

County of Hawai'i

PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

June 2, 2009

Pastor Gary Summers
Grace Community Church
74-4889 Palani Road
Kailua-Kona, HI 96740

Dear Pastor Summers:

Special Permit (SPP 1010)

Request: Time Extension to Condition Nos. 2 (Water Commitment)
And 3 (Construction)

Applicant: Grace Community Church

Tax Map Key: 7-4-6:portion 38

The Planning Commission at its duly held public hearing on May 15, 2009, voted to approve the above-referenced request for an amendment to conditions relating to extension of time limits and related conditions of Special Permit No. 1010, which allowed the establishment of a church and related facilities on approximately 3 acres of land. The property is located on the east side of Palani Road adjacent to and north of the Kona Christian Academy, Honokōhau 2nd, North Kona, Hawai'i.

Approval of this request is based on the following:

The applicant requests a 5-year time extension to comply with Conditions Nos. 2 (water commitment payment) and 3 (complete construction) of Special Permit No. 1010, which was approved by the Planning Commission on September 30, 1998 for the establishment of a church and related facilities on approximately 3 acres of land. Condition 2 required that a water commitment payment be made to the Department of Water Supply within 90 days of the special permit effective date and Condition 3 required that construction of the church be completed within 5 years of the permit effective date, including securing Final Plan Approval. On March 31, 2003 the Planning Director granted a five (5) year administrative time extension from September 30, 2003 to September 30, 2008 to complete construction of the church. Since then the applicant has made efforts towards constructing a required left-turn lane at the project driveway.

However, the applicant has stated that “despite our diligent efforts during this time, we have been unable to overcome the bureaucratic nature of the HELCO and Hawaiian Tel processes to get the required pole relocations completed so that construction of the turn lane could commence. That is where we were stuck until the meeting called by the Mayor’s West Hawai‘i office on August 28, 2008, which caused renewed specific interest by the utilities in the project. This brought the cooperation needed from HELCO and Hawaiian Tel to move forward with pole relocations as soon as possible. We have always believed in the added safety that will be provided by the required turn lane, and have eagerly sought to get it built without additional time extension of Special Permit No. 1010. While we regret we have been unable to meet that time frame due to these frustrating delays, we now believe that both HELCO and Hawaiian Tel are prepared to start their work within the next couple of months. We therefore hope to meet all requirements of Special Permit No. 1010 within a one-year time frame, barring any future delays we cannot control.”

According to an August 21, 2008, memo from the Department of Water Supply the applicant has not yet submitted a water commitment deposit and has been using approximately three times more than the allocated water from the existing 5/8” water meter that services the property. Although the applicant has requested a five-year time extension to secure a water commitment, the Planning Director recommends allowing an additional 180 days only to fulfill this requirement.

Granting of the time extension request would not be contrary to the original reasons for granting the Special Permit. In 1997 the original applicant submitted three concurrent requests related to the use of the subject property: a State Land Use Boundary Amendment (SLUBA) from Agricultural to Rural, a zoning amendment from A-5a to RA-.5, and a special permit application for establishment of the subject church. The SLUBA and zoning amendment were approved and became effective on February 17, 1998. Hawai‘i Revised Statutes Chapter 205-6 permits certain unusual and reasonable uses within the Rural district through the issuance of a special permit. The State Land Use Rural district includes activities and uses characterized by low density residential lots of not more than one dwelling per half acre and intermixed farms, in areas where “city-like” concentration of people, structures, streets and urban level of services are absent. The church use continues to be an unusual and reasonable use of lands situated in the State Land Use Rural district as it is not located in a “city-like” area and is surrounded by residential and agricultural zoned lands. The applicant will still be required to comply with all other existing conditions of Special Permit No. 1010.

Approval of this request would not be contrary to the General Plan or the Zoning Code. The subject property is located in the State Land Use Rural district and County zoned RA-.5 district. These districts both allow the establishment of a church provided a special permit is obtained. The General Plan LUPAG Map designates the property as

Urban Expansion, which allows for a mix of high density, medium density, low density, industrial, industrial-commercial and/or open designations in areas where new settlements may be desirable, but where the specific settlement pattern and mix of uses have not yet been determined. As the church use is allowed in the LUPAG designated Urban Expansion area, the time extension request would not be contrary to the General Plan or the Zoning Code.

