

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 2, 2005

Mr. Sidney Fuke
100 Pauahi Street, Suite 212
Hilo, HI 96720

Dear Mr. Fuke:

Special Permit Application (SPP 05-005)

Applicant: Debra Dickens

Request: Establishment of Neighborhood Store (former Morihara Store)

Tax Map Key: 8-4-15:portion 10

The Planning Commission at its duly held public hearing on July 15, 2005, voted to approve the above-referenced application to allow the re-establishment of a neighborhood store (former Morihara Store) on approximately 10,000 square feet of land situated within the State Land Use Agricultural District. The property is located along the southeast (mauka) side of Highway 11 and across from the Highway 11 – City of Refuge Road junction, Keokea, South Kona, Hawaii.

Approval of this request is based on the following:

The applicant is requesting a Special Permit to re-open the former "Morihara Store." She proposes to re-establish the neighborhood store and provide a parking area on approximately 10,000 square feet of land on a 6.16-acre parcel. The applicant proposes to renovate the existing structure to provide essential or basic goods and supplies to residents and visitors in the area and include a coffee shop. A parking area with seven stalls will be added adjacent to the store to allow for off-street parking.

The proposed request 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

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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 "C" or "Fair" and unclassified by the Agricultural Lands of Importance in the State of Hawaii (ALISH) map. The property and surrounding properties are zoned Agricultural (A-5a). It is not anticipated that the proposed use will displace any agricultural activity nor diminish the agricultural potential of the area since only a 10,000-square foot portion of the 6.16-acre property will be used for the proposed neighborhood store and parking area. The remainder of the property will continue in growing coffee and macadamia nut trees. Thus, this request is not contrary to the objectives of the State Land Use Law for the Agricultural District.

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 area on the property where the proposed request would be located is designated as "Important Agricultural Land," which are those lands with better potential for sustained high agricultural yields because of soil type, climate, topography, or other factors. In North and South Kona, a factor in determining the area as important agricultural land is whether the land was part of the "coffee belt", which is a continuous band defined by elevation and input from area farmers. The request to re-establish the store is consistent with the LUPAG Map designation of Important Agricultural Land because the store site has been developed previously and has an existing structure (former Morihara's Store). The proposed use is consistent with the Land Use and Economic elements of the General Plan. The proposed use will be consistent with, among others, the following goals, policies and standards of the Land Use and Economic Elements 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.
- Encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

Economic Element

- Provide residents with opportunities to improve their quality of life through economic development that enhances the County's natural and social environments.
- Economic development and improvements shall be in balance with the physical, social and cultural environments of the island of Hawaii.
- Provide an economic environment that allows new, expanded, or improved economic opportunities that are compatible with the County's cultural, natural and social environment.
- Encourage the development of a visitor industry that is in harmony with the social, physical and economic goals of the residents of the County.

Additionally, 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. The majority of the property will still be retained in agricultural use and only a small portion, which has been previously used as a neighborhood store, will continue to be used for such purposes.

The desired use will not adversely affect surrounding properties. The subject property and surrounding properties are situated within the State Land Use Agricultural District and County's Agricultural-5 acre zoned district. Surrounding properties include scattered residences, coffee and macadamia nut farms, fruit farms, pastures, and vacant lands. Honaunau Post Office is located on the makai side of Mamalahoa Highway, across the project area.

The proposed neighborhood store and parking area is located along the Mamalahoa Highway, on a property that is approximately 6.16 acres in size. Hours of operation will be limited to 6:00 a.m. to 6:00 p.m., daily. No letters of objections were received from the public as of this writing. Due to the limited nature of the proposed use, it is not anticipated that the use will adversely impact surrounding properties.

The proposed request will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, and police and fire protection. Access to the project site is from Mamalahoa Highway (Highway 11), which is a two-lane arterial with a right-of-way width of 50 feet. The roadway has a 20-22 foot wide pavement width and paved shoulders. Access from the highway will enter a new parking area located adjacent to and north of the existing store, just north of the intersection of Mamalahoa Highway and Keala O Keawe Road. This will have seven (7) parking stalls for off-street parking.

In reviewing this application, the Planning Director was concerned that there was not adequate sight distance from the proposed access to and from the highway. To the south, there is a portion of land that curves makai and makes it difficult to achieve adequate sight distance for vehicles entering and exiting the proposed access. A sight distance analysis report submitted by Witcher Engineering confirmed the lack of adequate sight distance from the proposed access point. Based on this information, the Planning Director requested that another sight distance analysis be conducted from an access point approximately 100 feet to the north. The second sight distance analysis report confirmed that if the access point moved 100 feet to the north, sight distance would be increased to acceptable levels. The Planning Director is relying on the submitted sight distance analysis reports from the engineer regarding the adequacy of sight distance. As a result, a condition will be added requiring that the proposed access point be moved approximately 100 feet to the north. The applicant will also be required to receive approval and conform to the requirements of the Department of Transportation for the driveway connection to Mamalahoa Highway.

Flood Zone "AE" affects the subject parcel as designated by the Flood Insurance Rate Map (FIRM), but the site of the proposed store is within Zone X, which is an area determined to be outside the 500-year flood plain. County water is available to the site, and wastewater will be disposed in compliance with the requirements of the Department of Health. All other essential utilities and facilities are available to support the proposed use.

The land upon which the proposed use is sought is suited for the uses permitted for the district. The proposed use will be located within an area whose soils are classified as "C" or "Fair" by the Land Study Bureau's Overall Master Productivity Rating. The Department of Agriculture's ALISH Map does not classify the subject property as having any agricultural importance. In this case, the majority of the property will remain in agricultural activity with three acres planted in macadamia nut trees and one acre planted in coffee trees. The use will be utilizing an existing structure and occupying only a small portion of the property. Therefore, the request to re-establish a neighborhood store (the former Morihara Store) for this location is considered an "unusual and reasonable" use of land within the agricultural district.

The proposed use will not substantially alter or change the essential character of the land and the present use. In this case, the request will not substantially alter the character of the land

and the present use of agriculture being conducted on the property. The proposed request will utilize only a 10,000-square foot area of a 6.16-acre parcel. The neighborhood store will be within an existing 1,080-square foot structure. The remainder of the proposed request will be used for a seven-stall parking area. Under Rule 6 and H.R.S. sec. 205-6, the ultimate issue in deciding a special permit is whether the use is an "unusual and reasonable" use of the property. In making this decision, the Commission must consider the seven listed criteria in Rule 6.3(b)(5)(A-G). The proposed use does not have to meet all of the listed criteria in order to be approved as long as the Commission finds, on balance, that the proposal is "unusual and reasonable". Given the fact that the subject portion of the property has been developed with an existing structure, and the remainder of the property will remain in agricultural activity, this request is considered an "unusual and reasonable" use of land within the agricultural district that will not substantially change the essential character of the land and its present use.

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. The project site is not proximate to the shoreline and will not be impacted by coastal hazard and beach erosion. 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 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. In a letter dated February 26, 2005, the applicant has requested a "no effect" letter from the State Department of Land and Natural Resources – Historic Preservation Division. A condition of approval will be included to require the applicant to notify the DLNR-HPD should any unidentified sites or remains be encountered, and proceed only upon an archaeological clearance from the Department of Land – Historic Preservation Division.

Based on the above considerations, the approval of this request 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, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.

2. A description of the permit area in map and written form by metes and bounds as certified by a registered surveyor shall be submitted to the Planning Department prior to receipt of a Certificate of Occupancy. The area covered by the store and parking lot shall not exceed 10,000 square feet.
3. Construction of the proposed improvements shall be completed within five (5) 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, paved parking stalls in accordance with the requirements specified in Chapter 25 (Zoning Code), HCC for a neighborhood commercial store, and other improvements associated with the proposed use. Landscaping 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 shall follow the standards applicable to commercial zones that abut residential zones for the area covered by the special permit (approximately 10,000 square feet).
4. The square footage of the building is limited to the present store size for retail use, with a potential expansion of up to an additional 50% for ramps, restrooms, storage and other accessory uses.
5. The hours of operation shall be limited to 6:00 a.m. to 7:00 p.m., daily.
6. The driveway connection to Mamalahoa Highway (Highway 11) shall be approved and conform to the requirements of the Department of Transportation.
7. The parking lot shall be constructed to the north of the existing store. The access point shall be moved approximately 100 feet to the north of the proposed access.
8. All development-generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties. A drainage system, if required, shall be constructed meeting with the approval of the Department of Public Works and the Department of Transportation prior to the issuance of a Certificate of Occupancy.
9. All earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control, of the Hawaii County Code.

10. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to the issuance of a Certificate of Occupancy.
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 applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
13. Upon compliance with all conditions of approval, the applicant shall provide, in writing, a final status report to the Planning Director
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 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).

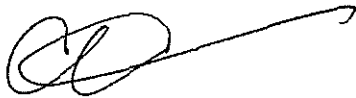
Should any of these conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke this permit

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. Sidney Fuke
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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

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