



County of Hawai'i

WINDWARD PLANNING COMMISSION

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

OCT 23 2013

Sandra Pechter Song, Esq.
10 Kamehameha Avenue
Hilo, HI 96720

Dear Ms. Song:

Special Permit (SPP No. 08-000053)
Applicant: Carnor J. Sumida
Request: 10-Year Time Extension to Condition No. 2 (Life of Permit)
Tax Map Key: 1-5-016:172

The Windward Planning Commission, at its duly held public hearing on October 3, 2013, voted to approve the above-referenced request for a 10-year time extension of time to Condition No. 2 (life of permit) of Special Permit No. 08-053, which allowed the establishment of a baseyard for trucks and trailers on 0.9-acre of land situated within the State Land Use Agricultural District. The property is located between Highway 130 (Kea'au-Pāhoa Road) and 33rd Avenue in Hawaiian Paradise Park Subdivision, Kea'au, Puna, Hawai'i.

Approval of the request is based on the following:

The applicant is requesting an amendment for a 10-year time extension of Condition No. 2 of Special Permit No. 08-53, which allowed the establishment of a baseyard for trucks and trailers on 0.9 acres of land situated within the Hawaiian Paradise Park Subdivision on the mauka side of Uluhe Street (33rd Avenue). Special Permit No. 08-53 was approved with a 5-year permit life. Five years has passed and the applicant would like to continue operating his business on the property for an additional 10 years. There have been no suitable industrial-zoned lands that have become available within a 4-mile radius since the Special Permit was issued.

Granting of the time extension request would not be contrary to the original reasons for the granting of the permit. The baseyard use will 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. The land upon which the existing use is sought is unsuited for the uses permitted within the district. It 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 Hawai'i (ALISH) Map. With the installation and continued maintenance of the appropriate landscaping along the property boundaries and limited business hours, noise and visual impacts upon the adjoining properties can continue to be adequately mitigated. Since the approval of the Special Permit, the use has not adversely affected surrounding properties, as the Planning Department has not received any complaints regarding the operation. Lastly, the continued operation will not unreasonably burden public agencies to provide roads, sewers, water, drainage, and police and fire protection.

Approval of this request would not be contrary to the General Plan or the Zoning Code. Since the granting of the Special Permit in 2008, the Puna Community Development Plan (PCDP) was adopted and amended. The PCDP recognizes that although industrial-zoned Shipman Business Park is very large, it is at some distance from emerging population centers in Hawaiian Paradise Park/Orchidland/'Āinaloa and upper Puna, and there has been a demand for light industrial sites closer to these population centers. This has resulted in special permits creating light-industrial uses scattered among residential and agricultural lots, rather than planned development.

A 2010 amendment of the PCDP proposed that further industrial development should occur on the sites currently designated in the General Plan LUPAG map, plus an area along 33rd Avenue in Hawaiian Paradise Park, from Maku'u going toward Kea'au, where several businesses have special permits. This area, which consists of 46 lots of 0.5 to 1.0 acre, should become a light industrial area only if the survey currently being conducted by the Planning Department shows that lot owners want this changed and are willing to fund the infrastructure improvements necessary to create a light industrial area: road improvements, water, and thick landscaping to shield the site from Highway 130 and the residential lots abutting the site.

The survey referenced above in the amendment to the Puna CDP was conducted by a previous Planning Director, who made an effort to contact the owners of these 46 lots along 33rd Avenue by sending letters and requesting their input on the matter. There were 17 of the 46 lot owners who responded to the letters. There were 9 owners in favor of changing the land use of the area for industrial uses, 6 owners who are not in favor of changing the land use and 2 owners are not sure about the change. In addition, the Planning Director sent letters to the owners on 32nd Avenue that border the makai lots on 33rd Avenue asking if they would be in favor of a land use change to a light industrial area

on 33rd Avenue. There were 3 of the 27 lot owners who responded to these letters and all 3 were against the change. The survey results were pretty even with approximately half of those responding being in favor of the change and half not being in favor of the change.

In light of the above, the Planning Department will continue to encourage landowners with light industrial uses on 33rd Avenue to relocate to an industrial-zoned district if they become available within a 4-mile radius or to continue submitting time extensions to extend the life of their permits until a permanent change to the General Plan from rural to industrial for this area has been adopted and the area can be rezoned for industrial uses. In this case, because no suitable industrial zoned lands have become available in a 4-mile radius, the Planning Director supports the approval of the 10-year time extension request with the continued condition that the applicant will be required to relocate the business if suitable industrial zoned lands become available for use within a 4-mile radius within the 10-year time period.

