

## County of Hawai'i

### LEEWARD PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720  
Phone (808) 961-8288 • Fax (808) 961-8742

JAN 12 2011

Mr. Gregory R. Mooers  
P.O. Box 1101  
Kamuela, HI 96743

Dear Mr. Mooers:

Special Permit (SPP 06-000034)

Applicant: Jason DeLuz

Request: To Amend Condition No. 4 of SPP 06-000034 to Extend the Life of the  
Permit an Additional Three Years

Tax Map Key: 6-4-001:004

---

The Leeward Planning Commission at its duly held public hearing on December 15, 2010, voted to amend Special Permit No. 06-34, which allowed the establishment of an automotive body repair shop and accessory uses for a 2-year period on 6,500 square feet of land within a larger 15.24-acre parcel situated within the State Land Use Agricultural District. The amendment request was to extend the life of the Special Permit for an additional 3 years. The Commission, however, voted to remove any time limitations on the life of the permit. The area under consideration is located along the south side of Māmalahoa Highway, across from Kakanihia Road, Pu'ukapu Homesteads, 1<sup>st</sup> Series, Waimea, South Kohala, Hawai'i.

Approval of the request is based on the following:

Special Permit 06-000034 was approved on September 22, 2006, to allow the establishment of an auto body repair shop and accessory uses for a two-year period in a 6,500-square foot portion of a 15.24-acre parcel. The applicant originally requested a three-year time extension to Condition No. 4 (life of the permit) to allow the continued operation of an existing automotive body repair shop and accessory uses, which consists of a 2,520- square foot garage structure, accessory parking and auto storage area in a 6,500-square foot portion of a 15.24-acre property. The additional time requested will allow the applicant to seek an appropriately zoned property to relocate the auto body

repair shop. No additional structures are planned or proposed by this application. Storage of materials is inside the garage structure and up to five vehicles can be parked in the area south of the garage structure in the area depicted on the site plan as "Gravel Parking Area."

Condition No. 4 of Special Permit 06-000034 states:

"The life of this permit shall not exceed two (2) years from the effective date of this permit."

During the Applicant's testimony before the Leeward Planning Commission on December 15, 2010, discussion revolved around the recent approval by the Commission of a Special Permit for an automotive maintenance shop (Caitano) without a time limit. While this amendment request to allow for the continued operation of the existing DeLuz automotive body repair shop had many similarities to the recently approved Caitano automotive maintenance shop located in the same general area, the most significant difference is that the existing DeLuz automotive body repair shop is located closer to Waimea town on lands designated as Low Density Urban, compared to the other facility being located in Rural designated lands. Secondly, this particular request is associated with an existing business that situated itself within an existing building that was originally constructed for the purpose of repairing agricultural equipment. Approval of the Applicant's request would allow for the continued use of these existing buildings. With the Commission's approval of the Caitano Special Permit application for an automotive maintenance shop without a time limit, the Commission also felt that it was reasonable and fair to also approve this amendment request to Mr. DeLuz without the time limit.

**Approval of this revised amendment request 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.** The Applicant has been attempting to relocate his business to property in Haina. Because of misinformation related to the zoning, the Applicant was led to believe the proposed auto body repair shop operation would be permitted on this Haina property. Subsequently, he was advised that the Haina property is located within the Urban District and the proposed use would require a change of zone. This is highly unlikely and not supported by the Planning Department and the surrounding landowners. The Applicant is aware that the Planning Director desires uses such as automotive repair shops outside of the Agricultural district. Special Permit 06-000034 approved on September 22, 2006 had a two-year permit life, which expired on September 22, 2010. The Applicant originally sought an additional three years on the life of the current permit to allow for the relocation to other land in the Waimea area. The Planning Department has not received any complaints regarding the business since the approval of Special Permit 06-000034. Based on this and the previous

discussion regarding appropriateness of this use in its present location and within existing buildings, this Commission finds it reasonable to eliminate the time limit on this particular permit.

Approval of this revised amendment to eliminate the time limit and allow the Applicant to maintain his business on the subject property is also based on the knowledge that the Waimea town area has evolved into a commercial area that accommodates more than just an automotive repair business. It accommodates retail operations where you get a lot more traffic and a lot more revenue. The higher level of use is not conducive to smaller businesses like the Applicant's. The Commission feels that the approval of this revised amendment request to allow the Applicant to remain on the subject property is equitable and fair under the circumstances.

