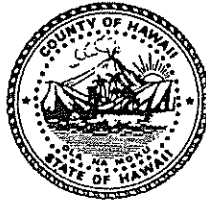


Harry Kim
Mayor



County of Hawaii

PLANNING COMMISSION

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-8742

CERTIFIED MAIL

7000 0600 0024 2903 6793

MAR 15 2002

Mr. Danny Freeman
P.O. Box 6096
Ocean View, HI 96737

Dear Mr. Freeman:

Special Permit Application (SPP 01-033)
Applicant: Danny W. Freeman
Request: Establish Mixed Light Industrial/Commercial Uses
Tax Map Key: 9-2-85:1

The Planning Commission at its duly held public hearing on February 15, 2002, voted to approve the above-referenced application. Special Permit No. 1137 is hereby issued to establish mixed light industrial/commercial uses on 1.81 acres of land situated in the State Land Use Agricultural District. The property is located in Hawaiian Ocean View Estates Subdivision at the intersection of Mamalahoa Highway and Tiki Lane, Kahuku, Ka'u, Hawaii.

Approval of this request is based on the following:

Although the Planning Department might ordinarily encourage landowners or applicants to file for a change of zone request for such development, rather than a Special Permit request, there is a general Hawaii County Council resolution or policy that water development is a necessary component in the planning and zoning of lands. Therefore, it is necessary that there is the existence of a reliable, sufficient public or private source of water for development. As there is no water system in the Hawaiian Ocean View Estates area, the County would not be in favor of any change of zone requests in the area without the necessary water supply and/or system for development.

015964
MAR 15 2002

Mr. Danny Freeman

Page 2

The applicant is requesting to establish mixed light industrial/commercial uses to include a wood-working facility with a wholesale/retail outlet, as well as provide service rental and shop space, and a commercial kitchen for preparing and packaging value-added products. The applicant purchased the property for the purpose of locating a woodworking shop and retail outlet. According to the applicant, the project would predominantly be light industrial activities in the nature of a woodworking shop for manufacturing Hawaiian-based cultural crafts and other utilitarian art pieces and products from the region's forest-to-ocean resources, along with related wholesale and retail displays in the commercial use aspect. Additional rental space would be made available for a selection of homemade products such as jams/jellies and pickled condiment and dehydrated or sun-dried goods. A commercial kitchen is also being proposed for processing and packaging products. Limited food service, refreshment and snack items, would be offered to clients and guests in the display area. Rental space would also provide a location for businesses currently being run from homes in the area.

The applicant resides within the Hawaiian Ocean View Estates (HOVE) Subdivision at the 5,000-foot elevation, and cures and age-processes wood at that location for his woodworking business. The subject property for this permit request is located at the 2,000-foot elevation and is considered ideal for working with seasoned wood materials due to the relatively low-humidity.

The proposed use is an unusual and reasonable use of land situated within the State Land Use Agricultural District and would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes (HRS), as amended. In the 1960s and 1970s, the State's agricultural district boundaries and regulations were first established and subsequently amended pursuant to Chapter 205, Land Use Commission, Hawaii Revised Statutes. The State Land Use Commission was created in 1961; the interim regulations and temporary district boundaries became effective in 1962; and subsequently the Regulations and Land Use District Boundaries became effective in August 1964. The Hawaiian Ocean View Estates Subdivision was created in January and December 1963, and May 1964. In recognizing that lands within the 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. In addition, 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 the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use.

The land on which the proposed use will be located is classified as "E" or "Very Poor" for agricultural productivity by the Land Study Bureau and unclassified by the Agricultural Lands of Importance to the State of Hawaii (ALISH) Map. The property, whose soil consists of A'a lava, is a vacant 1.810-acre parcel that is not in agricultural use. Therefore, development of the subject property to accommodate the mixed light industrial/commercial uses to include a woodworking facility with a wholesale/retail outlet, as well as provide service rental and shop space, and a commercial kitchen for preparing and packaging value-added products, will not have a significant adverse effect on the County's agricultural land inventory. It is determined that the proposed use is an unusual and reasonable use of lands situated within the Agricultural District and will not be contrary to the objectives of Chapter 205, HRS, as amended.

The proposed request is not contrary to the General Plan's Land Use Pattern Allocation Guide (LUPAG) Map that defines the subject property and its immediately surrounding area for Extensive Agricultural uses. Special Permits for other types of urban uses have been issued along both sides of the Mamalahoa Highway. These uses include a post office, hardware store, restaurants, drive-in and other types of commercial and industrial uses on both sides of the Mamalahoa Highway within both the Hawaiian Ocean View Estates and Hawaiian Ocean View Ranchos Subdivisions. There are no commercial and industrial-zoned lands available in the Hawaiian Ocean View Estates and Hawaiian Ocean View Ranchos areas. The applicant is proposing the development of this parcel into a mixed light industrial/commercial complex that will serve the residents of Hawaiian Ocean View Estates and Hawaiian Ocean View Ranchos Subdivisions, as well as residents of the other subdivisions in the area and people traveling in this particular region. It will also compliment the various urban-type of uses already established along the Mamalahoa Highway.

