

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

October 20, 2008

Ms. Heidi Hanza
HCR 1 Box 5088
Keaau, HI 96749

Dear Ms. Hanza:

Special Permit Application (SPP 08-000065)

Applicant: Heidi Hanza

Request: Group Childcare Home

Tax Map Key: 1-5-37:195

The Planning Commission at its duly held public hearing on October 3, 2008, voted to approve the above-referenced application to allow the establishment of a group childcare home (maximum of 12 pre-school aged children) on one acre of land situated within the State Land Use Agricultural District. The property is located on the east (makai) side of 26th Avenue, between Shower Drive and Kaloli Drive, Hawaiian Paradise Park Subdivision, Keaau, Puna, Hawaii.

Approval of this request is based on the following:

The applicant proposes to establish a group child care home within an existing dwelling for up to 12 preschool-age children. There will be one full-time employee in addition to the applicant. Hours of operation will be from Monday through Friday from 7:00 a.m. to 5:00 p.m., excluding public school holidays and vacations. Parking will be provided on-site.

The grounds for approving a Special Permit are based on Planning Commission Rule 6-6. 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 State Land Use Agricultural District. The intent of the State Land Use Law for the Agricultural district 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 proposed use is considered unusual since it is not agricultural in nature, but it is a reasonable use as the child care services provided will support the surrounding rural community.

The granting of this request would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended. The subject property is not located in an area designated as important agricultural lands. As the use will be restricted to the existing dwelling and fenced play area, the proposed use will not 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.

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).

(A) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. 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. The proposed group child care home will not adversely affect the preservation and agricultural use of the County's prime agricultural lands because the property is not considered important agricultural land. Therefore the proposed use 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. Surrounding properties are zoned A-1a and primarily vacant or in single-family residential uses. The closest dwelling is located on the adjacent lot south of the property. The lot immediately north of the property is vacant. Directly across 26th Avenue is a vacant lot with dwellings on both adjacent side lots. Due to the nature of the proposed use, it is not anticipated that the project will adversely impact surrounding properties. Conditions of approval will mitigate any potential impacts to surrounding properties by requiring the applicant to comply with the Planning Department's Rule No. 17 (Landscaping Requirements), provide on-site parking, and contain development-generated runoff within the subject property.

(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 site is from 26th Avenue, which is a privately owned and maintained gravel road within a 40-foot right-of-way. As most traffic to and from the site will be generated from within the subdivision, vehicles using County owned roadways will be minimal. Catchment water is available on the property. Wastewater will be disposed of into an individual wastewater system meeting the requirements of the Department of Health. There is ample room on the property to provide for off-street parking. All other public services and utilities are available to the project site. Based on the above, the requested use will not burden public agencies to provide additional services and the applicant has met this criterion.

(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 and have been established. The establishment of a group child care home would allow the applicant to provide child care opportunities to children in a portion of an existing dwelling. Due to the increase in population within the Hawaiian Paradise Park subdivision there is a need for child care facilities. The proposed use would eliminate the need for families that currently drive to Hilo for child care to continue to drive this long distance.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. Soils on the property are classified as "E" or "Very Poor" for agricultural productivity by the Land Study Bureau and are unclassified by the Agricultural Lands of Importance to the State of Hawaii (ALISH) Map. Additionally, the U.S.D.A. Soil Survey Report identifies the soil type as Pahoehoe Lava (rLW). Based on the poor conditions of the land upon which the proposed use is sought, the applicant has met this criterion.

(F) The use will not substantially alter or change the essential character of the land and the present use. The subject property is currently in residential use with a single-family dwelling, which will be used as a group child care home. The essential character of the surrounding area is rural in nature. The applicant is not proposing to construct any new structures. The proposed use will not change the rural character of the land and the existing residential use will continue during the hours the group child care home is not operating.

(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 Rural in the General Plan. This category includes existing subdivisions in the State Land Use Agricultural district that have a significant residential component. 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 proposed use is consistent with the General Plan LUPAG Map and Hawaiian Paradise Park Community Master Plan, and supports the following goals and policies of the Land Use and Economic elements of the General Plan:

Land Use Element

- 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.
- Strive for an economic climate that provides its residents an opportunity for choice of occupation.