Based on the above, the request to amend Special Permit No. 1010 would not be contrary to the objectives sought to be accomplished by the State Land Use Law Rules and Regulations or the original reasons for approving this permit. Approval of this request is subject to the following conditions (material to be added is underscored and material to be deleted is bracketed and struck through):

1. The applicant, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
2. The applicant shall submit estimated maximum daily water usage calculations, prepared by a professional engineer licensed in the State of Hawai'i, for review and approval by the Department of Water Supply and the required water commitment payment to the Department of Water Supply in accordance with its "Water Commitment Guidelines Policy" within ~~[ninety (90)]~~ one hundred eighty (180) days from the effective date of this amended special permit.
3. The construction of the church shall be completed within five (5) years from the effective date of this amended permit. This time period shall include finalizing all building permits and issuance of a Certificate of Occupancy by the Department of Public Works. This time period shall also include securing Final Plan Approval from the Planning Director for the construction of any remaining ~~[the]~~ church buildings. Plans shall identify structures, fire protection measures, paved parking area and driveway, and other improvements associated with the proposed use. Landscaping shall also be indicated on the plans and be provided for the purpose of mitigating any adverse noise or visual impacts to adjacent properties.
4. Any exterior signs shall meet with the approval of the Department of Public Works.
5. Driveway access to the subject property shall be limited to one access point meeting with the requirements of the Department of Public Works.
6. The applicant, its successors or assigns shall construct a left hand turn storage lane/pocket at a location to be determined by the Department of Public Works after review of the revised traffic report.

7. Comply with all applicable laws, rules, regulations and requirements of the affected agencies, including the Department of Public Works, Department of Health, and Department of Water Supply for the proposed development of the subject property.
8. Upon compliance with applicable conditions of approval, prior to the establishment of any use or the opening of the proposed development, the applicant shall submit a final status report, in writing, to the Planning Director.
9. If the applicant fails to comply with the conditions of approval or is unable to resolve any public complaint(s), the Planning Director shall investigate and, if necessary, enforce the appropriate conditions. The Planning Director may, as part of any enforcement action, refer the matter to the Planning Commission for review. Upon appropriate findings by the Planning Commission that the applicant has failed to comply with the conditions of approval or has caused an unreasonable adverse impact on surrounding properties, the permit may be suspended or revoked.

~~{10. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:~~

- ~~1. 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.~~
- ~~2. Granting of the time extension would not be contrary to the General Plan or the Zoning Code.~~
- ~~3. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.~~
- ~~4. 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).]~~

10. If the applicant should require an additional extension of time, the request shall be submitted to the Planning Commission for appropriate action. Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke the permit.

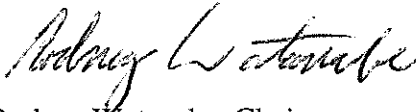
This approval does not, however, sanction the specific plans submitted with the request as they may be subject to change given specific code and regulatory requirements of the affected agencies.

Pastor Gary Summers

Page 5

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

Sincerely,

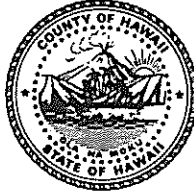


Rodney Watanabe, Chairman
Leeward Planning Commission

Lgracecommunitychurch01spp1010PC

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
Planning Department - Kona
State Land Use Commission
Mr. Gilbert Bailado
Mr. Dan Bolton

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 095 324 262

SEP 30 1998

Mr. Daniel B. Bolton
Malia Ohana Partnership 2
P.O. Box 898
Kailua-Kona, HI 96745

Dear Mr. Bolton:

Special Permit Application (SPP 97-14)
Applicant: Malia Ohana Partnership 2
Request: Establishment of a Church and Related Structures and Uses
Tax Map Key: 7-4-6:Portion of 38

The Planning Commission at its duly held public hearing on September 18, 1998, voted not to adopt the Report of the Contested Case Hearing Officers, Findings of Fact and Conclusions of Law, Decision and Order, and approved the above-referenced application. Special Permit No. 1010 is hereby issued to allow the establishment of a church and related structures and uses on approximately 3 acres of land within the State Land Use Agricultural District. The property is located on the east side of Palani Road adjacent to and north of the Kona Christian Academy, Honokohau 2nd, North Kona, Hawaii.