**Granting of the revised amendment request would not be contrary to the original reasons for the granting of the permit.** The revised amendment to allow the Applicant to maintain his business on the subject property would not be contrary to the original reasons for granting the permit. The use would continue to be an unusual and reasonable use of lands situated within the Agricultural District and will not be contrary to the objectives of Chapter 205, HRS, as amended. Additionally, the proposed use will not adversely affect the preservation and agricultural use of the County's prime agricultural lands, and is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations. Allowing for the continued use of the existing structures for an automotive body repair shop will not require any additional agricultural lands to be encumbered, as only a 6,500-square foot portion of a 15.24-acre property will continue to be utilized for the business. The continued use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, and police and fire protection. Lastly, the Planning Department has not received any letters of opposition regarding the amended request.

Since the approval of Special Permit 06-000034 and establishment of the permitted uses, the South Kohala Community Development Plan (SKCDP) was adopted by Ordinance No. 08 159 on November 20, 2008. The SKCDP identifies recommended future uses in the area as "small farms and ranches" on the South Kohala CDP Waimea Town Conceptual Plan. The applicant seeks to amend an existing approved permit, and the scope of uses has not expanded. Thus, although the request is inconsistent with a portion of the plan, the Planning Director supports the request as the Special Permit was approved prior to the adoption of the SKCDP. Furthermore, when there is a conflict between the General Plan and the SKCDP, the General Plan, which designates the property for urban-types of uses, shall prevail. Finally, the remainder of the subject property will remain in active agriculture, which is consistent with the vision of the SKCDP, but balances it by allowing for the continued use of existing buildings for an automotive body repair business.

With the elimination of a time limit on the Special Permit and its recognition as an approved use that will be allowed as a permanent facility, it was only reasonable to eliminate the restriction on business-related signage on the property.

Based on the above, the Leeward Planning Commission hereby approves of the revised amendments to Special Permit 06-000034. Approval of the amendments is subject to the following conditions (material to be added is underlined and material to be deleted is bracketed and struck through):

1. The applicant, successors or assigns shall be responsible for complying with all stated conditions of approval.
2. The applicant shall install a reduced pressure type backflow prevention assembly within five (5) feet of the existing water meter and any additional water meters on private property, which must be inspected and approved by the Department of Water Supply upon approval of this amendment to the Special Permit.
- ~~2. A description of the 6,500 square foot permit area shall be submitted in map and written form by metes and bounds, as certified by a registered surveyor, to the Planning Department within one year from the effective date of this permit.~~
- ~~3. Final Plan Approval for the automotive body paint shop and accessory uses shall be secured from the Planning Department in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawaii County Code within one year from the effective date of this permit. Plans shall identify all existing and/or proposed structures, paved driveway access and parking stalls associated with the proposed development. The existing tree buffer along Mamalahoa Highway shall be retained.~~
- ~~4. The life of this permit shall not exceed two (2) years from the effective date of this permit.]~~
- ~~5.]~~ 3. No more than five (5) vehicles for repair shall be permitted at the site at any one time. No vehicles shall be parked on the shoulders of the ~~[Mamalahoa]~~ Māmalahoa Highway fronting the property at any time. In addition, all vehicles in repair shall be parked within the garage after work hours.
4. Operation of the auto body repair and accessory uses shall be limited between 8:00 a.m. and 4:00 p.m. Monday through Friday.
- ~~6. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to the issuance of Final Plan Approval.]~~

- [7.] 5. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
6. 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.
- [8.] ~~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).]~~

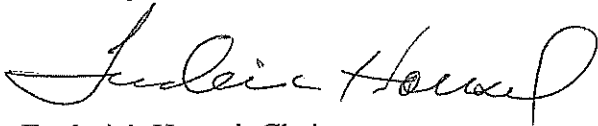
Should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke the permit.

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. Gregory R. Mooers  
Page 6

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

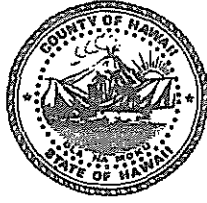
Sincerely,

A handwritten signature in cursive script that reads "Frederick Housel". The signature is written in black ink and is positioned above the printed name and title.

