

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

December 18, 2006

Dena and Sergio Ramirez
P.O. Box 1557
Honokaa, HI 96727

Dear Mr. and Mrs. Ramirez:

Special Permit Application (SPP 06-000037)

Applicant: Dena & Sergio Ramirez

Requests: Revocation of SPP No. 700 and Establishment of a Restaurant and Related Activities on 2.02 Acres Situated Within the State Land Use Agricultural District

Tax Map Key: 4-6-1:19

The Planning Commission at its duly held public hearing on December 1, 2006, voted to approve the above-referenced application to allow the establishment of a restaurant and related activities within an existing building situated on 2+ acres of land within the State Land Use Agricultural District. The Commission also voted to approve the revocation of Special Permit No. 700, which allowed the establishment of a physical therapy office on the same property. The effective date of the revocation will be when the applicants receive a Certificate of Occupancy for the restaurant. The property is located along the north (makai) side of the Honokaa-Waipio Road (Highway 240), approximately 1,800 feet west of Nienie Gulch and two miles west of Honokaa, Kulihi, Hamakua, Hawaii.

Approval of this request is based on the following:

The applicants, who reside on the property, are requesting a Special Permit to allow the establishment of a restaurant and related activities on the subject property, which is 2.019 acres in size. The applicants have been operating an Italian restaurant called Café il Mondo in Honokaa for approximately 10 years. The building in which the restaurant is located is for sale and the applicants have a month to month lease until the property is sold. The applicants have purchased the subject property and are proposing to relocate the restaurant within the existing dwelling. The property is landscaped and developed with an existing 3-bedroom single family dwelling that was constructed in

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1935 as a plantation home. The dwelling has also been used as a church and later as a physical therapy office, approved by Special Permit No. 700. The applicants are proposing to restore and preserve the historical structure, while modifying the use for a restaurant and related improvements. The related activities include creating a partnership with culinary training instruction at the high school and college level. They will use locally grown produce and meats to support local farmers and will be providing employment opportunities for residents in the area.

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 an unusual and 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 2.019 acres in size and situated within the State Land Use Agricultural district and the County's Agricultural (A-40a) zoned district. Previously, Special Permit No. 700 was approved on the subject property to allow the establishment of a physical therapy office within the existing dwelling and related improvements, such as a paved driveway access and parking. The applicants are proposing to establish an Italian restaurant within the existing structure and continue to use the structure as a dwelling. Therefore, the subject request is considered an unusual and reasonable use of the land situated within the State Land Use Agricultural District.

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 for those uses to which they are best suited in the interest of the public 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. It is situated on land characterized as Kukaiau silty clay loam formed in volcanic ash with 12% slopes. The use will be located within the existing single family dwelling which is situated within an area where soils are classified as "C" or "Fair" by the Land Study Bureau's Overall Master Productivity Rating and classified as Existing Urban Development by the Department of Agriculture's ALISH Map. The restaurant and related activities will be confined to the existing dwelling on-site. The proposed use will not displace any 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 the following:

(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 located on the north (makai) side of the Honokaa-Waipio Road, approximately 2.3 miles west of Honokaa town. There is an existing dwelling on the property that will be used for the restaurant and related activities. The use will be conducted within the existing dwelling. The remainder of the property is landscaped with plumeria trees, gardenias, lilies, poinsettias, hibiscus and ferns. Additionally, there are also tall norfolk pine trees, eucalyptus trees, silver oak trees and palm trees that are planted on the east and west borders (side yards) of the property which will minimize any visual and noise impacts that may be generated by the proposed request. The surrounding properties to the north, south and west are larger parcels that are zoned A-40a and consist of vacant parcels in agricultural uses and scattered dwellings. There are several single family dwellings located on non-conforming 7,000 to 23,000 square foot lots fronting the roadway to the east of the property. There have been no objections or concerns received from the surrounding property owners and the applicants have submitted letters of support for the project from members of the community. It is not anticipated that the requested use will have an adverse affect on the surrounding properties. Based on the above information, the applicants have met this criterion.

(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 property is available from Honokaa-Waipio Road, which has an approximately 20-foot wide pavement with paved shoulders within an 80-foot right-of-way. The Department of Transportation has requested that further evaluation be conducted regarding adequate sight distance for the proposed location. A condition of approval has been added to require the applicants to submit a sight distance study

prepared by a professional engineer licensed to the Department of Transportation. The applicants must receive approval of the study prior to receiving Certificate of Occupancy for the restaurant. Electricity and telephone are available to the property. There is no municipal sewer system in the area. The applicants currently utilize an existing cesspool system but will be required to install a grease trap and upgrade to a septic system. County water is available to the subject site. The property is situated within an area designated as Flood Zone X, an area determined to be outside the 500-year flood plain. Additionally, a condition of approval will include that the applicants meet all applicable County, State and Federal laws, rules, regulations and requirements.

