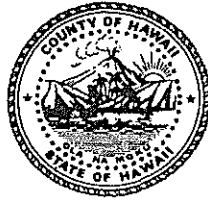


Harry Kim
Mayor



Permit Expired
(See Jeff)

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 2904 9588

APR 22 2002

Ms. Normajean Ku'ulei Snyder
P.O. Box 311
Pahoa, HI 96778-0311

Dear Ms. Snyder:

Special Permit Application (SPP 02-004)
Applicant: Normajean Ku'ulei Snyder
Request: Allow the Existing Farmers and Flea Market
and Proposed Educational, Learning and Activities Center
Tax Map Key: 1-5-7:portion of 23

The Planning Commission at its duly held public hearing on March 22, 2002, voted to approve the above-referenced application. Special Permit No. 1143 is hereby issued to allow the operation of the existing farmers and flea market, and proposed educational, learning and activities center on approximately 3.8 acres of land situated in the State Land Use Agricultural District. The property is located on the northern corner of Pahoa Main Road and 'Apa'a Street, Keonepoko Homesteads, Pahoa, Puna, Hawaii.

Approval of this request is based on the following:

The Planning Director would ordinarily encourage landowners or applicants with commercial uses to locate in a commercial zoned district or to file for a change of zone request for such development. In this case, however, upon reviewing the circumstances of the request to legitimize the existing farmers and flea market, and the proposed educational, learning and activities center, the Planning Director supports an approval of this Special Permit with a limited life and a requirement that the applicant apply for a State Land Use Boundary Amendment and concurrent Change of Zone.

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APR 22 2002

The applicant is applying for a special permit to legitimize the existing farmers and flea market, and proposed educational, learning and activities center on 3.8 acres of a 5.6 acre parcel. In the greenhouse, vendors at the market would sell a variety of items and products ranging from produce, plants, flowers, herbs, fruit (organic and hydroponic products), kava, noni, crafts, imports, specialty services (TV cable dish, AT&T Wireless, etc.) and edibles. Additional plans are to offer workshops and classes relative to the products available at the market (propagation, aquaculture, hydroponics, etc.), art classes (weaving, painting, craft activities), dance (hula, modern), exercise (yoga, tai chi, aerobics), music (amplified and acoustical) and health oriented programs.

The Pahoia Farmers Market initially operated in Pahoia Town on a Village Commercial (CV-10) zoned parcel. When this property was sold, the market was subsequently established on the subject parcel on September 16, 2001. The Planning Director issued a letter dated December 4, 2001 citing the applicant with an alleged zoning violation regarding the operation of a Farmer's Market in an Agricultural District on the subject property. Subsequently, the applicant submitted the special permit application to the Planning Department.

Within 1,300 feet of the subject property are two parcels which received approval for a State Land Use Boundary Amendment from Agricultural to Urban and a Change of Zone from Agricultural (A-1a) to Neighborhood Commercial (CN-20) to allow for commercial developments. Therefore, it would be consistent for the applicant to also seek a State Land Use Boundary Amendment and a Change of Zone to a commercial district to allow for her operation. However, since the proposed use is limited to only 2-3 days a week, the Special Permit was deemed to be the more appropriate process to immediately rectify the zoning violation until the State Land Use Boundary/Change of Zone process can be applied for.

The existing 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 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 220' x 160' greenhouse was permitted in 1980. Subsequently, there was no agricultural activity occurring within the greenhouse or on the property until the farmers/flea market was established. Since the greenhouse is an existing structure, the proposed use will not have a significant adverse effect on the County's agricultural land inventory. *Therefore, the existing 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 granting of this request would promote the effectiveness and objectives of Chapter 205A, Hawaii Revised Statutes, relating to Coastal Zone Management Program. Given the fact that the property site has been previously cleared and covered with cinders, it is unlikely that any archaeological features and threatened species of plants or animals are present on the property. There is no designated public access to the mountain areas nor to the shoreline over the property. The project site is located approximately 5 miles from the nearest shoreline and is in close proximity to an existing mix of agricultural, rural-residential and vacant lands. The existing operation will not impact any recreational resources, including access to and along the shoreline, mountain access, scenic and open space nor visual resources, coastal ecosystems, and marine coastal resources. Further, the property will not be affected by any coastal hazards nor beach erosion. Therefore, the approval of the subject request shall not be contrary to the objectives and policies of the Coastal Zone Management Program.

The 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 Low Density Urban/Urban Expansion Development. The use is consistent with 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.

- The County shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

Land Use – Commercial Sub-Element:

- Provide for commercial developments that maximize convenience to users.
- The development of commercial facilities should be designed to fit into the locale with minimal intrusion while providing the desired services. Appropriate infrastructure and design concerns shall be incorporated into the review of such developments.

The desired use will not adversely affect surrounding properties. Immediate surrounding lands are predominantly vacant although there are some agricultural uses across the Keaau-Pahoa Road and single-family residential uses across the paper road, 'Apa'a Street, in the Pahoa Village Lots. Existing structures on the project site include a 10'x 6' roadside stand (not in use), an 8'x 10' shed (used to store miscellaneous tools and equipment), a 15' x 15' farm dwelling (currently unoccupied) and the 220' x 160' open air greenhouse. This greenhouse has fiberglass corrugated roofing, steel pipe frames and cinder "floor". As a condition of approval, the applicant will be required to obtain all the necessary building permits for the conversion of this greenhouse to the proposed use. Three portable toilets are located near the Keaau-Pahoa Road. Hours of operation will be 2-3 days per week – Fridays, noon to 5:00 pm; and Saturdays/Sundays, 8:00 am to 2:00 pm. Although there is a parking area for 300 vehicles located on the project site, parking has been occurring in the County's right-of-way along the Keaau-Pahoa Road. To address the safety issues of traffic, parking and pedestrians along this road, the applicant will be required to secure the services of a police officer to direct traffic to the designated on-site parking area. This would reduce the traffic impact to the surrounding property owners and also ensure the safety of vendors and customers. Since the area has been cleared, the applicant will be required to submit a landscaping plan in conjunction with plans submitted for Plan Approval to minimize the noise and visual impact. With the installation of appropriate landscaping along the property boundaries and limited business hours, noise and visual impacts upon the adjoining properties can be adequately mitigated and the character of the surrounding area will not be significantly altered. Furthermore, 254 form letters, letters and an e-mail have been received in support of the existing use. No written objections on the subject application have been received from the general public or adjacent landowners.