Frederick Housel, Chairman  
Leeward Planning Commission

Ljasondeluzspp06-034olwpc

cc: Department of Public Works  
Department of Water Supply  
County Real Property Tax Division  
Planning Department - Kona  
State Land Use Commission  
DOT-Highways, Honolulu  
Mr. Gilbert Bailado /  
Mr. Robert Usagawa



## 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

September 28, 2006

Steven S. C. Lim, Esq.  
Carlsmith Ball, LLP  
121 Waiuanuenue Avenue  
Hilo, HI 96720

Dear Mr. Lim:

Special Permit Application (SPP 06-000034)  
Applicant: Jason DeLuz dba J. DeLuz Auto Body Repair  
Request: Establish an Automotive Body Repair Shop and Accessory  
Uses on Approximately 6,500 Square Feet of Land Within the  
State Land Use Agricultural District  
Tax Map Key: 6-4-1:portion 4

The Planning Commission at its duly held public hearing on September 22, 2006, voted to approve the above-referenced application to allow the establishment of an automotive body repair shop and accessory uses for a 2-year period on 6,500 square feet of land situated within the State Land Use Agricultural District. The area under consideration is located along the south side of Mamalahoa Highway, across from Kakanihia Road, Puukapu Homesteads 1<sup>st</sup> Series, Waimea, South Kohala, Hawaii.

Approval of this request is based on the following:

The applicant is requesting a Special Permit to legitimize an existing automotive body paint shop and accessory uses, which consists of an existing 2,520 square-foot garage structure, accessory parking and auto storage area in a 6,500-square foot portion of a 15.24-acre property. The project will consist of a garage structure, which includes 3 bays, spray booth and office space, and an external storage area for approximately 20 vehicles.

Previously, Special Permit No. 913 was approved to allow the establishment of an automotive repair shop on approximately 22,500 square feet of land on the subject property (TMK: 6-4-1: Portion of 4) to Samuel J. C. Guevara. The Special Permit

SEP 28 2006

approval was based upon the lack of available industrial zoned sites in the Waimea area. Condition No. 6 stated that the life of the permit shall not exceed five (5) years from the effective date of the permit, which ended on October 11, 2000. The auto repair shop continued until the Planning Department issued a warning letter on December 19, 2005, which requested that the applicant cease and desist the operation of "Jason Deluz Auto Body Repair" on the subject property, and not to conduct further "automotive body and glass repair" activity without first applying for and receiving approval for a Special Permit.

The applicant is requesting that the duration of the permit be for a five- (5) year period to allow time to relocate the business to a property in Haina. The Planning Director is recommending approval for a limited time period of two years to allow the relocation of the existing business. A longer term is not recommended because the use can be established within a CV zone in Waimea or Honokaa.

The grounds for approving a Special Permit are based on Rule 6-6 in the Planning Commission Rules. It states that the Planning Commission shall not approve a Special Permit unless it is found that the proposed use (a) is an unusual and reasonable use of land situated within the Agricultural or Rural District, whichever the case may be; and (b) the proposed use would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended.

The proposed use is a reasonable use of land situated within the Agricultural District. In recognizing that lands within 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 subject property is 15.24 acres in size and situated within the County's Agricultural (A-5a) zoned district. Even though the soil type and classification for the property are good for agricultural uses, the applicant will utilize only 6,500 square feet, or 1% of the property, and the remainder will be in active farming activity. Therefore, the subject request is considered an unusual and reasonable use of the agricultural land.

The granting of this request would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, 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. This property is situated on soil classified as KfA (Kikoni very fine sandy loam, 0 to 3 percent slopes), which is used for truck crops. The soils are classified as "B" or "Good"



by the Land Study Bureau's Overall Master Productivity Rating and designated as "Prime Agricultural Land" by the Department of Agriculture's ALISH Map. The use will be located within the existing garage and will not displace existing agricultural activity or diminish the agricultural potential of the subject property. Therefore, the proposed use will not adversely affect the preservation and agricultural use of the County's prime agricultural lands and is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

In addition to the above listed criteria, the Planning Commission shall also consider the criteria listed under Section 6-3(b)(5) (A) through (G). In considering the criteria, the Planning Director recommends as follows:

(A) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. This criterion has been met based on the previous discussion listed above, mainly because the subject request is considered an unusual and reasonable use of the agricultural land and the proposed use will not adversely affect the preservation and agricultural use of the County's prime agricultural lands that is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

(B) The desired use would not adversely affect surrounding properties.

The property is 15.24 acres in size and is rectangular in shape. It is located in Waimea on the mauka side of Mamalahoa Highway between the 54 and 55-mile markers. There is an existing 5-bedroom/1-bath single family dwelling that was constructed in 1943 and the garage for the auto body repair shop. The remainder of the property, approximately 15 acres, is being utilized for agricultural purposes. Surrounding properties to the south, east and west are zoned A-5a. Properties to the north across the highway are zoned A-40a. The surrounding properties consist of scattered single family dwellings, vacant lands, pasture, and farm lands. There have not been any complaints received by the Planning Department from surrounding property owners since the auto repair shop was established in 1995. Additionally, the project site is partially screened by the stand of lineal cypress/pine trees between the Mamalahoa Highway and the existing garage area.

