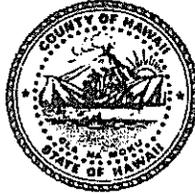


Harry Kim
Mayor



County of Hawaii

PLANNING COMMISSION

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APR 9 2003

Mr. Sidney M. Fuke
Planning Consultant
100 Pauahi Street, Suite 212
Hilo, HI 96720
Dear Mr. Fuke:

Special Permit Application (SPP 03-002)

Applicant: Mālamapōki'i - Kanu O Ka 'Āina Learning Ohana

Request: Establish a Preschool Within One of the Existing Single-Family Dwelling

Tax Map Key: 6-4-22:Portion of 21

The Planning Commission at its duly held public hearing on April 4, 2003, voted to approve the above-referenced application. Special Permit No. 1203 is hereby issued to establish a pre-school within one of the existing single family dwellings situated on approximately 9,869 square feet of land in the State Land Use Agricultural District. The property is located in the Lindsey Subdivision on the west side of White Road, approximately 0.4 mile from its intersection with Māmalahoa Highway, Pu'ukapu Homesteads 2nd Series, South Kohala, Hawai'i.

Approval of this request is based on the following:

Kanu O Ka 'Āina Learning 'Ohana (KALO) is a 501(c)(3) non-profit organization serving as the non-profit umbrella for Mālamapōki'i which was formed to provide culturally based curriculum in a bilingual setting for children 1 – 5 years of age. KALO administers the grant through which Mālamapōki'i will set-up and run a licensed pre-school, infant-toddler program, and pre-natal parent education program on the subject property.

The pre-school and related programs and facilities are proposed on an approximately 9,869 square foot lot in Lindsey Subdivision about 2.7 miles east of Waimea Town. The lots in this subdivision, which were created in 1963, are zoned by the County as Agriculture – 1 acre (A-1a), and the State Land Use designation is "Agricultural." The applicant expects this to be a temporary site until a permanent

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location is established within the next five (5) years. Total enrollment will not exceed fifteen (15) children and eight (8) full-time staff. Programs will operate during the weekdays. The busiest traffic periods for the program will be daytime drop-off (7:15 a.m. – 8:15 a.m.) and pick-up times (3:15 p.m. – 3:45 p.m.). All parking, drop-offs and pick-ups will be on-site. It is estimated that clients in the pre-natal program will average one student, one day per week, for about one hour at a time. These teens will be transported to the program by the charter school. Night uses will be limited to monthly parent/teacher conferences and one evening class per week with a maximum of 8 adult students. Yard maintenance and facility cleaning will be done on weekends. The pre-school and related facilities are not permitted uses under Chapter 205-4.5, Hawaii Revised Statutes (HRS). Therefore, the proposed development requires a Special Permit.

The granting of this request would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended. The proposed pre-school use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations for Agricultural district, and is considered to be an unusual and reasonable use of the land. 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 Study Bureau's overall master productivity rating for agricultural use on the subject property is Class "C" or Fair. The Agricultural Lands of Importance to the State of Hawaii (ALISH) map identifies the general area as Prime Agricultural Land. While the soil of the area is highly rated, little or no agricultural uses are occurring on the less than 10,000 square-foot lots of Lindsey Subdivision. No land will be taken out of agricultural use if the proposed child care facility is established on the subject property which has been in single family residential use for more than 10 years.

No archaeological resources are believed to be present on the lot since the entire subject property has been extensively altered from its original condition with construction of two dwellings, paved driveways and lawn and landscaping throughout the lot.

The desired use shall not adversely affect the surrounding properties. The surrounding area is characterized by rural-residential and pasture uses. Lands adjacent and to the east and west of the property are zoned Agricultural (A-1a), and lands adjacent and to the north and south of the property are zoned Agriculture (A-40a). The applicant has extensively adjusted their original proposal to serve a smaller number of children in order to ensure minimal impacts to surrounding properties. They also expect this to be a temporary location for their pre-school, thus allowing the property to revert back to residential use after the Special Permit expires.

