



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

January 23, 2006

Royden & Barbette Nabarro
HCR 1 Box 4182
Keaau, HI 96749

Dear Mr. and Mrs. Nabarro:

Special Permit Application (SPP 05-020)

Applicant: Royden & Barbette Nabarro

Request: 192 Square Foot (12'x16') Building for Certified Kitchen

On One Acre of Land Situated in the State Land Use Agricultural District

Tax Map Key: 1-5-37:107

The Planning Commission at its duly held public hearing on January 6, 2006, voted to approve the above-referenced application to allow the construction of a 192 square foot building for a certified kitchen on one acre of land situated within the State Land Use Agricultural District. The property is located along the makai side of 24th Avenue (Ohe Street), approximately 830 feet southeast of the Shower Drive – 24th Street intersection, Hawaiian Paradise Park Subdivision, Keaau, Puna, Hawaii.

Approval of this request is based on the following:

The applicants are requesting a Special Permit to construct a 192-square foot building to establish a certified kitchen. The applicants operate a small business called J & R's Lollipops and Things and intend to use the kitchen to make a product called "Bradda Pops." The proposed kitchen will not be used for cooking, but for the preparation of the ice pops. The applicants currently rent a kitchen away from their home where they conduct their business. The business will be operated by the applicants and family in the evening on weekdays and during the day on weekends. The applicants will bring in their own supplies and deliver the products to the customers.

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

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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 has been developed with a single-family dwelling and is landscaped. Therefore, 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 desired use will not adversely affect surrounding properties. Immediate surrounding lands are predominantly vacant with some scattered single-family residential uses. The property is one acre in size and large enough to minimize any negative impacts to surrounding properties. Due to the limited nature of the certified kitchen being confined within a 12-foot by 16-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 Shower Drive to 24th Avenue. Twenty Fourth Avenue, which has an approximately 20-foot wide cinder base in a 40-foot right-of-way, is a private roadway within the Hawaiian Paradise Park Subdivision.

County water is not available to the site, but is available from a water catchment system. Wastewater disposal will be provided by an existing cesspool. Police and Fire services are located in Keaau approximately four (4) miles from the site. 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 property and surrounding areas are designated for agricultural uses by both State and County land use laws. Through the issuance of a Special Permit, an applicant 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 4 miles from the site and in Pahoa Town approximately 5 miles from the property. Ideally, relocation to commercial or industrial-zoned lands would be a more appropriate location for a certified kitchen.

However, the Planning Director believes that the same principles that allow for small-scale businesses in residential areas, known as "home occupations," should also apply in the agricultural district, with perhaps some greater flexibility given because the lots are normally larger. The impacts of these home occupation type special permits will need to be judged on a site-specific basis with the potential negative impacts being dealt with by conditions of approval. This request is considered a home occupation.

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 Hawaii (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 applicants are proposing to construct a 12' x 16' (192-square foot) building for the certified kitchen in addition to the existing single-family dwelling located on-site. The character of the surrounding lands is predominantly vacant with scattered single-family residential uses. The applicants currently reside within the existing dwelling on the property. The proposed use is considered a home occupation and is accessory to the single-family dwelling. Therefore, the establishment of a certified kitchen 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 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 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 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.

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.

The granting of this request would promote the effectiveness and objectives of Chapter 205A, Hawaii Revised Statutes, relating to Coastal Zone Management Program (CZMP). The property has been developed and landscaped. There are no known archaeological or historic resources located on the property. There is no evidence of traditional and customary Native Hawaiian rights being practiced on the property. 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 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.

Based on the above considerations, the approval of the Special Permit request to establish a certified 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 applicants, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
2. The applicants shall comply with all applicable requirements of Section 25-4-13 of the Zoning Code, relating to Home Occupations.
3. The proposed certified kitchen shall be established within one (1) year from the effective date of this permit. This time period shall include securing 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 home occupation. 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 zone along the northwest boundary of the property.
4. The hours of operation shall be limited from 7:00 p.m. to 10:00 p.m., Monday through Friday, and 10:00 a.m. to 6:00 p.m., Saturday and Sunday
5. Only one employee shall be permitted in addition to household members.
6. No off-site parking shall be allowed.
7. 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.

8. The applicants shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
9. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of this permit. The report shall include, but not be limited to, the status of each condition and to what extent the conditions of approval are being complied with. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.
10. 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 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).

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.

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

Sincerely,



C. Kimo Alameda, Chairman
Planning Commission

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cc: All Aina Services
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