The PCDP recommends the following guidelines for establishing light-industrial uses along 33rd Avenue: "Industrial development for those sites proposed in the community development plan should have adequate infrastructure, to include road access, water, and landscaping to limit visibility from the highways to emphasize that these sites are to provide services to the residential and agricultural communities. All industrial sites should have alternate access to the main highway, and no lots should have direct highway access." Conditions were included in the original permit that required the applicant meet these guidelines such as paying a fair share cost in paving 33rd Avenue, prohibiting direct access to Highway 130, and providing a landscape buffer to limit visibility of the baseyard from the highway.

The applicant has complied with these conditions and although he has made a good faith effort to maintain the landscaping, it does not currently meet the intent of the PCDP to provide "thick landscaping to shield the site from Highway 130 and the residential lots abutting the site." This is mainly because when some of the plants died they were replanted with small trees that take time to grow to create an adequate visual buffer. The applicant has recently replanted 6-foot tall Podocarpus trees along the southern corner of the lot which should provide a thick landscape screen from Highway 130 at maturity. However, should these trees or any other boundary landscaping die in the future, the Department recommends the applicant replace these trees with a different species that may grow more successfully such as areca palms, and that the trees be at least 6-feet in height at planting. In a letter dated May 30, 2013 (see P.D. Exhibit 1), the applicant's neighbor requested that trees not be planted along his fence line, therefore the Department also recommends that Condition No. 7 related to landscaping be revised to reflect the neighbor's wishes.

A water system has not been installed because the applicant uses water from one of his water tank trucks to water the landscaping and clean the trucks and trailers stored at the baseyard. Since potable water is not required at the site for the baseyard use, we recommend removal of Condition No. 11 related to a water commitment from the Department of Water Supply. We are also recommending deletion of other conditions that the applicant has already fulfilled such as paving 33rd Avenue and securing final plan approval. With the continued implementation of the recommended conditions, the amendment to Condition No. 2 will not be contrary to the General Plan or the Zoning Code.

Based on the above, the 10-year time extension request to Condition No. 2 of Special Permit No. 08-53 is approved. Approval of this amendment request is subject to the following conditions (new material is underscored and deleted material is bracketed and struck through):

1. The applicant shall be responsible for complying with all of the stated conditions of approval.
2. The life of the permit for the baseyard shall be for [~~five (5)~~] ten (10) years from the effective date of this [~~permit~~] amendment or upon new industrial zoned lands becoming available within an approximate four (4)-mile radius from the subject property, within a reasonable period to effect the relocation, whichever occurs first.
- [~~3.~~] ~~The applicant shall pay his fair share cost of paving 33rd Avenue to the property site to a minimum width of 20 feet meeting with the approval of the Hawaiian Paradise Park Association, and that the paving shall be completed within one (1) year from the effective date of this permit.]~~
- [~~4.~~] ~~The applicant shall pay his fair share of any other necessary infrastructure improvements that are required for improving 33rd Avenue.]~~
- [~~5.~~]3. The baseyard operations shall be conducted in substantial conformance with representations made in the application and to the Planning Commission.
- [~~6.~~]4. No further subleasing of the property shall occur for baseyard or other business-related activities.
- [~~7.~~] Final Plan Approval from the Planning Director shall be secured within six (6) months from the effective date of this permit in accordance with the Zoning Code, Sections ~~25-2-71(f), 25-2-72, 25-2-76 and 25-2-77.~~ Plans shall identify existing and proposed structures, the number, type and location of heavy equipment, fire protection measures, landscaping, signage, parking stalls, driveway and other improvements associated with the uses. ~~Landscaping for all property boundaries,~~

~~shall also be indicated on the plans and be provided for the purpose of mitigating any adverse noise or visual impacts to adjacent properties. Landscaping shall be established and maintained at a minimum height of ten (10) feet and minimum depth of four (4) feet within and along all property boundaries, and be designed to provide a complete visual screen from Highway 130 when the landscaping is fully mature.]~~

5. A thick landscape screen shall be provided for the purpose of mitigating any adverse noise or visual impacts to adjacent properties and for limiting the visibility of the baseyard from the highway. Landscaping shall be established and maintained at a minimum height of ten (10) feet and minimum depth of four (4) feet within and along the west property boundary, and be designed to provide a complete visual screen from Highway 130 when the landscaping is fully mature. The applicant shall immediately replace any trees that die in the future with fully mature trees. Landscaping shall be established and maintained at a minimum height of ten (10) feet and minimum depth of four (4) feet within and along the north, east and south property boundaries, unless otherwise agreed to with neighboring property owners.

