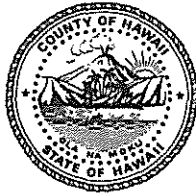


Fred Galtones, Chairman
Planning Commission

Llamocalm01PC

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
Planning - Kona
State Land Use Commission
Department of Land & Natural Resources-HPD, Kona
Rodney Haraga, Director/DOT-Highways, Honolulu
Department of Liquor Control

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
Z 416 228 871

July 6, 1995

Ali Ghalamfarsa, President
Ali'i Architects, Inc.
74-5565 Luhia Street
Kailua-Kona, HI 96740

Dear Mr. Ghalamfarsa:

Special Permit Application No. 95-6
Applicant: Kona Seafood, Inc.
Request: Establish Wholesale & Retail Seafood Outlet
Tax Map Key: 8-3-13:Portion of 10

The Planning Commission at its duly held public hearing on June 22, 1995, voted to approve the above-referenced application. Special Permit No. 903 is hereby issued to establish a wholesale and retail seafood outlet and related improvements on approximately 14,000 square feet of land situated within the State Land Use Agricultural District on the mauka side of Mamalahoa Highway across from the existing Kona Seafood outlet, Keei 2nd, South Kona, Hawaii.

Approval of this request is based on the following:

The granting of this special permit will promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes (H.R.S.), 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 unsuited for agricultural uses. The proposed wholesale and retail seafood operations will utilize, for the most part, an existing structure which currently occupies a 14,000 square foot project site which has been extensively developed to accommodate a former wholesale seafood operation. Therefore, approval of the requested use will not commit additional agricultural land for non-agricultural uses. Soils within the project site not affected by previous development are classified as "Unique Agricultural Land" according to the ALISH map system and "E" or "Very Poor" by the Land Study Bureau for agricultural productivity. As the site plan indicates, the amount of land within the project site not encumbered by existing improvements are negligible. The

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discussion above confirms the Director's findings that approval of 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.

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 General Plan will also promote the effectiveness and objectives of Chapter 205, H.R.S.

The request is not contrary to goals, policies and standards of the General Plan. Approval of the proposed use would complement 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.

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

- o Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural and physical environments of the County.
- o Protect and encourage the intensive utilization of the County's important agricultural lands.
- 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.
- o Industrial development shall maintain or improve the quality of the present environment.
- o Buffer zones shall be established between industrial and adjacent noncompatible uses of land.
- o Industrial development shall be conveniently located to its labor resource.

Although industrial in nature due to its wholesale operations, approval of this request at this particular location will complement land uses within the immediately surrounding area. The applicant's wholesale and retail seafood operations, which closed in May 1995, is located almost directly across from the project site on the opposite side of Mamalahoa Highway. The project site and affected structures themselves were formerly used as a wholesale seafood operation. Honaunau School, a retail store and a service station/auto repair shop are located within the immediate vicinity. Approval of the subject request will

complement the rural commercial and civic operations located along this small stretch of the Mamalahoa Highway.

The proposed use will not have any significant adverse effects on the surrounding properties. The proposed use will occupy structures formerly utilized as a wholesale seafood operation. Over the many years the former wholesale seafood establishment was in operation within the project site and the applicant's former wholesale and retail seafood operation located across the highway, the Planning Department has not received any complaint from surrounding property owners. The Director anticipates that the proposed use will also be well accepted within the community. However, to ensure that adverse visual or noise impacts which may be generated are adequately mitigated, appropriate landscaping and paved access and parking areas will be recommended.

The proposed use will not substantially alter or change the essential character of the land and the present use. As previously mentioned, the project site was formerly used for wholesale seafood operations. The existing vacant structure will be renovated and expanded within its existing roofline to accommodate the requested use. Therefore, the character of the subject property will not be severely altered.

The proposed use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, police and fire protection. Wastewater disposal will be accommodated within two existing cesspools. At the time of construction, the State Department of Health will determine the proper method of sewage disposal. County water is available to the subject property. Access to the project site from the Mamalahoa Highway, which has a pavement width of approximately 20 feet within an approximately 60-foot right-of-way, is adequate to accommodate all traffic which may be generated by the proposed use. The State Department of Transportation, which had jurisdiction over this section of the Mamalahoa Highway, will require that access connection to the highway from the project site meet all applicable State regulations and requirements. Improvements to sight distance and entrance lighting will be required if found necessary. All other utilities and services to support the proposed use are or will be made available.

Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established. Typically, one would expect to find a wholesale seafood operation in closer proximity to harbors and major transportation networks for the convenience of fishermen. Over the years, the applicant has demonstrated that its former establishment located across from the project site has operated successfully with no apparent ill effect as a result of its location. This small rural community near Honaunau has sustained several small retail and industrial operations over the years. This specific region along the Mamalahoa Highway is not able to readily support an Urban designation by the State Land Use Commission since urban-level of services, facilities and infrastructure are not available. Through the issuance of a Special Permit, these rural communities are able to establish a limited amount of services and industries.

Portions of the existing structure currently extend beyond the boundaries of the subject property into the State highway right-of-way as well as into an adjoining parcel. According to representations by the applicant, these projections will be removed. Plan approval review of the proposed wholesale and retail facility will ensure that the renovated facility maintain the proper structural setbacks from property boundaries. Existing

governmental reviews to ensure compliance with existing Zoning Code and Building Code requirements will be enforced during the renovation of the existing non-conforming structure.

Based on the above consideration, it is determined that the establishment of a wholesale and retail seafood operation within the project site 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, successors or assigns shall be responsible for complying with all of the stated conditions of approval.
2. The applicant, its successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim or demand for the property damage, personal injury and 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 granting of this permit.
3. A metes and bounds description of the approximately 14,000 square foot project site in map and written form shall be filed with the Planning Department in conjunction with plans for Final Plan Approval review.
4. Final Plan Approval of the wholesale and retail seafood establishment shall be secured from the Planning Department in accordance with Chapter 25-243 of the Zoning Code. Plans shall identify existing and proposed structures, paved (concrete, asphalt-concrete or chip-seal) driveway and parking areas associated with the proposed use. Appropriate landscaping shall be provided for the purpose of mitigating any noise and visual impacts which may be generated by the facility.
5. Construction of the wholesale and retail seafood operation and related improvements shall be completed and a certificate of occupancy issued within three (3) years from the effective date of this Special Permit.
6. 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

Ali Ghalamfarsa, President
Ali'i Architects, Inc.
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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).

7. 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 Alice Kawaha or Susan Gagorik of the Planning Department at 961-8288.

Sincerely,

*Edward E. Croak, Vice Chair,
for Wilton K. Wong, Chairman*

Wilton K. Wong, Chairman
Planning Commission

AK:syw
LKoSea01.PC

cc: 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
Kona Seafood, Inc.