Therefore, it is anticipated that the continued use of a 6,500 square foot area consisting of an existing automotive body paint shop and accessory uses for a two-year period will not adversely affect the surrounding property owners. Based on the above, this criterion has been met.

(C) Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection.

Access to the subject property is from Mamalahoa Highway, which is a County owned and maintained 2-lane paved roadway within a 60-foot right-of-way. Water and other essential utilities are available to the property. There would be an increase in traffic from the repair shop, but not a significant amount that would adversely impact Mamalahoa Highway. Additionally, the intent of the applicant is to relocate the business to a property in Haina. Based on the above, this criterion has been met.

(D) Unusual conditions, trends, and needs have arisen since 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 be established.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. This criterion is not met. The land on which the proposed use is located is classified as Prime Agricultural Land by the Agricultural Lands of Importance to the State of Hawaii (ALISH) Map and on "B" or "Good" soil according to the Land Study Bureau Soil Rating classification. Although the use will be conducted on 6,500 square feet of a 15.24-acre property, the project site is suitable for the uses permitted within the district.

(F) The proposed use will not substantially alter or change the essential character of the land and present use. The proposed development will only utilize approximately 1 percent of 15.24-acre property. The remainder of the property will be used for residential and agricultural purposes. The proposed use will not substantially alter or change the character of the land and its present use. Therefore, the applicant has met this criterion.

(G) The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans. 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 project site is located in area identified as "Low Density Urban" in the General Plan. This designation mainly allows for residential uses, with an overall residential density of up to six units per acre. It can also allow ancillary community and public uses, and neighborhood and convenience-type commercial uses.

The approval of the subject request would support, among others, 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.
- Provide an economic environment that allows new, expanded, or improved economic opportunities that are compatible with the County's cultural, natural and social environment.

Special Permit No. 913, which was previously approved on the property to allow an automotive body and glass repair operation, was given a five-year permit life. The five-year permit life allowed the development to occur because of the need within the Waimea area for automotive repair service, but also required the applicant to relocate when industrial zoned lands become available in Waimea. The applicant has secured a property in Haina for the business, but is requesting a five year permit life to finish existing contractual obligations made to various rental car agencies and private individuals, and to relocate and establish his business in Haina.

Based on the above considerations, the request to allow an existing automotive body paint shop and accessory uses for a two-year period to relocate, instead of the requested five-year period, is an unusual and reasonable use of land within the State Land Use Agricultural District and would not be contrary to the objectives sought to be accomplished by the State Land Use Law Rules and Regulations. The request is approved by the Planning Commission subject to the following conditions:

1. The applicant, successors or assigns shall be responsible for complying with all stated conditions of approval.
2. A description of the 6,500-square foot permit area shall be submitted in map and written form by metes and bounds, as certified by a registered surveyor, to the Planning Department within one year from the effective date of this permit.

3. Final Plan Approval for the automotive body paint shop and accessory uses shall be secured from the Planning Department in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawaii County Code within one year from the effective date of this permit. Plans shall identify all existing and/or proposed structures, paved driveway access and parking stalls associated with the proposed development. The existing tree buffer along Mamalahoa Highway shall be retained.
4. The life of this permit shall not exceed two (2) years from the effective date of this permit.
5. No more than five (5) vehicles for repair shall be permitted at the site at any one time. No vehicles shall be parked on the shoulders of the Mamalahoa Highway fronting the property at any time. In addition, all vehicles in repair shall be parked within the garage after work hours.
6. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to the issuance of Final Plan Approval.
7. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
8. 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).

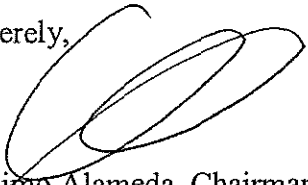
Steven S. C. Lim, Esq  
Page 7

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



C. Kim Alameda, Chairman  
Planning Commission

Ldeluzautobody01PC

cc: Mr. Jason Deluz  
Department of Public Works  
Department of Water Supply  
County Real Property Tax Division  
Planning Department - Kona  
State Land Use Commission  
Rodney Haraga, Director/DOT-Highways, Honolulu