~~[8. The required landscaping shall be installed prior to the occupancy of a baseyard on the subject property.]~~

~~[9.]6. Access to the subject property shall be limited to 33rd Avenue.~~

~~[10.]7. The hours of operation for the baseyard operations shall be limited to 6:30 a.m. to 4:00 p.m., daily.~~

~~[11. Prior to the issuance of a water commitment by the Department of Water Supply, the applicant 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 one hundred and eighty days from the effective date of this permit.]~~

~~[12.]8. The applicant shall comply with all applicable laws, rules and regulations of the State and County agencies for this baseyard use.~~

~~[13.]9. 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.

- ~~[14. An initial extension of time for the performance of conditions, with the exception of Condition No. 2 and 3, 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).]~~

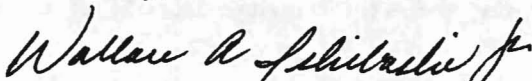
10. If the applicant should require an additional extension of time, the applicant shall submit the request to the Planning Commission for appropriate action.

Should any of these conditions not be met or substantially complied with in a timely fashion, the 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.

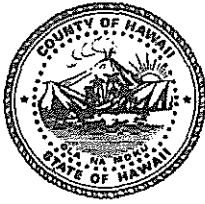
Should you have any questions, please contact Daryn Arai of the Planning Department at 961-8288.

Sincerely,


Wallace A. Ishibashi, Jr., Chairman
Windward Planning Commission

Lsumida01 spp08-053wpc

cc: Mr. Carnor J. Sumida
Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
Mr. Gilbert Bailado



County of Hawai'i

PLANNING COMMISSION

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July 7, 2008

Sandra P. Song, Esq.
10 Kamehameha Avenue
Hilo, HI 96720

Dear Ms. Song:

Special Permit Application (SPP 08-000053)
Applicant: Carnor Sumida
Request: To Allow the Establishment of a Baseyard for Trucks & Trailers
Tax Map Key: 1-5-16:172

The Planning Commission at its duly held public hearing on June 6, 2008, voted to approve the above-referenced application to allow the establishment of a baseyard for trucks and trailers on 0.9 acre of land situated within the State Land Use Agricultural District. The property is located between Highway 130 (Keaau-Pahoa Road) and 33rd Avenue, Hawaiian Paradise Park Subdivision, Keaau, Puna, Hawaii.

Approval of this request is based on the following:

The applicant is requesting a Special Permit to establish a semi-tractor, truck and trailer baseyard for the parking of tractor-trailers, trucks and trailers, and the storage of truck related materials, for the applicant's hauling business (ACR Water Hauling) on 0.90 acre of land on 33rd Avenue in Hawaiian Paradise Park. The proposed request would consist of an uncovered parking lot for up to 15 tractor-trailers, 3 water trucks, and water and freight trailers on a compacted red cinder surface. There would be a storage container to store truck parts and related equipment but no permanent improvements, including diesel or gasoline storage tanks. Water will be available to the site to allow the applicant to wash the vehicles on the site. There will be a six-foot high chain link fence and gate with Podocarpus trees planted around the perimeter of the property to mitigate visual impacts of the parking lot. Access will be from 33rd Avenue and there will be no direct access to the Keaau-Pahoa Road.

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The Planning Commission found that this area within Hawaiian Paradise Park on 33rd Avenue between Makuu Drive and Paradise Drive is in possible transition to becoming a Light Industrial area. The Hawaiian Paradise Park Community Master Plan was revised in September of 2005, which included a statement that the 46 one-acre lots that front 33rd Avenue between Makuu and Paradise Drive should be re-designated light industrial to reflect the original 1995 Master Plan proposal with modifications.

The Planning Commission noted that although this area is not designated as Industrial in the General Plan, there are efforts being made that may result in a possible future General Plan amendment to allow for light industrial uses in this area. These efforts include the change in the Hawaiian Paradise Park Community Master Plan as mentioned above, the continued approval of Special Permits for light industrial uses on 33rd Avenue, and an effort by the Planning Director in sending out a letter to each of the 46 owners on 33rd Avenue asking if they would like to see this area changed to a light industrial area. In this manner, the Planning Director can make a better decision as to the future direction of this area for such a transition. As such, the Planning Commission moved to approve the Special Permit with a similar 5-year life to allow time to see if this area does transition in the future. If the area does not transition into a light industrial area, the applicants will need to comply with the condition requiring them to relocate to any area within a 4-mile radius that becomes available for industrial uses.