(D) Unusual conditions, trends, and needs have arisen since district boundaries and regulations were established. In the 1960's and 1970's, the State's agricultural district boundaries and regulations were established and subsequently amended pursuant to HRS Chapter 205. The State Land Use Commission was created in 1961, and interim regulations and temporary district boundaries became effective in 1962. Subsequently, the regulations and Land Use District Boundaries became effective in August of 1964. 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, a community may establish various "non-agricultural" services that may not be available or allowed by zoning for its residents. The request to allow a restaurant within an existing structure in this area is in line with the intent for allowing the issuance of a Special Permit. Based on the above discussion, the applicants have met this criterion.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. The property is situated on soil identified as Kukaiau silty clay loam formed in volcanic ash with 12% slopes, classified as "C" or "Fair" by the Land Study Bureau's Overall Master Productivity Rating and classified as "Existing Urban Development" by the Department of Agriculture's ALISH Map. Although the land and soil can be utilized for uses permitted within the district, the proposed request will be conducted entirely within the existing dwelling located on the property. Based on the above information, the applicants have met this criterion.

(F) The use will not substantially alter or change the essential character of the land and the present use. The proposed request will be conducted within the existing dwelling located on the 2.019-acre parcel. There was a previous Special Permit (SPP 700) issued for the property to allow a physical therapy office. Additionally, the ALISH map identifies the property as "Existing Urban Development." Therefore, the proposed request will not substantially alter or change the essential character of the land or its present use. The applicants have 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 property is located in area identified as Important Agricultural Land in the General Plan. Important agricultural lands are those with better potential for sustained high agricultural yields because of soil type, climate, topography, or other factors. The property is classified as "Existing Urban Development" by the Department of Agriculture's ALISH Map and is identified as having "C" or "Fair" soil by the Land Study Bureau's Overall Master Productivity Rating. As the proposed request will be conducted within an existing dwelling, it will not be contrary to the Land Use Pattern Allocation Guide (LUPAG) Map designation for this area. Additionally, 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 areas 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.
- Strive for an economic climate which provides its residents an opportunity for choice of occupation.
- Encourage the development of a visitor industry that is consistent with the social, physical and economic goals of the residents of the County.

The proposed request will allow the applicants an opportunity to improve their quality of life, provide an economic environment that allows this new, economic opportunity and increase the development of the visitor industry for Hawaii.

The proposed use is not contrary to the objectives sought to be accomplished by Chapter 205A, Hawaii Revised Statutes, relating to coastal zone management program. Given the fact that the property has been developed with a residential dwelling, it is unlikely that any archaeological features and threatened species of plant or animal are present on the property. There is no designated public access to the mountain areas over the property. It is adjacent to existing residences and vacant lands. The property is not located within the Special Management Area. Therefore, the proposed use will not adversely impact any recreational resources, including access to and along the shoreline, scenic and open space nor visual resources, coastal ecosystems, and marine and coastal resources. Further, the property will not be affected by any coastal hazards or beach erosion.

Based on the above considerations, the request to allow the establishment of a restaurant and related activities on 2+ acres of land is an unusual and reasonable use of land, which would not be contrary to 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, successor or assigns shall be responsible for complying with all stated conditions of approval.
2. The effective date for the revocation of Special Permit No. 700 shall be when the applicants receive a Certificate of Occupancy for the restaurant. If the applicants are unable to obtain a Certificate of Occupancy for the restaurant, the applicants shall be entitled to keep Special Permit No. 700 for the physical therapy office in force and shall request a revocation of Special Permit No. 06-000037.
3. The applicants shall submit the anticipated maximum daily water usage calculations as recommended by a registered engineer, and a water commitment deposit in accordance with the "Water Commitment Guidelines Policy" to the Department of Water Supply within ninety days from the effective date of this permit for review and approval.
4. Construction of the proposed development shall be completed within five (5) years from the effective date of this permit. Prior to construction, the applicants shall secure Final Plan Approval for the proposed development 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 paved 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 comply with the bufferyard standard for separation of a CN (Neighborhood Commercial) zone adjoining a RS (Single-Family Residential) zone in Rule No. 17. The landscaping fronting Honokaa-Waipio Road shall conform to the front yard landscaping requirements for a CN (Neighborhood Commercial) zone in Rule No. 17.