The request is not contrary to the goals, policies and standards of the General Plan. The approval of the subject request would support the following goals and policies of the General Plan:

Economic Element:

- Provide residents with opportunities to improve their quality of life.
- 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.

Land Use Element:

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

Commercial Sub-element:

- Provide for commercial developments that maximize convenience to users.
- Distribution of commercial areas shall be such as to best meet the demands of neighborhood, community and regional needs.

The desired use will not adversely affect surrounding properties. Surrounding lands are predominantly vacant with some scattered single-family residential uses. Furthermore, the subject property is bordered on two sides by existing roadways; Mamalahoa Highway to the south, and Tiki Lane to the west. These roadways physically separate the subject property from other properties within this portion of Hawaiian Ocean View Estates Subdivision, with the exception of the adjoining parcel to the east, which is currently vacant. According to plans submitted with the application, the proposed mixed commercial/light industrial facility will be situated at the northwest corner of the subject property. The proposed structure will be situated approximately 150 feet north of Mamalahoa Highway. Proposed hours of daily operation will be from 7:00 a.m. to 6:00 p.m. for business activities. Administrative activities may involve evening hours as well. Initially, the applicant/owner will operate the proposed complex with one employee. It is anticipated that within 3-5 years, two to four additional employees will be needed to operate the facility. Additionally, the facility will support 10-30 self-employed persons who will sell and consign products at the facility. It is anticipated that any noise generated at this complex will be sufficiently mitigated with proposed landscaping buffer and will not create a significant adverse impact upon the adjoining property. The proposed facility will be situated at least 100 feet from the adjoining property to the west. With the installation of appropriate landscaping along the property boundaries and limiting the business activities to the hours between 7:00 a.m. and 6:00 p.m., that noise and visual impacts upon the adjoining property can be adequately mitigated and the character of the surrounding area will not be significantly altered.

The proposed development will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. Access to the subject property from the Mamalahoa Highway will be provided by Tiki Lane, a privately maintained roadway having a 21-foot wide asphalt pavement with grassy/graveled shoulders within a 40-foot wide right-of-way. Tiki Lane

is of adequate width to accommodate traffic generated by the proposed uses. The proposed development does not directly access the Mamalahoa Highway and therefore, does not place a significant direct impact upon traffic flow at the Mamalahoa Highway-Tiki Lane intersection.

While County water supply is not available to support the proposed development, the applicant intends to incorporate two 20,000-gallon water tanks, one for non-potable needs, and the other strictly for fire protection. According to the applicant, bottled water will be provided for all consumption uses. The means of wastewater disposal shall be in accordance with the requirements of the State Department of Health. The Police Department had no objections to the request. All other essential utilities and facilities are available to support the proposed use.

Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established. The project site and surrounding area are designated for agricultural uses by both State and County land use laws. However, the massive Hawaiian Ocean View Estates and Hawaiian Ocean View Ranchos Subdivisions must still provide their residents with the basic necessities of life, such as accessibility to food, personal services and other commodities typically found within an established community. Through the issuance of a Special Permit, a community may establish various "non-agricultural" services to provide its residents as well as travelers in the area with a quality of life that many of our residents in urban communities may take for granted.

The land upon which the proposed use is sought is unsuited for the uses permitted within the district. The soil within the subject property is classified as "E" or Very Poor for agricultural productivity and unclassified by the Agricultural Lands of Importance to the State of Hawaii (ALISH) Map. The property primarily consists of A'a lava, which is poorly suited for cultivation. Furthermore, the Special Permit process, established by legislation, allows for other uses to be established for which the district is classified, provided the objectives of Chapter 205, HRS, are promoted.

Based on these considerations, the approval of the Special Permit request to establish a mixed light industrial/commercial facility would be supportive of 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 these conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke this permit.

