

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

May 25, 2005

Patrick and Theresa Moylan
P.O. Box 1306
Pahoa, HI 96778

Dear Mr. and Mrs. Moylan:

Special Permit Application (SPP 04-016)
Applicant: Patrick and Theresa Moylan
Request: Cabinet Shop
Tax Map Key: 1-6-8:102

The Planning Commission at its duly held public hearing on May 12, 2005, voted to approve the above-referenced application to allow the establishment of a cabinet shop on 2 acres of land situated in the State Land Use Agricultural District. The property is located at the southern corner of 37th Street and Melia Street, Orchidland Estates Subdivision, Keaau, Puna, Hawaii.

Approval of this request is based on the following:

The applicants, Patrick and Theresa Moylan, are requesting a special permit to legitimize an existing cabinet shop on the subject property. The applicants have been operating the family owned cabinet business for over 13 years. The applicants reside on the subject property within an existing 5-bedroom/2-bath single family dwelling.

The proposed use is an unusual and reasonable use of land situated within the State Land Use Agricultural District and will not substantially alter or change the essential character of the land and the present use. 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 the agricultural districts might not be best suited for

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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 subject property is approximately 2 acres in size and situated within the County's Agricultural (A-3a) zoned district. The applicants currently reside within an existing dwelling as their primary residence. The applicants are requesting to legitimize an existing family owned cabinet business that has been operated on the subject property for over thirteen years. They propose to build and confine the business within a permanent, permitted structure, screened from public view. The use is considered a home occupation and is accessory to the single-family dwelling. Therefore, the subject request is considered an unusual and reasonable use of the agricultural land and will not substantially change the essential character of the land and the present use.

The existing use is situated within the State Land Use Agricultural District and is not contrary to the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes (HRS), as amended. 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 consist of Lava flows, pahoehoe. The applicants have operated the cabinet business on the subject property for approximately thirteen years. The subject property has been developed with a single-family dwelling and landscaped with ohia, eucalyptus, palm, macnut, mango and lychee trees. Given the fact that the subject property has very poor soil and has been improved with a dwelling and landscaping, it is not anticipated that the cabinet shop will displace any agricultural activity nor diminish the agricultural potential of the area. 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. Thus, this request is not contrary to the objectives of the State Land Use Law for the Agricultural District.

The desired use will not adversely affect surrounding properties. Surrounding properties are similarly zoned Agricultural (A-3a) and consist of scattered single-family dwellings, vacant lands and lands being used for agricultural purposes. There are dwellings on the adjacent 2-acre properties to the southwest and southeast, and southwest across Melia Street. The applicants run their own business and operate from 7:30 a.m. to 4:00 p.m. on Monday through Fridays and occasionally on Saturdays. The business has been conducted within unpermitted structures, but the applicants are proposing to construct a permanent, permitted structure if the special permit is approved. A condition will be included requiring that cabinet making activities shall be conducted within an approved structure. They will also be required to remove the existing unpermitted structures. To mitigate any noise or smell that may be produced by the business, conditions will be added requiring the applicants to comply with the requirements of the

Department of Health regarding noise and physical emissions. The property is two (2) acres in size and large enough to minimize visual, noise, and other impacts. A condition will be added to increase landscaping around the boundaries to mitigate possible impacts. Based on size of the property, the limited use of the business and the added conditions to mitigate any possible adverse impacts, it is not anticipated that the use will adversely impact surrounding properties.

The establishment of a cabinet shop will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, and police and fire protection. Access to the subject property is available from Orchidland Drive, which is a private with a 20-foot pavement width and 37th Street, which is a private road consisting of 17-foot gravel and cinder width. The applicants have an existing water catchment system. Wastewater disposal shall be disposed of within an existing cesspool. Police and Fire services are located in Pahoa, a little less than 4 miles away. All other essential utilities and facilities are available to support the cabinet shop.

The request is not contrary to the General Plan's Land Use Pattern Allocation Guide (LUPAG) Map that defines the subject property and immediately surrounding area for Rural. The request is not contrary to the goals, policies and standards of the General Plan. The approval of the subject request would support, among others, the following goals and policies of the General Plan:

Economic Element:

- Provide residents with opportunities to improve their quality of life through economic development that enhances the County's natural and social environments.
- The County shall provide an economic environment that allows new, expanded, or improved economic opportunities that are compatible with the County's cultural, 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.
- Encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

The Moylans have eight children, seven of which are living with them at home. They have operated the family owned cabinet business for over thirteen years. Approval

of the request will allow the applicants an opportunity to improve the quality of their life while not displacing any agricultural activity nor diminishing the agricultural potential of the area.