Approval of this request is based on the following:

Such use is not contrary to the objectives sought to be accomplished by the land use law and regulations. 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 recognizing that lands within agricultural districts might not be best suited for agricultural activities and yet classified as such, and in recognition that certain types of uses might not be strictly agricultural in nature, yet reasonable in such districts, the legislature has provided for the Special Permit process to allow certain unusual and reasonable uses within the Agricultural district.

The area under consideration is classified as Agricultural by the State Land Use Commission. The Agricultural District not only includes lands with a high capacity or potential for agricultural uses, but also lands which are surrounded by or contiguous to

C9169
SEP 30 1998

agricultural and ancillary activities by reason of topography, soils and other related characteristics. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use. The proposed project will be located within an area whose soils are classified as "E" or "Very Poor" by the Land Study Bureau's Overall Master Productivity Rating and as "Other Important Agricultural Land" on the State Department of Agriculture's Agricultural Lands of Importance to the State of Hawaii (ALISH) Map.

The soils within the project area are classified by the U.S. Department of Agriculture, Soil Conservation Service, as Kaimu, extremely stony peat. The Kaimu series consists of thin well-drained organic soils over a'a lava on Mauna Loa. In a representative profile, the surface layer is very dark brown, extremely stony peat about 3 inches thick. Permeability is moderately rapid, runoff is slow, and the erosion hazard is slight. They are moderate to steep slopes. Elevation is approximately 1,200 feet above mean sea level. The soil is appropriate for pasture, macadamia nuts, papaya, and citrus fruits. Due to the shallow, rocky soils and arid climate, the soils are suitable for mainly pasture. Although it is possible that some agricultural activities may be conducted on the subject property, it is determined that approval of the subject request would not be contrary to the objectives of the State Land Use Law and Regulations given the low agricultural potential for the subject area and the above-cited criterion for determining the Agricultural District.

The subject property is situated within the County's Agricultural (A-5a) zoned district. The proposed church would be situated on 3 acres of land which is part of a larger 5.055 acre parcel. The proposed church structure will be a one-story building. The property is of sufficient size, 5+ acres, to enable adequate setbacks and buffers to be established. These concerns will be addressed through conditions of approval and the "Plan Approval" process. Therefore, the size, bulk, architecture, function and placement of the proposed structure and the impacts resulting therefrom are not anticipated to be adversely affecting the surrounding lands or properties nor significantly affecting the character of the area.

The proposed use will not take significant lands out of the agricultural inventory for this area and will not significantly affect the agricultural resource of the area. The proposed use will be confined to the subject property which is presently vacant. In addition, no active agricultural lands will be taken out of production to provide the area necessary to establish this use. The proposed use would not displace agricultural activity nor diminish the agricultural potential of the area since this parcel has not been in agricultural use in years.

The desired use will not adversely affect the surrounding properties. The subject property is currently vacant. The surrounding area consists of a mixture of single-family residences and vacant lots. The subject parcel is situated across the Paniolo Subdivision which consists primarily of seventy two (72) 1-acre lots. The zoning pattern in the vicinity is a mixture of Agricultural (A-1a and A-5a) and Single Family Residential (RS-10). Adjacent to the parcel is the Kona Church of Christ which was granted Special Permit No. 549 for the construction of the church and the school (Kona Christian Academy) with an enrollment of 120 students. The property is of sufficient size to allow for adequate setbacks and buffers in minimizing any physical,

social, or other impacts that this church use may have on the area. To minimize any visual or noise impacts to surrounding property owners, additional landscaping may be required during Plan Approval review.

The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, police and fire protection. The site is currently served by water, telephone and electrical utilities. Under the current membership of approximately 60 people. The Sunday attendance is approximately 100 people. The church expects to operate with a pastor and small staff during flexible daily work hours. Members activities will include Sunday and special holiday services as well as day and evening classes and group meetings. Primary access to the subject area is provided by Palani Road, a two-lane County roadway, which has a pavement width of 20 feet within a 40-foot right-of-way. The Department of Transportation has stated that the project will not have an adverse impact on the State Transportation facilities. The Department of Public Works has expressed the need for improvements along the property's Palani Road frontage. Further, after review of the revised traffic report, the Department of Public Works recommends that a left hand turn storage lane/pocket be provided. This concern will be addresses through a condition of approval. Also no preschool or related activities shall be permitted on the subject property. The applicant shall meet all applicable agency requirements of the Department of Health, Department of Public Works, Department of Water Supply, and the Fire Department prior to the establishment of the proposed use.