5. 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.
6. The applicants shall install a grease trap and upgrade to a septic system in compliance with the State Department of Health prior to the establishment of the restaurant.
7. All driveway connections to Honokaa-Waipio Road shall comply with the requirements of the Department of Transportation.
8. The applicants shall widen the existing paved driveway shoulder from three feet to the current standard of six feet and install two (2) "no parking" signs along the property's highway frontage in compliance with the requirements of the Department of Transportation.
9. There shall be no off-street parking allowed on the State Highway right-of-way as required by the Department of Transportation. All parking for the restaurant shall be provided on-site.
10. The applicants shall submit a sight distance study prepared by a professional engineer licensed in the State of Hawaii to the DOT's Highway Division District Office and secure the DOT's approval of their driveway prior to Certificate of Occupancy.
11. No additional storm water discharge will be allowed onto the highway right-of-way as required by the Department of Transportation.

12. Plans for construction work within or adjoining the State Highway right-of-way shall be in accordance with State Highway standards and submitted to DOT's Highways Division, Hawaii District Office, for review and approval. Improvements required because of the restaurant shall be provided at no cost to the State.
13. The restaurant operation shall be conducted within the existing dwelling with any remodeling consistent with Exhibit B attached to the application.
14. The applicants shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
15. An extension of time for the performance of conditions of 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 the Zoning Code.
 - C. Granting of the 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 Director may initiate procedures to revoke this Special 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.

Dena and Sergio Ramirez
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Should you have any questions, please contact Norman Hayashi of the Planning Department at 961-8288, ext 205.

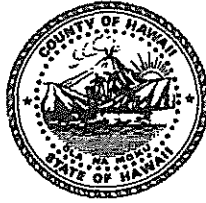
Sincerely,



C. Kimo Alameda, Chairman
Planning Commission

Lramirez01PC

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
Rodney Haraga, Director/DOT-Highways, Honolulu
Department of Health
SPP No. 700



County of Hawai'i

PLANNING COMMISSION

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Phone (808) 961-8288 • Fax (808) 961-8742

May 13, 2009

Dena and Sergio Ramirez
P.O. Box 1557
Honoka'a, HI 96727

Dear Mr. and Mrs. Ramirez:

Special Permit (SPP 06-000037)

Applicant: Dena and Sergio Ramirez

Request: Amendment to SPP No. 06-000037 to Allow the Use of an Additional
Structure for Restaurant and Culinary School

Tax Map Key: 4-6-1:19

The Planning Commission at its duly held public hearing on May 1, 2009, voted to approve the above-referenced request for an amendment to SPP 06-000037 to allow the use of an additional structure for a restaurant and culinary school. SPP 06-000037 originally allowed the establishment of a restaurant and related activities within an existing building on 2+ acres of land situated within the State Land Use Agricultural District. The property is located on the north (makai) side of the Honoka'a-Waipi'o Road (Highway 240), approximately 1,800 feet west of Nienie Gulch and two miles west of Honoka'a, Kuliha'i, Hāmākua, Hawai'i.

Approval of this request is based on the following:

The applicants are requesting an amendment to Special Permit No. 06-37 to allow the use of an additional structure for the restaurant and culinary school in the area of the property that was previously permitted to allow for employee parking and an outdoor lanai area.

Special Permit No. 06-37 was approved by the Planning Commission on December 1, 2006, to allow the establishment of a restaurant and related activities within an existing building on 2+ acres of land. The project site is landscaped and developed with an existing 3-bedroom single family dwelling that was constructed in 1935 as a plantation home.

The amendment request 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. The applicants have been operating an Italian restaurant called Café il Mondo in Honoka'a for over 10 years. Their business is in a building currently for sale and they have a month to month lease that can be terminated at any time. The increasing rent puts additional strain on the applicants in these tough economic times.

Café il Mondo will be relocated to the proposed new structure on the site. The use of a smaller additional structure will allow the applicants to begin their business at their new location and to put more time and money into the renovation work needed to restore the existing building. The existing building needs a complete new foundation and thorough renovation work, including the new dining and kitchen area for the restaurant.

Granting of the amendment request would not be contrary to the original reasons for the granting of the permit. The request to allow the additional smaller structure 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.

The subject property is 2.019 acres in size and situated within the State Land Use Agricultural district and the County's Agricultural (A-40a) zoned district. The use will be located within an area where soils are classified as "C" or "Fair" by the Land Study Bureau's Overall Master Productivity Rating and classified as Existing Urban Development by the Department of Agriculture's ALISH Map. The applicants are required to put in landscaping to minimize any adverse impacts to surrounding properties. The Planning Department has not received any letters of opposition regarding the original request or the amended request. Lastly, the additional use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, and police and fire protection.