Temporary construction-related noise as renovations are made to the existing structures is expected to be short-term. The applicant will be required to comply with applicable county, state and federal requirements to ensure a safe environment for workers and the general public. Added traffic and noise in the subdivision from pre-school activities should be minimal with the limited number of students and staff. The program's busiest times will be Monday through Friday, from 7:15 a.m. – 4:00 p.m., during which times there will be sounds of children being dropped off and picked up, sounds from the outdoor playground and sounds generated by the indoor daily program. Night classes for no more than 8 adults will be limited to one night a week and end by 9:00 p.m. The only weekend activities will be yard maintenance and facility clean-up. Visual and noise buffers will be through fencing and landscaping. The outward appearance of the existing structures will not be significantly changed or enlarged. Conditions restricting the operational characteristics of the proposed pre-school are incorporated within this approval recommendation to ensure the preservation of the rural-residential and agricultural character of this portion of Waimea.

Also incorporated as a condition of this approval recommendation is a provision that will require the applicant to seek resolution of any nuisances that may be caused by the proposed preschool operations. If unsuccessful in securing resolution of any complaint, the Planning Director has the authority to bring such matters to the Planning Commission for consideration that may result in the revocation of the Special Permit.

Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. The project site is located within an area adequately served with essential services and facilities such as water, police, fire and medical services. The existing County roads servicing the area could have been potentially impacted by increased traffic due to the program. However, by limiting the total enrollment to no more than fifteen (15) children and eight (8) staff and limiting the Special Permit to a period of no more than five (5) years, impacts to traffic directly due to the proposed program should be adequately minimized. White Road, a County-maintained roadway with a pavement width of 12 feet within a 40-foot wide right-of-way, is anticipated to accommodate the limited amount of traffic generated by the proposed pre-school operations and will not require the widening of its pavement to 20 feet with the installation of a right-turn lane in White Road and a left-turn lane in Mamalahoa Highway at its intersection, as recommended by the Department of Public Works. All parking associated with the proposed pre-school shall be provided on-site with on-street parking to be prohibited.

Due to the temporary use of the subject property as a pre-school and its probable return to single family residential use, it is not recommended that all parking be paved.

The applicant proposes to gravel the additional parking stalls which will help to alleviate runoff concerns by not increasing the impermeable surface area of the lot.

Wastewater to be generated by the proposed use will be accommodated by the existing cesspool servicing the existing dwellings. The applicant will convert the wastewater system to a septic-type system if so desired by the Department of Health. The applicant shall satisfy all other agency requirements.

Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established. The purpose of the special permit request is to allow the temporary operation of a Hawaiian and English language pre-school and related programs on 9, 869 square feet of land in an Agricultural District. 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 subdivision within which the subject property is located was created in 1963 and consists of 35 non-conforming lots that are less than 10,000 square feet in an Agricultural State Land Use District. These small lots are largely dedicated to residential use with little or no agricultural activity being conducted on them. Pre-school use of the subject property is consistent with the social and physical character of the residential-agricultural area and nearby residents may choose to enroll their children in Mālamapōki'i programs. A small number of short-term construction-related jobs and full-time administrative, teaching and teaching-related positions will be created by the programs. This will contribute in a small way to the County's economy.

The land upon which the proposed use is sought is unsuited for the uses permitted within the district. The proposed pre-school site has been in single family residential use for more than the past 10 years. No land will be taken out of agricultural use should the subject property be used for early childhood education programs. The lots in Lindsey Subdivision are primarily dedicated to residential use with little or no ongoing agricultural activities.

The proposed use will not substantially alter or change the essential character of the land and the present use. The property was previously used for rural, residential purposes. With the development of the pre-school, the outside appearance of the existing buildings on the subject property will not significantly change. The proposed use would not be inconsistent with the character of the area as lands immediately to the north and south are also in rural, residential use. The temporary nature and small-scale of the proposed use and the limited land area it will occupy will not adversely affect or significantly change the adjacent residential uses or the agricultural land uses located to the east and west of the subject property.

The request will not be contrary to the General Plan. The subject parcel falls within an area designated as Intensive Agriculture on the General Plan Land Use Pattern Allocation Guide (LUPAG) Map. The zoning for the property is Agricultural-1 acre (A-1a) with a State Land Use designation of Agricultural. Special Permits may be applied for to allow uses other than agricultural on the subject property. The proposed request would complement and be consistent with the following goals, policies and standards of the General Plan:

Land Use Element

- Designate and allocate land uses in appropriate proportions and mix and 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.