The proposed request will meet the child care needs of the surrounding community and allow the applicant an opportunity to improve her quality of life.

The request is consistent with the objectives and policies as provided by Chapter 205A, HRS, and Special Management Area guidelines contained in Rule No. 9 of the Planning Commission Rules of Practice and Procedure. The property is located over 3 miles from the nearest shoreline and therefore will not likely be affected by coastal hazards and beach erosion. Although there were no professional surveys conducted of the site, there are no identified recreational resources, historic resources, public access to the shoreline or mountain areas, scenic and open space preserves, coastal ecosystems, marine resources or other natural and environmental resources in the area. Additionally, no evidence exists of any traditional and customary Native Hawaiian rights being practiced on the site. Thus, the proposed request is consistent with the objectives of Chapter 205A.

Based on the above, the approval of the request to establish a day care center would support the objectives sought to be accomplished by the Land Use Law and Regulations. Approval of this request is subject to the following conditions:

1. The applicant(s), its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
2. To comply with HRS, Chapter 346-161, the applicant shall obtain a license to operate a group child care home as defined in HRS, Chapter 346-151 from the Hawaii State Department of Human Services and provide a copy of the license to the Planning Director prior to the start of the operation.
3. Attendance at the group child care home shall be limited to no more than twelve (12) preschool-age children.
4. The proposed use shall be established within the existing single-family dwelling.
5. The hours of operation shall be limited to Monday through Friday from 7:00 a.m. to 6:00 p.m.
6. The applicant shall provide bottled water to the children, parents and employees at the group child care home.
7. The applicant shall secure Final Plan Approval for the proposed use from the Planning Director in accordance with Chapter 25-2-70, Chapter 25 (Zoning Code), Hawaii County Code. Plans shall identify all existing and/or proposed structures, fire protection measures, parking stalls, and other improvements associated with the proposed use in accordance with Chapter 25, (Zoning Code), Hawaii County Code. Landscaping shall be provided to screen all play yards from adjacent properties.
8. All exterior signs shall conform to Section 3-12 of the Sign Code, Chapter 3 of the Hawaii County Code, relating to signs in the Agricultural district.
9. All development-generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties.
10. The applicant shall meet the State Department of Health's standards and requirements for the existing cesspool, which require that the cesspool serves no more than twenty (20) persons per day.

11. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to Final Plan Approval.
12. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
13. Upon compliance with all conditions of approval and prior to the start of the operation, the applicant shall provide, in writing, a final status report to the Planning Director.
14. An initial extension of time for the performance of conditions 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).

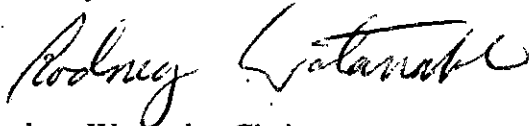
Should any of these conditions not be met or substantially complied with in a timely manner, the Planning Director may initiate procedures to revoke this permit.

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.

Ms. Heidi Hanza
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Should you have any questions, please contact Norman Hayashi of the Planning Department at 961-8288.

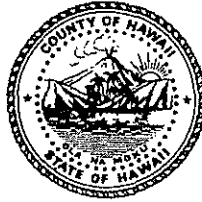
Sincerely,

A handwritten signature in cursive script that reads "Rodney Watanabe".

Rodney Watanabe, Chairman
Planning Commission

Lhanzaspp08-000065PC

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division-Hilo
State Land Use Commission
DOT-Highways, Honolulu
Department of Health
Department of Human Services, Childcare Licensing



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

September 9, 2010

Ms. Heidi Hanza
HCR-1 Box 5088
Keaau, HI 96749

Dear Ms. Hanza:

Special Permit (SPP 08-000065)
Applicant: Heidi Hanza
Request: Amend Condition 3 of SPP 08-000065 to Allow Up to 40 Children
In a Group Child Care Center
Tax Map Key: 1-5-37:195

The Windward Planning Commission at its duly held public hearing on August 12, 2010, voted to approve the above-referenced request for an amendment to Condition Nos. 2, 3, 4 and 10 of Special Permit No. 08-000065, which allowed a group child care home accommodating a maximum of 12 pre-school aged children. The requested amendments seek a change of use to a school accommodating a maximum of 44 children ranging in ages from 3 to 8 years old. The one-acre property, situated within the State Land Use Agricultural District, is situated on 26th Avenue, approximately 1,700 feet south of its intersection with Shower Drive in Hawaiian Paradise Park Subdivision, Puna, Hawai'i.