Approval of this amendment request would not be contrary to the General Plan or the Zoning Code. The amendment request would not be contrary to the General Plan or the Zoning Code. The request would continue to be consistent with the Land Use and Economic Elements of the General Plan. The granting of this request at this particular location will provide a convenient service to the growing community while maintaining the rural character of the area and provide residents with opportunities to improve their quality of life through economic development that enhances the County's natural and social environments. Lastly, the applicants have previously received approval of a

Special Permit to allow the establishment of a restaurant and related activities within and existing building on 2+ acres of land, in compliance with the Zoning Code.

Based on the above considerations, the Planning Director is recommending approval for the amendment request to allow the use of an additional structure for the restaurant and culinary school. Approval of the request is subject to the following conditions (material to be added is underscored and material to be deleted is bracketed and struck through):

1. The applicants, successor or assigns shall be responsible for complying with all stated conditions of approval.
2. ~~[The effective date for the revocation of Special Permit No. 700 shall be when the applicants receive a Certificate of Occupancy for the restaurant. If the applicants are unable to obtain a Certificate of Occupancy for the restaurant, the applicants shall be entitled to keep Special Permit No. 700 for the physical therapy office in force and shall request a revocation of Special Permit No. 06-00037.~~
3. ~~The applicants shall submit the anticipated maximum daily water usage calculations as recommended by a registered engineer, and a water commitment deposit in accordance with the "Water Commitment Guidelines Policy" to the Department of Water Supply within ninety days from the effective date of this permit for review and approval.~~
- 4.] Construction of the proposed development shall be completed within five (5) years from the effective date of this [~~permit~~] amendment. Prior to construction, the applicants shall secure Final Plan Approval for the proposed development from the Planning Director in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code. Plans shall identify all existing and/or proposed structures, paved driveway access and paved 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 comply with the bufferyard standard for separation of a CN (Neighborhood Commercial) zone adjoining a RS (Single-Family Residential) zone in Rule No. 17. The landscaping fronting Honoka'a-Waipio Road shall conform to the front yard landscaping requirements for a CN (Neighborhood Commercial) zone in Rule No. 17.
- [5-]3. 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.

- [6.]4. The applicants shall install a grease trap and upgrade to a septic system in compliance with the State Department of Health prior to the establishment of the restaurant.
- [7.]5. All driveway connections to Honoka'a-Waipio Road shall comply with the requirements of the Department of Transportation.
- [8.]6. The applicants shall widen the existing paved driveway shoulder from three feet to the current standard of six feet and install two (2) "no parking" signs along the property's highway frontage in compliance with the requirements of the Department of Transportation.
- [9.]7. There shall be no [off-street] parking allowed on the State Highway right-of-way as required by the Department of Transportation. All parking for the restaurant shall be provided on-site.
- [10.]8. The applicants shall submit a sight distance study prepared by a professional engineer licensed in the State of Hawai'i to the DOT's Highway Division District Office and secure the DOT's approval of their driveway prior to Certificate of Occupancy.
- [11.]9. No additional storm water discharge will be allowed onto the highway right-of-way as required by the Department of Transportation.
- [12.]10. Plans for construction work within or adjoining the State Highway right-of-way shall be in accordance with State Highway standards and submitted to DOT's Highways Division, Hawai'i District Office, for review and approval. Improvements required because of the restaurant shall be provided at no cost to the State.
- [13.] ~~The restaurant operation shall be conducted within the existing dwelling with any remodeling consistent with Exhibit B attached to the application.~~
- [14.]11. The applicants shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
- [15.]12. An extension of time for the performance of conditions of the permit may be granted by the Planning Director upon the following circumstances:

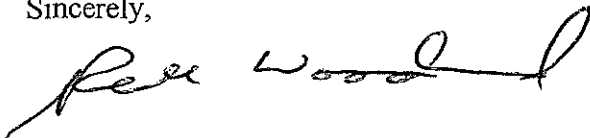
- A. Non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicants, successors or assigns, and that are not the result of their fault or negligence.
- B. Granting of the time extension would not be contrary to the General Plan or the Zoning Code.
- C. Granting of the 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 Director may initiate procedures to revoke this Special Permit.

This approval does not, however, sanction the specific plans submitted with the request 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,



Rell Woodward, Chairman
Windward Planning Commission

Lramirezpp06-000037PC

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