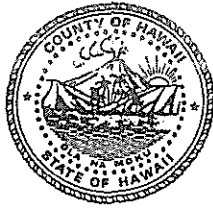


Harry Kim
Mayor



County of Hawaii
PLANNING COMMISSION

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

October 15, 2004

Charles and Jelena Clay
P.O. Box 159
Honomu, HI 96728

Dear Mr. and Mrs. Clay:

Special Permit Application (SPP 04-011)

Applicant: Charles and Jelena Clay

Request: Allow the Construction of a 520 Square Foot Structure for a
Construction Business and an Art Business, Including Teaching, Public Display
And Sales of Art

Tax Map Key: 2-8-11:portion 23

The Planning Commission at its duly held public hearing on September 16, 2004, voted to approve the above-referenced application. Special Permit No. 1243 is hereby issued to allow the establishment of a construction and an art business, including teaching, public display and sales of art products, on a 26,350 square foot area within the State Land Use Agricultural District. The property is located 490 feet south of Akaka Falls Road and approximately 2 miles east (mauka) of Honomu Village, Honomu, South Hilo, Hawaii.

Approval of this request is based on the following:

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 the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use.

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.

per 1296
OCT 15 2004

The applicants are requesting to establish a contractor's office and an art studio/gallery/teaching area on a 26,350 square foot area of a 27.694-acre parcel. The request will consist of an office area of 6' x 10' for the construction business and an art studio, sales and display gallery, and teaching space of 15' x 20' within a 20' x 26' building being constructed on site and related improvements.

There will be agricultural activity associated with the art business as the artwork created by Jelena Clay uses ti leaf, gourds and native plants. These plants will be grown within the requested area. The request will utilize a small portion of the 27.694-acre property and no additional land will be taken out of the existing agricultural inventory nor will the agricultural resources of the area be negatively impacted.

Based on the above circumstances, approval of the subject request would not be contrary to the objectives of the State Land Use Law Rules and Regulations given the subject conditions.

The granting of this request would promote the effectiveness and objectives of Chapter 205A, Hawaii Revised Statutes, relating to the Coastal Zone Management Program. There are no known archaeological features or threatened flora or fauna on the subject parcel. The land is former C. Brewer land that has been extensively cultivated with sugar cane production in the past. The Department of Land and Natural Resources-Historic Preservation Division issued a "no-effect" letter stating that they believe there are no historic properties present because intensive cultivation has altered the land and residential development/urbanization has altered the land. Thus, they believe that "no historic properties will be affected" by this undertaking. There is no designated public access to the mountain or coastal areas over this parcel. The project site is located over one mile from the nearest shoreline. The proposed project will not impact any recreational, 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. Finally, the structure and uses will not significantly obstruct any makai views or significantly affect view planes.

The desired use will not adversely affect the surrounding properties. The proposed uses will be conducted within a 20' x 26' structure. The property is of sufficient size to allow for adequate setbacks and buffers in minimizing any physical, social or other impacts that this proposed use may have on the surrounding properties. There are large acre parcels zoned A-20a surrounding the property. There are no dwellings located near the property. The nearest dwelling is at the mauka end of Honomu, which is approximately one mile away. Thus, the proposed request will not adversely affect the surrounding properties.

The desired use will not unreasonably burden public agencies to provide roads

and streets, sewers, water, drainage, and police and fire protection. The site is currently served by telephone and electrical utilities. Water is provided by a water catchment tank. Access to the property is on a road and utility easement that has 15-foot wide paved lane within a 30-foot right-of-way. The easement connects to Akaka Falls Road just below the 2 mile marker on the north side of the roadway. Akaka Falls Road (Highway 220) is a paved State owned and maintained roadway with a 40-foot wide right-of-way. The traffic generated by the proposed uses will be minimal. In addition, the art business plans to attract visitors that are already traveling on Akaka Falls Road to visit Akaka Falls. Lastly, the proposed use will not generate concerns for additional services as reflected by the agencies' responses. Thus, the proposed request will not unreasonably burden public agencies.

Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established. The property and surrounding lands are former C. Brewer lands that were used for cultivating sugarcane. With the loss of sugarcane production, major land use changes have occurred as a result of the breakup and sale of large agricultural parcels used as former sugar lands. The applicants would like to have a small portion of their property to use for an office and art studio, sales and display gallery, and teaching space. This would save them from commuting to Hilo daily and allow them more time to spend on their property. The proposed uses will assist in serving the Honomu and Rural South Hilo area by providing additional educational and cultural benefits for the immediate community and the island as a whole. This type of public benefit with minimal impact to the surrounding community is consistent with the social and physical character of a rural-agricultural area, contributes to the economy of the County, and complements existing agricultural activities.

The use will not substantially alter or change the essential character of the land and the present use. No existing agricultural activities will be curtailed or diminished as a result of the establishment of this activity on the subject property. A portion of the requested area will also be used for growing ti leaf; gourds and native plants. Thus, the proposed use will not have a detrimental impact on the agricultural resources of the area or the County of Hawaii.

The request is not contrary to the General Plan. The General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the property for Extensive and Intensive Agricultural uses. Although the soils are classified as "C" or "Fair" by the Land Study Bureau's Overall Master Productivity Rating and "Prime Agricultural Land" by the Department of Agriculture's Agricultural Lands of Importance to the State of Hawaii (ALISH) Map, only a small portion of land will be used for the request, leaving approximately 27 acres remaining for agricultural activity. The request would support the following goals, policies and standards of the Economic and Land Use Elements of the General Plan:

Economic

- Provide residents with opportunities to improve their quality of life.
- The County of Hawaii shall strive for an economic climate which provides its residents an opportunity for choice of occupation.
- The County of Hawaii shall strive for diversification of its economy by strengthening existing industries and attracting new endeavors.

LAND USE

- Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural and physical environments of the County.
- Zone urban- and rural-types of uses in areas with ease of access to community The county shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

The applicants will be conducting home occupation type businesses that will improve their quality of life and allow them to choose their occupations. The proposed uses will also provide new services and benefits to the community and to visitors, and promote Hawaii.

Based on the above considerations, the proposed construction and an art business, including teaching, public display and sales of art products and related improvements 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 Director may initiate the revocation of the Special Permit.

1. The applicants, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
2. Prior to the establishment of this use, the applicants, successors or assigns shall secure Final Plan Approval for the proposed use from the Planning Director in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawaii County Code. Plans shall identify all existing and/or proposed structures, paved driveway access and parking stalls associated with the proposed development. Landscaping

shall also be indicated on the plans for the purpose of mitigating any adverse noise or visual impacts to adjacent properties in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements).

3. The hours of operation for the proposed uses shall be limited from 8:00 a.m. to 5:00 p.m., Monday through Friday, and 10:00 a.m. to 5:00 p.m. on weekends.
4. All parking shall be maintained on the property.
5. Only two signs shall be allowed for the request: one small sign along Akaka Falls Road and one sign fronting the structure for the construction/art business. Each sign shall be no larger than 8 square feet.
6. The applicant shall comply with all applicable laws, rules regulations and requirements of other affected agencies, including the Department of Health and Fire Department, for the proposed use.
7. Should any unidentified sites or remains such as lava tubes, artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings or walls be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources—Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the (DLNR-HPD) when it finds that sufficient mitigative measures have been taken.

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.

Charles and Jelena Clay

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

Sincerely,



Fred Galdones, Chairman
Planning Commission

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