Approval of this request is based on the following:

The applicant is requesting to convert a group childcare home into a school and to increase the maximum number and age of children attending the school. On October 3, 2008, Special Permit No. 08-65 was approved by the Planning Commission to establish a group childcare home within an existing dwelling. The applicant no longer intends to use the building as a dwelling but instead plans to convert it to a school. The current permit limits the number and age of children to twelve (12) preschool-aged children. The applicant is requesting to increase attendance to up to 44 children aged 3 to 8 years old. Minor modifications to the building and site will be made to accommodate the increased

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attendance such as replacing the existing cesspool with a septic system for wastewater disposal, creating additional covered work/play spaces outdoors, and providing additional on-site parking. The applicant will increase staff to two full-time certified teachers and one full-time teacher's aide. The facility would continue to operate from 7:00 a.m. to 6:00 p.m., Monday-Friday, year round, as required in Condition No. 5 of the permit.

As a result of the request, Conditions 2, 3, 4 and 10 of the current permit would need to be amended or deleted. Condition 2 of the permit required that the applicant obtain a license to operate the group childcare home from the Department of Human Services. Since the Department of Human Services does not regulate private schools, this condition is no longer relevant, and thus should be deleted. Condition 3 limited attendance to no more than 12 preschool-aged children. The applicant is requesting to modify this condition. Condition 4 required that the group childcare home be established within the existing dwelling. The building would no longer be used as a dwelling; therefore this condition should be deleted. Condition 10 required that the applicant comply with the Department of Health's requirements related to the existing cesspool on the property. This condition will be modified to require replacement of the existing cesspool with a septic tank.

According to the applicant, since opening in August 2009, the demand from parents for this kind of educational program has been overwhelming and she currently has a waiting list. Parents have requested that the applicant increase enrollment to accommodate more children and allow current students to stay in the program longer, beyond the preschool years.

Approval of this request would not be contrary to the General Plan or the Zoning Code. The property is located on lands designated Agricultural by the State Land Use Commission and zoned Agricultural-1 acre (A-1a) by the County. A special permit is required on lands within the State Land Use Agricultural district and zoned Agricultural by the County. Soils on the property are unclassified by the ALISH map, and the Land Study Bureau's Soil Rating for the property is "E" or "Very Poor" for agricultural activity. The proposed use will continue to mainly take place within an existing building as proposed in the original request, and therefore will not diminish the agricultural potential of the land. The General Plan LUPAG map designation for the property, which is Rural, has not changed since the original permit was granted. This category includes existing subdivisions in the State Land Use Agricultural district that have a significant residential component. 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 proposed use would directly serve the residents of Hawaiian Paradise Park by providing educational opportunities that are currently lacking in the area. Shortly after the original permit was granted, the Puna Community Development Plan was adopted by ordinance by the County Council. The subject

property is located outside of the Hawaiian Paradise Park (HPP) Regional Town Center, which is located about 2,300 feet to the south. The CDP indicates that the development of public and quasi-public uses, such as schools, churches and community centers, should be discouraged outside of the village center unless there is a compelling reason to locate the facility in an outlying area due to its particular characteristics or circumstances. The largest parcels identified in the CDP for development as the Town Center are owned by the HPP Community Association and the original subdivider. These properties have not yet been developed by the owners or made available to others for lease for community and commercial land uses. In 2008, the applicant started a group childcare home on the subject property to address the shortage of childcare services in HPP. Other educational establishments in HPP include the Malamalama School, Malamalama Preschool and Day Care Center, and a tutoring center for grades K-6. However, these establishments are not adequate to meet the demand for educational services in HPP, thus the request to allow the conversion of a group childcare home to a school is reasonable for this particular area.