The granting of this request would promote the effectiveness and objectives of Chapter 205A, Hawaii Revised Statutes, relating to Coastal Zone Management Program (CZMP). Given the fact that the property has been previously cleared and developed, 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 more than 4 miles from the nearest shoreline and is in close proximity to an existing mix of agricultural, residential-based and vacant lands. The development 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.

Based on the above considerations, the approval of the Special Permit request to legitimize an existing cabinet shop would be supportive of the objectives sought to be accomplished by the Land Use Law and Regulations. This permit application is an opportunity to discuss general attitudes toward special permits for small scale home businesses, as compared to special permits for large commercial enterprises. In residential zones, small home businesses are allowed as "home occupations." The major limits for "home occupation" are listed in HCC sec. 25-4-13(b) and (e).

In general, home occupations have not created serious problems in residential areas. In the state land use agricultural district, however, such businesses currently need a special permit. There are undoubtedly hundreds of such businesses operating without special permits, but they only come to the attention of the Planning Department when there is a complaint.

The Planning Director sought an amendment to Chap. 205 at the state legislature in 2002 and 2003 to allow the counties to treat home occupations in the agricultural district the same as in residential areas, but it did not pass. (It may be possible to accomplish this on the county level by amending the zoning code, for dwellings in the agricultural district that do not have to be "farm dwellings." These are dwellings on lots created before June 4, 1976.) The Planning Director believes that the same principles that allow small scale businesses in residential areas as "home occupations" should apply in the agricultural district, with perhaps some greater flexibility given that the lots are normally larger.

The impacts of all special permits have to be judged on a site-specific basis. In this case, although there are potential negative impacts from the cabinet shop, these can be dealt with by the conditions of approval.

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 Planning Director may initiate procedures to revoke this permit.

1. The applicant, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
2. Construction of the proposed facility shall be completed within two (2) years from the effective date of this permit. Prior to construction, the applicant, successors or assigns shall secure Final Plan Approval for the proposed development from the Planning Director in accordance with Chapter 25-2-70, Chapter 25 (Zoning Code), Hawaii County Code. Plans shall identify all existing and/or proposed structures, fire protection measures, parking stalls, and other improvements associated with the proposed use. Landscaping and buffers along the property boundaries shall be included in the development plans to mitigate any potential adverse noise or visual impacts to adjacent properties in accordance with the Planning Department's Rule No. 17 (Landscaping Requirements). Landscaping adjacent to both side yard boundaries shall conform to the standard for separation of a RS (Single-Family Residential) from a ML (Limited Industrial) zone in Rule No. 17. The landscaping fronting 37th Street and Melia Street shall conform to the front yard landscaping requirements under Rule No. 17.
3. Remove or secure a building permit for all unpermitted structures on the property immediately.
4. All operations and materials have to be within a fully enclosed building, screened from public view.
5. The applicants shall install an air filtration system to control dust and fugitive emissions from the shop, sufficient to meet all applicable State and Federal air quality standards, and which shall be used whenever dust or emissions may be generated.
6. Sound levels shall follow Department of Health rules for residential areas (55 dBA daytime), HAR, Title 11, Chapter 46 (Community Noise Control). No nighttime operation shall be allowed.

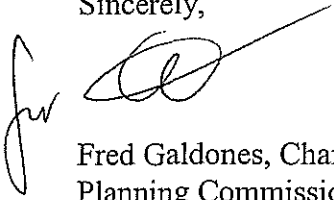
7. The hours of operation for the cabinet shop shall be limited from 8:00 a.m. to 5:00 p.m.; Monday through Saturday.
8. Only one employee shall be permitted in addition to household members.
9. No off-site parking shall be allowed.
10. The applicants shall be required to pay the road maintenance fee for a home use business to the Orchardland Community Association.
11. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources - State Historic Preservation Division (DLNR-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigative measures have been taken.
12. The applicants shall comply with all applicable County, State and Federal laws, rules, regulations and requirements, including the Department of Health regulations relating to noise, physical emissions and fugitive dust.
13. A written final status report shall be submitted to the Planning Director upon compliance with all conditions of approval.
14. 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).

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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 of the Planning Department at 961-8288.

Sincerely,



Fred Galdones, Chairman
Planning Commission

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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
Department of Health
Orchidland Community Association
Zoning Inspector – Hilo
Mr. Richard Gallagher