The existing operation 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 is from the Keaau-Pahoa Road, a County road with an approximately 22 ½-foot pavement within a 60-foot right-of-way. There are designated entrance and exit driveways. County water is available, and the applicant has installed the required backflow prevention device. Since there is no wastewater disposal system, the applicant is utilizing three portable toilets. Police and Fire services are available at Pahoa Town, less than a mile away. All other essential utilities and facilities are available to support the existing use.

Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established. The project site and surrounding areas are designated for agricultural uses by both State and County land use laws. Through the issuance of a Special Permit, a community may establish various "non-agricultural" services and uses that benefit its residents. The subject property is located in the Keonepoko Homesteads with frontage along the Keaau-Pahoa Road. While there are commercial zoned lands available in the immediate area, approvals for uses other than agricultural have been approved through the Special Permit process. Ideally, rezoning to a commercial district would be more appropriate for the existing farmers and flea market, and proposed educational, learning and activities. The Special Permit was deemed the more appropriate process with conditions to limit the life of the permit to two (2) years and requirement that the applicant submit State Land Use Boundary Amendment and Change of Zone applications within two (2) years of the effective date of the Special Permit. In addition, the subject parcel's General Plan designation of Low Density Urban/Urban Expansion allows for commercial uses.

The use will not substantially alter or change the essential character of the land and the present use. The greenhouse is an existing structure. Parking will be located on the portion of the parcel that has been previously cleared.

The land upon which the existing 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 Lava flows, pahoehoe. In addition, 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 the above considerations, the approval of the Special Permit request to legitimize the existing farmers and flea market, and to allow the proposed educational, learning and activities center 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 life of the permit for the existing farmers and flea market, and proposed educational, learning and activities center shall be limited to a period of two (2) years from the effective date of the permit.
3. The applicant shall apply for a State Land Use Boundary Amendment and concurrent Change of Zone to a commercial district within two (2) years of the effective date of the permit.
4. The proposed development shall be conducted in substantial conformance with representations made in the application.
5. The applicant shall finalize all permits and secure a Certificate of Occupancy from the Department of Public Works, Building Division within six (6) months from the date of approval by the Planning Commission.
6. Final Plan Approval for the operation shall be secured within six (6) months from the date of approval by the Planning Commission and shall be in accordance with Plan Approval pertaining to the Zoning Code. Plans shall identify the existing structure, signage, fire protection measures, parking stalls, driveway and other improvements associated with the 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. Native species from the area shall be used when possible.
7. The effective date of the permit shall be upon compliance with both Conditions 5 and 6.

8. The hours of operation shall be limited to 2 – 3 days per week – Fridays, noon to 5:00 pm; and Saturdays/Sundays, 8:00 am to 2:00 pm.
9. The designated driveway access and exit to the Keaau-Pahoa Road shall conform to Chapter 22, Streets and Sidewalks of the Hawaii County Code.
10. During the hours of operation, the applicant shall secure the services of a police officer to direct traffic to the on-site parking area. No parking will be allowed within the County right-of-way along the Keaau-Pahoa Road.
11. Any earthwork activities (gradings) shall conform to Chapter 10, Erosion and Sedimentation Control, of the Hawaii County Code.
12. If required, a drainage study shall be prepared and submitted for approval to the Department of Public Works. Any required drainage system shall be constructed prior to or in conjunction with Final Plan Approval or issuance of a Certificate of Occupancy, meeting with the approval of the Department of Public Works.
13. Additional storm runoff due to the subject development shall be disposed within the property. If dry wells are included in the subject development, an Underground Injection Control (UIC) permit may be required from the State of Hawaii, Department of Health.
14. A Solid Waste Management Plan shall be submitted for review and approval to the Department of Environmental Management in conjunction with the submittal of plans for Final Plan Approval to the Planning Director.
15. Any exterior signs shall meet with the approval of the Department of Public Works.
16. The applicant shall comply with all applicable laws, rules and regulations of the State and County agencies for the existing use.
17. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the approval of the Special Permit. The report shall include, but not be limited to, the status of the development 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 with and the Planning Director acknowledges that further reports are not required.

18. 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.
19. An initial extension of time for the performance of conditions within the permit, with the exception of Conditions No. 2 and No. 3, 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).

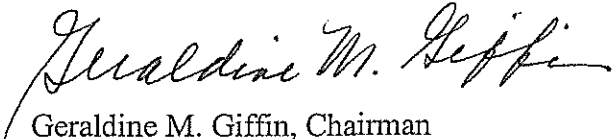
This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

Ms. Normajeane Ku'ulei Snyder

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Should you have any questions, please contact Alice Kawaha and Susan Gagorik of the Planning Department at 961-8288.

Sincerely,



Geraldine M. Giffin, Chairman
Planning Commission

Lsnyder01PC

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. Jeffrey Darrow