Approval of this request would not be contrary to the original reasons for granting the Special Permit. The permit was originally granted to provide childcare services to the surrounding community. Demand for these services with an educational focus has grown since the permit was originally granted. Due to the increase in children attending the proposed school, traffic in the general area will likely increase during pick-up and drop-off times. According to the applicant approximately 50% of the children that currently attend the group childcare home carpool. Carpooling will continue to be encouraged in order to reduce traffic impacts in the neighborhood. Additionally, adequate off-street parking will be provided in accordance with the Zoning Code.

Based on the above, the request to amend Special Permit No. 08-65 to change the use from a group childcare home to a school and increase the number and age of children attending the school 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 or the original reasons for approving this permit.

Approval of this request is subject to the following conditions. Material to be added is underscored; material to be deleted is bracketed and struck through.

1. The applicant(s), its successors or assigns shall be responsible for complying with all of the stated conditions of approval.

~~[2. To comply with HRS, Chapter 346-161, the applicant shall obtain a license to operate a group child care home as defined in HRS, Chapter 346-151 from the Hawaii State Department of Human Services and provide a copy of the license to the Planning Director prior to the start of the operation.]~~

- [3.]2. Attendance at the [~~group child care home~~]school shall be limited to no more than [~~twelve (12) preschool-age~~]forty four (44) children.
- [4.] The proposed use shall be established within the existing single family dwelling.]
- [5.]3. The hours of operation shall be limited to Monday through Friday from 7:00 a.m. to 6:00 p.m.
- [6.]4. The applicant shall provide bottled water to the children, parents and employees at the [~~group child care home~~]school.
- [7.]5. The applicant shall secure Final Plan Approval for the proposed use from the Planning Director [~~in accordance with Chapter 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code.~~]prior to commencing operation of the school. Plans shall identify all existing and/or proposed structures, fire protection measures, parking stalls, and other improvements associated with the proposed use in accordance with Chapter 25, (Zoning Code), Hawai'i County Code. [~~Landscaping shall be provided to screen all play yards from adjacent properties.~~]The pavement of parking spaces is not required, and any material may be used for the parking spaces that will eliminate erosion, mud and standing water. 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 (side and rear) standard for separation of a CV (Village Commercial) zone adjoining a RS (Single-Family Residential) zone in Rule No. 17.
- [8.]6. All exterior signs shall conform to Section 3-12 of the Sign Code, Chapter 3 of the Hawai'i County Code, relating to signs in the Agricultural district.
- [9.]7. All development-generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties.
- [10.]8. The applicant shall install a septic system or other equivalent individual wastewater system meeting the State Department of Health's standards and requirements [~~for the existing cesspool, which require that the cesspool serves no more than twenty (20) persons per day~~].
- [11.]9. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to Final Plan Approval.

- [12.]10. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
- [13.]11. Upon compliance with all conditions of approval and prior to the start of the operation, the applicant shall provide, in writing, a final status report to the Planning Director.
- [14.]12. An initial extension of time for the performance of conditions 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.
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Should any of these conditions not be met or substantially complied with in a timely manner, the Planning Director may initiate procedures to revoke this permit.

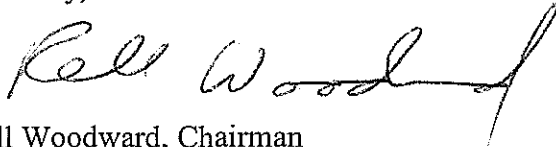
This approval does not, however, sanction the specific plans submitted with the request as they may be subject to change given specific code and regulatory requirements of the affected agencies.

Ms Heidi Hanza

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

Sincerely,

A handwritten signature in black ink that reads "Rell Woodward". The signature is written in a cursive style with a long, sweeping underline.

Rell Woodward, Chairman
Windward Planning Commission

Lhanzaspp08-065amendwwpc

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