The land upon which the proposed use is sought is unsuitable for the uses permitted within the district. The soils within the project area are unsuitable for many types of agriculture uses and have not been used as such. Due to the physical characteristics and size of the property, agricultural endeavors have not been promoted. The nature of the request is to allow for the permanent establishment of a church.

The use will not substantially alter or change the essential character of the land and the present use. The proposed use will alter the character of the land, yet will not substantially change the character of the land. The general contours of the land will be preserved as the applicant desires to construct the facility on the mauka section of the property. The use is proposed to be developed in harmony with the existing rural character of the neighborhood.

Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established. In terms of population, the North Kona district has been one of the fastest growth areas on the island. From 1970 to 1990 the population of North Kona increased by 361 percent. The 1990 U.S. Census Data: Table 6, indicates a population of 4,832 in 1970 and a population of 22,284 in 1990 in the North Kona district. As such, the proposed use will help to meet the housing and spiritual needs of the expanding population in this area.

The request is not contrary to the General Plan. The subject request is not contrary to the General Plan LUPAG Map, which designates the property as Urban Expansion. Urban Expansion allows for a mix of high density, medium density, low density, industrial and/or open designations in areas where new settlements may be desirable, but where the specific settlement pattern and mix of uses have not yet been

determined. The request would also support the General Plan's goals and policies of the Land Use (Agricultural) elements of the General Plan.

Based on the above considerations, the proposed church 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 and Regulations.

Approval of this request is subject to the following conditions. Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke the permit.

1. The applicant, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
2. The applicant shall submit the required water commitment payment to the Department of Water Supply in accordance with its "Water Commitment Guidelines Policy" within ninety (90) days from the effective date of this special permit.
3. The construction of the church shall be completed within five (5) years from the effective date of this permit. This time period shall also include securing Final Plan Approval from the Planning Director for the construction of the church. Plans shall identify structures, fire protection measures, paved parking area and driveway, and other improvements associated with the proposed use. Landscaping shall also be indicated on the plans and be provided for the purpose of mitigating any adverse noise or visual impacts to adjacent properties.
4. Any exterior signs shall meet with the approval of the Department of Public Works.
5. Driveway access to the subject property shall be limited to one access point meeting with the requirements of the Department of Public Works.
6. The applicant, its successors or assigns shall construct a left hand turn storage lane/pocket at a location to be determined by Department of Public Works after review of the revised traffic report.
7. Comply with all applicable laws, rules, regulations and requirements of the affected agencies, including the Department of Public Works, Department of Health, and Department of Water Supply for the proposed development of the subject property.
8. Upon compliance with applicable conditions of approval, prior to the establishment of any use or the opening of the proposed development, the applicant shall submit a final status report, in writing, to the Planning Director.
9. If the applicant fails to comply with the conditions of approval or is unable to resolve any public complaint(s), the Planning Director shall investigate and, if necessary, enforce the appropriate conditions. The Planning Director may, as

Key 875
SLV 992
SPP 1010

Mr. Daniel B. Bolton
Malia Ohana Partnership 2
Page 5

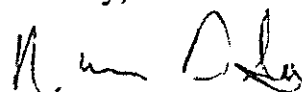
part of any enforcement action, refer the matter to the Planning Commission for review. Upon appropriate findings by the Planning Commission that the applicant has failed to comply with the conditions of approval or has caused an unreasonable adverse impact on surrounding properties, the permit may be suspended or revoked.

10. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:
 1. 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.
 2. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
 3. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
 4. 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).

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 of the Planning Department at 961-8288 or Royden Yamasato of the Planning Department West Hawaii Office at 327-3510.

Sincerely,



Kevin M. Balog, Chairman
Planning Commission

LMOP205.PC

- cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
West Hawaii Office
State Land Use Commission
Kazu Hayashida, Director/DOT-Highways, Honolulu
Mr. Walter Andreae
Mr. John J. Mahoney, Jr.
The Honorable Curtis Tyler, County Council