

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

August 18, 2005

Mr. William T. Turner
HC2 Box 6074
Keaau, HI 96749

Dear Mr. Turner:

Special Permit Application (SPP 05-003)

Applicant: William T. Turner

Request: Gunsmith Repair Within the Existing Single Family Dwelling

Tax Map Key: 1-5-59:40

The Planning Commission at its duly held public hearing on August 5, 2005, voted to approve the above-referenced application to allow the establishment of a gun repair shop within portion of an existing dwelling situated on 21,780 square feet of land within the State Land Use Agricultural District. The property is located along the west side of Paradise Ala Kai Drive, approximately 520 feet north of the Paradise Ala Kai Drive-Kilika Road junction, Hawaiian Paradise Park Subdivision, Keaau, Puna, Hawaii.

Approval of this request is based on the following:

The applicant proposes to establish a gun repair shop within a portion of an existing single-family dwelling on approximately 21,780 square feet of land. The site plan indicates an approximately 45-square foot room inside the dwelling to be used for the proposed business. No exterior signage or advertising is proposed. The applicant has stated "there is a locked room with special gun safes on site and will be supervised by the Bureau of Alcohol, Tobacco and Firearms. No firing of firearms will take place on the property. All chemicals will be disposed of by an environmental company called Unitee." The applicant also hopes to have the opportunity to offer his services to the Hawaii County Police Department. A Federal Firearms License will be obtained for the business. There will be no employees, and clients will be pre-screened, by appointment only. Hours of operation will be Monday through Friday, 9 a.m. to 4 p.m.

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The 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. 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 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.

Soils on the property are 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. As the property is improved with a single-family dwelling and not in active agricultural use, it is not anticipated that the proposed use will displace any agricultural activity nor diminish the agricultural potential of the area. Thus, this request is not contrary to the objectives of the State Land Use Law for the Agricultural District.

The request is consistent with the objectives and policies as provided by Chapter 205A, HRS, and Special Management Area guidelines contained in Rule No. 9 of the Planning Commission Rules of Practice and Procedure. Although the property is located in the Special Management Area, it is not an oceanfront parcel. On May 2, 2005, Special Management Area Minor Permit No. 181 was issued to the applicant to establish a gunsmith shop as a home occupation in the single-family dwelling. There are no identified recreational resources, historic resources, public access to the shoreline or mountain areas, scenic and open space preserves, coastal ecosystems, marine resources or other natural and environmental resources in the immediate area. Although there were no professional surveys conducted of the site, it is not anticipated that endangered or threatened candidate species of flora or fauna are located within the property, and the area has not been identified as a significant botanical or biological habitat. Presently, there is no evidence of any traditional and customary Native Hawaiian rights being practiced on the site, nor existence of known valued cultural, historical or native resources in the area. Thus, it is not anticipated that the proposed request will have any adverse impact on cultural or historical resources in the area.

No commissioned archaeological inventory survey of the area was conducted. By memo dated February 7, 2005, the Department of Land and Natural Resources Historic Preservation Division has stated that "we believe there are no historic properties present because business will be conducted in [an] existing structure built approximately 3 years

ago. Thus, we believe that no historic properties will be affected by this undertaking." The property is not known to be a habitat for any rare or endangered animal life and would not have any significant negative impact on floral or fauna resources in the area.

The desired use will not adversely affect surrounding properties. Surrounding properties within the Hawaiian Paradise Park Subdivision are approximately ½-acre in size and zoned Agricultural (A-1a). Uses in the surrounding area consist of vacant lands and scattered single-family dwellings. According to building permit records, the closest dwelling is located on TMK: 1-5-59: 54, makai and to the northeast of the property. There is another dwelling on TMK: 1-5-59: 38, two lots north of the property. The applicant proposes to establish the gun repair shop as a home occupation with an existing dwelling. Due to the limited nature of the proposed use within an existing single-family dwelling, it is not anticipated that the use will adversely impact surrounding properties. No off-site parking shall be allowed. By letter dated January 14, 2005, the Hawaiian Paradise Park Homeowners Association Board of Directors has approved the request to operate a gunsmith business within the dwelling, contingent upon the applicant securing a Federal Firearms License and Special Permit.

The proposed use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. Access to the site will be from Paradise Ala Kai Drive, a private roadway with an approximate width of 11 feet. All roads within Hawaiian Paradise Park are private. Water will be provided by a catchment system, and wastewater will be disposed of in an existing septic system. There is a volunteer fire station on TMK: 1-5-40:65 on the corner of 21st Avenue and Paradise Drive. County police and fire services are available in Keaau. 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 areas are designated for agricultural uses by both State and County land use laws. However, through the issuance of a Special Permit, various "non-agricultural" services and uses may and have been established. The applicant proposes to establish a gun repair shop in an existing dwelling to meet the needs of the community as well as to have the opportunity to offer his services to the Hawaii County Police Department. The Hawaiian Paradise Park Homeowners Association Board of Directors has approved the applicant's request to establish the proposed use, contingent upon the applicant securing a Federal Firearms License and Special Permit.