Public Facilities (Education)

- In proposed communities, sufficient acreage shall be reserved for school facilities. Sites shall be free from flooding and drainage problems, excessive slope and shall incorporate appropriate street and driveway design and location to minimize traffic interference, pedestrian hazard, and to enable safe and easy access for vehicles, bicycles and pedestrians.

Economic Element

- The County shall support all levels of educational opportunities and institutions for its residents.
- 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 General Plan encourages the provision of public educational facilities that effectively service community needs and seek ways of improving public service through better and more functional facilities which are in keeping with the environmental and aesthetic concerns of the community. Therefore, the proposed pre-school is consistent with policies and standards set forth in the General Plan. The public use of this parcel is not strictly agricultural in nature, yet is a reasonable use within the Agricultural district.

The proposed pre-school use is not contrary to the objectives sought to be accomplished by Chapter 205A, Hawaii Revised Statutes, relating to coastal zone management program. There is no known designated public access to mountain or shoreline areas traversing the subject property. Nor are there any known native Hawaiian gathering rights practiced on the property. The property is located more than 5 miles from the nearest coastline. It is adjacent to existing residences and agricultural lands. Therefore, the proposed pre-school uses will not adversely impact any recreational resources, including access to and along the shoreline, scenic and open space nor visual resources, historic resources, coastal ecosystems, and marine and coastal resources. Further, the property is not affected by any coastal hazards or beach erosion.

Based on the above considerations, the proposed pre-school and related facilities are considered 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 Director may initiate procedures to revoke the permit.

1. The effective life of this Special Permit shall be for a period not to exceed five (5) years from the date of issuance of this permit or its abandonment, whichever occurs first. Within 3 months from the date of termination of pre-school operations, the applicant shall complete all necessary steps to ensure the proper conversion of the subject property and all structures to single family dwelling and its related uses.
2. Prior to establishing the pre-school use, the applicant shall secure Final Plan Approval from the Planning Director in accordance with the Zoning Code Sections 25-2-71(f), 25-2-72, 25-2-76, and 25-2-77. Plans shall identify all existing and proposed structures, parking, access and drop-off/pick-up areas, and landscaping associated with the proposed use. The applicant shall notify the Planning Department, in writing, of the completion of required improvements prior to commencing operation of the proposed pre-school.

3. Operation of the pre-school and its related activities shall commence within one (1) year from the date of issuance of the Special Permit and shall be conducted in a manner that is substantially representative of plans and details as contained in the Department's Background Report for Special Permit Application No. 03-002 and with the following requirements and restrictions:
 - a. No more than fifteen (15) children and no more than five (5) prenatal care students shall receive services at any one time from all programs conducted on the subject property.
 - b. No more than eight (8) full-time staff shall be employed by the programs.
 - c. All parking, drop-offs and pick-ups shall be done on-site.
 - d. At least two parking spaces shall be reserved for use by parents and visitors at the front of the property.
 - e. Night classes shall be limited to no more than once/week, for no more than 8 adult students, and will end no later than 9:00 p.m.
 - f. Weekend activities shall be limited to yard and facility up-keep and maintenance during daylight hours.
4. Comply with all other applicable laws, rules, regulations and requirements of the affected government agencies for the proposed use, including those of the Departments of Health and Water Supply, the Department of Public Works-Building Division and the Fire Department.
5. If the applicants fail to comply with the conditions of approval or cause complaint(s) relating to any interference or nuisance and are unable to resolve them with the surrounding community, the Planning Director shall investigate and, if necessary, suspend the permit. The Planning Director shall then refer the matter to the Planning Commission to revoke the permit. Upon appropriate findings by the Planning Commission, if the applicants fail to comply with the conditions of approval or have caused any unreasonable interference or nuisance on the surrounding community, the permit may be revoked.
6. An initial extension of time for the performance of conditions within the permit, with the exception of Condition No. 1, may be granted by the Planning Director upon the following circumstances:

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- 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.
- 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 Norman Hayashi or Phyllis Fujimoto of the Planning Department at 961-8288.

Sincerely,



Fred Galdones, Chairman
Planning Commission

cc: Keōmailani Case
Department of Public Works
Department of Water Supply
Fire Department
County Real Property Tax Division
West Hawaii Office
State Department of Health
State Land Use Commission
Rodney Haraga, Director/DOT-Highways, Honolulu
Planning Department – Kona