1. The applicant shall be responsible for complying with all of the stated conditions of approval.

2. The construction of the initial phase of the facility shall be established within five (5) years from the effective date of this permit. This time period shall include securing Final Plan Approval from the Planning Director for the construction of the facility.
3. Prior to the start of construction, Final Plan Approval for the proposed facility and related improvements shall be secured from the Planning Director in accordance with the Zoning Code. Plans shall identify existing and proposed structures, signage, fire protection measures, parking stalls, driveway and other improvements associated with the proposed uses. 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. Native species appropriate to the area shall be incorporated into the landscaping where possible.
4. Final Plan Approval shall be secured for all future structures on the subject property within five (5) years of the completed construction of the initial phase.
5. Any exterior signs shall meet with the approval of the Department of Public Works.
6. Access to the subject property shall be restricted to Tiki Lane. Access from the Mamalahoa Highway shall be prohibited.
7. The hours of operation shall be limited to the hours between 7:00 a.m. to 6:00 p.m. for business activities and up to 10:00 p.m. for administrative activities. No public or industrial activities shall be conducted between the hours of 6:00 p.m. and 10:00 p.m.
8. The applicant shall comply with all applicable laws, rules and regulations of the State and County agencies for this proposed use.
9. Upon compliance with all conditions of approval and prior to the start of the operation, the applicant shall provide, in writing, a final status report to the Planning Director.
10. 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

Mr. Danny Freeman

Page 7

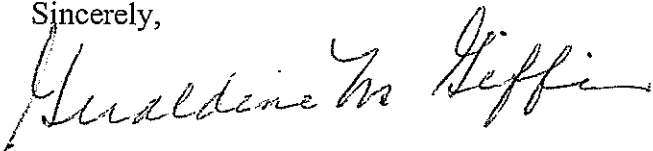
unreasonable adverse impact on surrounding properties, the permit may be suspended or revoked.

11. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:
 - A. 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.
 - 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).

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 contact Alice Kawaha of the Planning Department at 961-8288.

Sincerely,

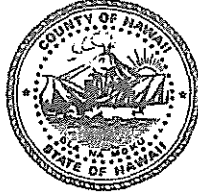


Geraldine M. Giffin, Chairman
Planning Commission

Lfreeman01PC

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
Brian Minaai, Director/DOT-Highways, Honolulu
Mr. Ralph Roland

Harry Kim
Mayor



Christopher J. Yuen
Director

Brad Kurokawa, ASLA
LEED® AP
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

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

November 28, 2006

Mr. Danny Freeman
P.O. Box 6096
Ocean View, HI 96737

Dear Mr. Freeman:

Special Permit No. 1137 (SPP 1137)

Applicant: Danny Freeman

Request: Establishment of Mixed Light Industrial/Commercial Uses

Subject: Administrative Time Extension for Condition No. 2

Tax Map Key: 9-2-85:1

This is to acknowledge receipt of your letter dated November 13, 2006 requesting a 5-year administrative time extension to comply with Condition No. 2 of Special Permit No. 1137.

Condition No. 2 of Special Permit No. 1137 states:

“The construction of the initial phase of the facility shall be established within five (5) years from the effective date of this permit. This time period shall include securing Final Plan Approval from the Planning Director for the construction of the facility.”

In your letter you state you are not been able meet the deadline of Condition 2 based on several delays that could not have been foreseen and are beyond your control.

Based on the on the above information, we will grant a 5-year administrative time extension until **March 15, 2012** in accordance with Condition No. 11 of Special Permit No. 1137.

Please be informed, however, should you need an additional extension of time to comply with Condition No. 2, your request and reasons, along with 20 copies of that request shall be forwarded to the Planning Commission with a \$100 filing fee. A public hearing will be held before the Planning Commission.

Mr. Danny Freeman
Page 2
November 28, 2006

A copy of your request will be forwarded to the Planning Commission. If you have any questions, please feel free to contact Jeff Darrow at 961-8288, ext. 259.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

JWD:smn

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cc w/letter: Planning Commission
Planning Department-Kona

2006 NOV 14 AM 8 29

November 13, 2006

PLANNING DEPARTMENT
COUNTY OF HAWAII

TO: Christopher J. Yuen, Director
Planning Department
County of Hawaii
25 Aupuni St.
Hilo Hawaii 96720

FROM: Danny Freeman

RE: Special Permit No. 1137
Time Extension Request
TMK 9-2-085:01

Dear Mr. Yuen,

I am writing to request extension of Special Permit No.1137 as allowed under Condition 11 when the approval of SPP 01-33 was granted by the Planning Commissioners. Regrettably, it will not be possible to reach completion of all that was called for within Final Plan Approval by the date stipulated, March 15, 2007.

Several unforeseen delays were encountered after approval of SPP 01-33 on March 15, 2002. Actual construction work did not begin until September 20, of 2003 due to complications with inadequate construction drawings provided by the out-of-state fabricator. Additional work and time was then required in order to obtain building permits.

A second unexpected delay taking nine months occurred due to the personal family matter of my divorce and having a pending court settlement involving the project property. The divorce was finalized on March 10, 2005, when I was then free to continue with the project, as planned.

The third frustrating delay was caused when the steel structure finally arrived from the mainland on August 9, 2005. The subsequent inventory revealed key missing parts and items that would prevent assembly and erection. This situation caused time-consuming three-party negotiation in order to reach a resolution. The structure was finally erected; then, once the enclosure had been fully completed, received an inspection on April 1, 2006.