The request will conform to, among others, the Land Use and Economic elements of the General Plan and is not contrary to the goals, policies and standards of the General Plan. The Land Use Pattern Allocation Guide (LUPAG) Map component of the General Plan is a representation of the document's goals and policies to guide the coordinated

growth and development of the County. It reflects a graphic depiction of the physical relationship among the various land uses. The LUPAG Map establishes the basic urban and non-urban form for areas within the County. The property is designated Rural, and soils on the property are classified as "E" or "Very Poor" for agricultural productivity and unclassified by the Agricultural Lands of Importance to the State of Hawai'i (ALISH) Map. While the potential for agricultural uses may exist, the soil conditions within the property and surrounding area would preclude such intensive agricultural activities from being conducted. Although the proposed use is not defined as a use that is compatible with the Rural designation, it is consistent with the Land Use and Economic element of the General Plan. 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.

In view of the recent Hawaii State Supreme Court's "PASH" and "*Ka Pa'akai O Ka'Aina*" decisions, the issue relative to native Hawaiian gathering and fishing rights must be addressed in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site:

Investigation of valued resources: No formal archaeological reconnaissance survey, oral history of kamaaina accounts of the area, historical survey of documentary records, botanical and/or fauna study was submitted.

The valuable cultural, historical, and natural resources found in the rezoning area: As the property is improved, rare or endangered floral or faunal resources are unlikely to be found on the site. By memo dated February 7, 2005, the DLNR-SHPD has stated that no historic properties will be affected by this undertaking.

Possible adverse effect or impairment of valued resources: Native plants could be destroyed by construction and ground alteration. The property does not abut the shoreline, therefore Hawaiian gathering and fishing rights is not an issue.

Feasible actions to protect native Hawaiian rights: The applicant has stated that there are no traditional or customary Native Hawaiian rights being practiced on the site, nor existence of any known valued cultural, historical or native resources in the area. Thus, it is believed that the project would have no adverse impact relative to the cultural and historical resources of the area. To the extent to which traditional and customary Native Hawaiian rights are exercised, the proposed action will not affect traditional Hawaiian rights.

Based on the above considerations, the approval of the request to establish a gunsmith repair shop within an existing single-family dwelling would support the objectives sought to be accomplished by the Land Use Law and Regulations. Approval of this request is subject to the following conditions.

1. The applicant(s), its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
2. Final Plan Approval shall be secured from the Planning Director in accordance with Chapter 25-2-70, Chapter 25 (Zoning Code), Hawaii County Code within one (1) year from the effective date of this permit. Plans shall identify all existing and/or proposed structures, fire protection measures, parking stalls, and other improvements associated with the proposed use.
3. The applicant shall obtain final inspection for the dwelling (Building Permit No. 011043) from the Department of Public Works prior to the establishment of the proposed use.
4. The gun repair operation shall be restricted to an area within the existing dwelling as indicated on the site plan.
5. The applicant shall secure a Federal Firearms License from the Bureau of Alcohol, Tobacco and Firearms prior to the commencement of operation.
6. No exterior signs identifying or advertising the business shall be allowed on the property.
7. The driveway connection to Paradise Ala Kai Drive shall conform to Chapter 22, Streets and Sidewalks, of the Hawaii County Code.
8. No off-site parking shall be allowed.
9. The hours of operation shall be limited from 9:00 a.m. to 4:00 p.m. Monday through Friday.
10. No firing or selling of firearms shall be permitted on the property.
11. 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.

12. 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.
13. Comply with all applicable County, State and Federal laws, rules, regulations and requirements.
14. An initial extension of time for the performance of conditions 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 applicants, 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).
 - E. If the applicant should require an additional extension of time, the Planning Department shall submit the applicant's request to the Planning Commission for appropriate action.

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.

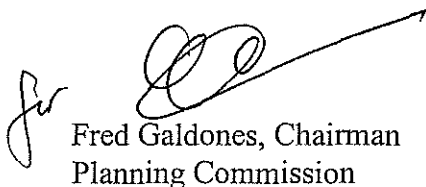
This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

Mr. William T. Turner

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

Sincerely,

A handwritten signature in black ink, appearing to be 'Fred Galdones', with a long horizontal stroke extending to the right.

Fred Galdones, Chairman
Planning Commission

Lturner01pc

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission