

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

June 23, 2005

Mr. Gregory J. Plescia
P.O. Box 2146
Pahoa, HI 96778

Dear Mr. Plescia:

Special Permit Application (SPP 05-007)

Applicant: Gregory J. Plescia

Request: Building for a Commercial Kitchen

Tax Map Key: 1-5-16:142

The Planning Commission at its duly held public hearing on June 3, 2005, voted to approve the above-referenced application to allow the construction of a 2,400-square foot building for a certified (commercial) kitchen on approximately 2,400 square feet of land situated within the State Land Use Agricultural District. The property is located along the makai side of Uluhe Street (33rd Street), approximately 2,500 feet northwest of Makuu Drive, Hawaiian Paradise Park Subdivision, Keaau, Puna, Hawaii.

Approval of this request is based on the following:

The applicant is requesting a special permit to construct a 2,400-square foot steel building to house a certified (commercial) kitchen. The structure will be used for storage and for the processing of foods that the applicant plans to sell to wholesale and retail outlets.

In recognizing the lack of commercial and industrial lands in the vicinity of Hawaiian Paradise Park Subdivision and Orchidland Estates Subdivision, the Planning Department has been supportive of the proposed Hawaiian Paradise Park Community Master Plan adopted by the County Council by Resolution No. 184-97. Included in the plan is a concept map that identifies a light industrial area of approximately 20 acres on Kaloli Drive and 14th Avenue. Further, there are three approximately 20-acre nodes identified for commercial uses. Two sites are located along Kaloli Drive and one site is

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proposed along Makuu Drive. The General Plan has recently been amended, which included several revisions to the Land Use Pattern Allocation Guide (LUPAG) Map to accommodate the commercial and light industrial uses for those respective nodes identified in the Hawaiian Paradise Park Community Master Plan. The area for industrial uses is located on Kaloli Drive between 13th and 15th Avenue. In addition, there are three areas (nodes) that were changed to Medium Density Urban to accommodate commercial uses. These areas are located on Kaloli Drive between 24th and 25th Avenue, on Kaloli Drive between 3rd and 4th Avenue, and on Makuu Drive between 25th and 26th Avenue. There is also a Medium Density Urban node located on the Orchiland Drive near Highway 130 where Wiki Wiki Mart is located. These areas would be the preferred locations where development can be contained.

However, until such time that these areas are rezoned and/or developed, or upon new commercial zoned lands becoming available within an approximate 4-mile radius from the subject property, the Planning Department supports an approval of this Special Permit with a limited life.

The proposed 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.

The land on which the proposed use is located is 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. The property has a soil classification that consists of lava flows, pahoehoe. The subject property is vacant and has been cleared. Given that only an approximately 2,400-square foot portion of a one-acre property will be used for the business, it is not anticipated that the certified kitchen 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 granting of this request would promote the effectiveness and objectives of Chapter 205A, Hawaii Revised Statutes, relating to Coastal Zone Management Program

(CZMP). According to the State Department of Land and Natural Resources Historic Preservation Division, DLNR-SHPD believes there are no historic properties present because previous grubbing/grading has altered the land. Thus, DLNR-SHPD believes that "no historic properties will be affected" by this undertaking. It is unlikely that threatened species of plants or animals are present on the property, as the site has been cleared. There is no designated public access to the mountain areas or to the shoreline from the property. The project site is located more than four (4) miles from the nearest shoreline and is in close proximity to an existing mix of agricultural, residential-based and vacant lands. The proposed 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, as the site is approximately four (4) miles from the coastline. Therefore, the approval of the subject request is not contrary to the objectives and policies of the Coastal Zone Management Program.

The desired use will not adversely affect surrounding properties. Immediate surrounding lands are predominantly vacant with some scattered single-family residential uses. A contractor's warehouse approved by Special Permit No. 1184 and a towing and auto repair shop approved by Special Permit No. 1212 are located southeast from the site, towards Makuu Drive on 33rd Avenue. The property is one acre in size and large enough to minimize any impacts. Due to the limited nature of the certified kitchen being confined within a 60-foot by 40-foot structure and the minimal increase of noise and traffic, it is not anticipated that the use will adversely impact surrounding properties.

The establishment of a certified kitchen 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 from Makuu Drive to Uluhe Street (33rd Avenue). Uluhe Street (33rd Avenue), which has an approximately 20-foot wide gravel base in a 40-foot right-of-way, is a private roadway within the Hawaiian Paradise Park Subdivision. A condition of approval will be added stating that no time extension of the permit shall be granted unless the road is paved to provide a 20-foot wide pavement within the 33rd Avenue right-of-way from Makuu Drive to the subject property, meeting the approval of the Hawaiian Paradise Park Homeowner's Association. This will require the applicant to participate with the previous applicants who received special permits on 33rd Avenue to provide a 20-foot wide pavement within the 33rd Avenue right-of-way from Makuu Drive to the subject property or limit the use of the permit to a 5 year time period.

County water is not available to the site, but will be available from a water catchment system. Wastewater disposal will be provided by a cesspool. Police and Fire services are located in Pahoa approximately four (4) miles from the site. All other essential utilities and facilities are available to support the proposed uses.

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. Through the issuance of a Special Permit, a community may establish various "non-agricultural" services and uses that benefit its residents. While there are no commercial and industrial-zoned lands available in the immediate area, approvals for uses other than agricultural have been approved through the Special Permit process. The closest commercial/industrial zoned lands are located in Keaau Village and the Shipman Industrial Park in Keaau, approximately seven miles from the site and in Pahoa Town approximately four miles from the property. Ideally, relocation to commercial or industrial-zoned lands would be a more appropriate location for a certified (commercial) kitchen. However, given the limited availability of commercial and industrial zoned lands in the area, the Planning Department supports an approval of this request with a limited life, to allow time to relocate these types of uses within more appropriate zoned areas as they become available in the future.

The Hawaiian Paradise Park Community Master Plan adopted by the County Council by Resolution No. 184-97 includes a land use concept map identifying a light industrial area of approximately 20 acres on Kaloli Drive and 14th Avenue, and three other commercial nodes along Kaloli Drive and Makuu Drive. The subject property is less than four miles from these proposed areas. The Land Use Pattern Allocation Guide (LUPAG) Map for these sites have redesignated from Orchards to Medium Density Urban and Industrial to support commercial and industrial uses in the area. Although these lands are another source for commercial/industrial activity, the County Council and/or State Land Use Commission must still approve subsequent land use changes. In light of these actions, a period of five (5) years should be adequate time to plan and relocate to appropriate commercial/industrial zoned lands. Therefore, a condition will be included to limit the life of the permit to five (5) years or upon new commercial/industrial zoned lands becoming available within the Hawaiian Paradise Park Subdivision or Orchidland Estates, with a reasonable period to effect the relocation, whichever occurs first.

The land upon which the existing use is sought is unsuited for the uses permitted within the district. 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 Hawai'i (ALISH) Map. While the potential for intensive and/or extensive agricultural uses may exist, the soil conditions within the property and surrounding area would preclude such intensive agricultural activities from being conducted. 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 proposed use will not substantially alter or change the essential character of the land and the present use. The applicant is proposing to construct a 60'x 40' steel building for the certified kitchen. The applicant hopes to add 2-3 green houses, fish tanks, and a dwelling in the future. These structures would be permitted in the agricultural district if the special permit were not needed for the certified kitchen. The character of the surrounding lands is predominantly vacant with scattered single-family residential uses. Additionally, there is a contractor's warehouse and a towing/auto repair business that have been approved by Special Permits located in this same area. These businesses are also utilizing similar structures on their property. Thus, the establishment of a certified kitchen on this property will not substantially alter the essential character of the land.

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 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 Rural, includes existing subdivisions in the State Land Use Agricultural and Rural districts that have a significant residential component. Typical lot sizes vary from 9,000-square feet to two acres. These subdivisions may contain small farms, wooded areas, and open fields as well as residences. Allowable uses within these areas, with appropriate zoning, may include commercial facilities that serve the residential and agricultural uses in the area, and community and public facilities. The Rural designation does not necessarily mean that these areas should be further subdivided to smaller lots. Most lack the infrastructure necessary to allow further subdivision.

The approval of the subject request would support the goals and policies of the Land Use and Economic elements of 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.

Based on the above considerations, the approval of the Special Permit request to establish a certified (commercial) kitchen 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 shall be responsible for complying with all of the stated conditions of approval.
2. The life of the permit for the certified kitchen shall be for five (5) years from the effective date of this permit, or upon new industrial zoned lands or suitable sites developed under special permit within the LUPAG "medium density urban" or "industrial" areas becoming available within a 4-mile radius from the subject property, whichever occurs first. The applicant shall have a reasonable time period to effect the relocation. No extension of this permit shall be granted unless the road is paved to provide a 20-foot wide pavement within the 33rd Avenue right-of-way from Makuu Drive to the subject property, meeting the approval of the Hawaiian Paradise Park Homeowner's Association.
3. Final Plan Approval from the Planning Director shall be secured within one year from the effective date of this permit 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). Landscaping shall follow the standards applicable to light industrial zones that abut residential zones, including the portion of the property fronting 33rd Avenue.

4. The size of the structure shall be limited to 2,400 square feet gross floor area.
5. The hours of operation of the certified kitchen shall be limited from 8 a.m. to 5 p.m., daily.
6. The business shall be limited to one (1) additional employee, in addition to the applicant and spouse.
7. A drainage study shall be prepared and the recommended drainage system shall be constructed, meeting the approval of the Department of Public Works.
8. Signage shall not be visible from Highway 130.
9. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
10. Upon compliance with applicable conditions of approval, and upon completion of construction for any portion of the development, the applicant shall submit a status report, in writing, to the Planning Director.
11. An initial extension of time for the performance of conditions, with the exception of Condition No. 2, 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).

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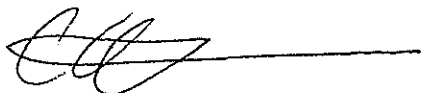
The time frames in Condition No. 2 may only be extended by Planning Commission action.

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.

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