During these down times I worked on the landscaping which is, to date, 85% complete for the Phase I area and 45% complete in the Phase II area. I have also fabricated and installed the signage for the highway frontage. This is nearly complete, awaiting the individual shingles to be hung for the occupying tenants of each business establishment.

The fourth cause for delay has been the consequences of the building boom, causing critical shortages of qualified workers along with increased labor and material cost. My contractor, Jim Anderson (Lic. BC 22146), has become overwhelmed with work. Because of the various project interruptions, he has not been able to find personnel in the right time slots to complete all the ongoing work in a timely manner. After each interrupting delay, re-scheduling has proven to be logistically difficult, causing more postponements. This has been recurrent throughout the course of the whole project's history thus far.

To illustrate the scope and timeframe sequences involved, I am including the project's chronology, as represented on our flow chart, starting from the very beginning and then noting some overrun costs that significantly increased the original estimates (*see attachment*). This will bring things up to the present.

The permits pulled to date were for the Steel Building Shell that does include a complete restroom facility and some finished electrical fixtures. The commercial kitchen element under this initial permit is roughed-in only for electrical and plumbing at this stage. Under this initial permit water tanks, fire hydrants, septic systems, parking and off-street circulation have been addressed and awaiting the final.

The scope of work remaining under this initial permit is the finishing of wall surfaces enclosing exposed electrical and plumbing work. Finish plumbing and electrical work on the restroom, etc., along with the drywall finishing, painting and floor treatments. Exterior walkways and door landings are yet to be poured.

Progress with HELCO has been long ongoing. It took until May of 2005 to receive a written proposal for pole installations. A second agreement to allow power lines to cross my property in order to make service possible on up Tiki Lane took until March 2006. The three poles required to bring power from the highway to my service connect and other owners up the street was scheduled to be completed September 30, 2006. HELCO says they are still backlogged, but I was told they are still actively working on it.

After getting finals for existing permits, I will still need to pull one for the commercial kitchen, as required by the Department of Health. I have four parties wanting to share this facility with me. There has also been overwhelming interest in renting commercial space once the building is complete. I plan to accommodate four or five lessees by providing space divisions that would leave enough room for my shop needs. An additional half-dozen potential tenant requests have had to be turned down. A flexible system for space divisions is now being planned that are non-structural, but will require more permit processing.


I hope this explains the situation adequately and helps by serving as a progress report for my project to date. If there is any other information you need in order to determine my request for a time extension I will be happy to provide all I can toward this end.

In conclusion, the request being made is for a five-year extension for Phase I in order to allow for completion and establishment of my business, free from undue stress. I would then like to be able to continue with the plans for Phase II, which will provide some of the needed rental space now much in demand in our growing community.

Thank you for your time and consideration. If further clarification is needed I can be reached at:

PO Box 6096
Ocean View HI 96737
Phone (808)217-7036

Respectfully yours, . . .


Danny Freeman
DF/bb
Attachment

ATTACHMENT

STAGE/CATEGORY SPECIAL PERMIT NO. 1137	TIME FRAME OR DATE	COST TOTALS THAT INCURRED OVERRUNS
Purchased land for project	6/01/2000	
Project Planning	9/1/2001 to 11/2001	
SPP 01-32 Approval	3/15/2002	
Final Plan Approval	4/16/2003	
Building Permit Issued	9/30/2003	
Foundation Inspected	5/1/2004	
Slab Pour Completed & Inspected	6/1/2004	\$50,000.00
Project interrupted due to divorce And Property Settlement	6/1/2004 to 3/10/2005	18,000.00
Water Tank Installation	5/2/2005	7,000.00
Septic System Installed	5/2/2005	7,200.00
Balance paid Steel Building with Steel Cost Increases	5/31/2005	55,000.00
Building Shipping	6/13/2005	13,387.00
Shipping Insurance	6/13/2005	389.00
Building Arrives with Fabrication Parts Error	8/9/2005	
Shipping Cost Refund	8/16/2005	-5,917.00
HI Corp sends Replacements	8/19/2005	
New Bolts Required	9/25/2005	
Steel Building Erection Completed	2/28/2006	21,000.00
Installed Drainage, Sump Cover Grates	5/30/2006	
Plumbing Rough-in Completed and Inspected	5/30/2006	
Electrical Installation Begins	6/1/2006	14,000.00
Rough Electrical Inspection	9/25/2006	
Rough Framing Inspection	10/3/2006	
Intermittent Landscaping and Site Work Ongoing	9/1/2006 to 10/30/2006	

NOTE: Due mostly to delays, resultant rising cost overruns have exceeded \$60,000.00 thus far.