Within the last five years, there have been four (4) Special Permits approved for light industrial type uses on 33rd Avenue between Paradise Drive and Makuu Drive in Hawaiian Paradise Park. This applicant would be the fifth Special Permit request for this area on 33rd Avenue. Each of the approved Special Permits have a condition limiting the life of the permit to five (5) years, or upon new industrial (or commercial in some cases) zoned lands or suitable sites becoming developed under special permit within the LUPAG "industrial" areas available within a 4-mile radius from the subject property, whichever occurs first.

Additionally, three of the four permits had a condition stating that there would be no time extension of the life of the permit granted unless the road is paved to provide a 20-foot wide pavement within the 33rd Avenue right-of-way from Makuu Drive to their subject properties, meeting the approval of the Hawaiian Paradise Park Homeowner's Association. As of the date of this writing, 33rd Avenue remains unpaved.

The Planning Commission added a condition requiring that the applicant pay his fair share for the paving of 33rd Avenue up to his property and allowed a period of one year to have this paving completed. The applicant will need to work with the previously approved Special Permit applicants to coordinate the required paving of 33rd Avenue to be completed within the one year time period. This time condition cannot be administratively extended. Additionally, the Planning Commission added a condition

requiring the applicant to pay his fair share of any other necessary infrastructure improvements that are required for improving 33rd Avenue.

Another concern of the Planning Commission was to see that appropriate landscaping was installed prior to the property being occupied as a baseyard. This concern was generated by the lack of compliance of the landscaping condition by previously approved Special Permit applicants in the area. As such, a condition of approval was added to require landscaping to be installed prior to the occupancy of a baseyard on the subject property.

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 baseyard shall be for five (5) years from the effective date of this permit or upon new industrial zoned lands becoming available within an approximate four (4)-mile radius from the subject property, within a reasonable period to effect the relocation, whichever occurs first.
3. The applicant shall pay his fair share cost of paving 33rd Avenue to the property site to a minimum width of 20 feet meeting with the approval of the Hawaiian Paradise Park Association, and that the paving shall be completed within one (1) year from the effective date of this permit.
4. The applicant shall pay his fair share of any other necessary infrastructure improvements that are required for improving 33rd Avenue.
5. The baseyard operations shall be conducted in substantial conformance with representations made in the application.
6. No further subleasing of the property shall occur for baseyard or other business-related activities.
7. Final Plan Approval from the Planning Director shall be secured within six (6) months from the effective date of this permit in accordance with the Zoning Code, Sections 25-2-71(f), 25-2-72, 25-2-76 and 25-2-77. Plans shall identify existing and proposed structures, the number, type and location of heavy equipment, fire protection measures, landscaping, signage, parking stalls, driveway and other improvements associated with the uses. Landscaping for all property boundaries, shall also be indicated on the plans and be provided for the purpose of mitigating any adverse noise or visual impacts to adjacent properties. Landscaping shall be

established and maintained at a minimum height of ten (10) feet and minimum depth of four (4) feet within and along all property boundaries, and be designed to provide a complete visual screen from Highway 130 when the landscaping is fully mature.

8. The required landscaping shall be installed prior to the occupancy of a baseyard on the subject property.
9. Access to the subject property shall be limited to 33rd Avenue.
10. The hours of operation for the baseyard operations shall be limited to 6:30 a.m. to 4:00 p.m., daily.
11. Prior to the issuance of a water commitment by the Department of Water Supply, the applicant 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 one hundred and eighty days from the effective date of this permit.
12. The applicant shall comply with all applicable laws, rules and regulations of the State and County agencies for this baseyard use.
13. 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.
14. An initial extension of time for the performance of conditions, with the exception of Condition No. 2 and 3, 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.

Sandra P. Song, Esq.
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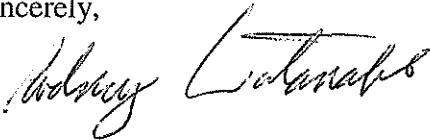
- C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
- D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

Should any of these conditions not be met or substantially complied with in a timely fashion, the 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,



Rodney Watanabe, Chairman
Planning Commission

Lsumida01PC

cc: Mr. Carnor J. Sumida
Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
DOT-Highways, Honolulu
Hawaiian Paradise Park Owners Association