

County of Hawai'i

PLANNING COMMISSION

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March 20, 2009

Ms. Mona Lisa Hyatt
Pāhoa Feed and Fertilizer
15-2754 Pāhoa Village Road
Pāhoa, HI 96778

Dear Ms. Hyatt:

Special Permit Application (SPP 08-000068)

Applicant: HQHQ, Inc. dba Pāhoa Feed and Fertilizer

Request: Allow Farm, Feed, Fertilizer, Supply Store, and Office & Retail Space Within Existing Steel Building and Certified Kitchen (for Public to Use) and Office Space Within Existing Single Family Dwelling

Tax Map Key: 1-5-7:76

The Planning Commission at its duly held public hearing on March 6, 2009, considered the applicant's request for a special permit to allow the establishment and expansion of a farm, feed, and fertilizer supply store and the establishment of retail space, professional offices, and a certified kitchen on approximately 1.10 acres of land situated within the State Land Use Agricultural District. The property is located along the west side of Pāhoa Village Road about 230 feet north of the Apa'a Street intersection, Keonepoko Homesteads, Pāhoa, Puna, Hawai'i.

The Planning Director recommended the approval of the continued operation of the existing farm, feed, and fertilizer supply store and the denial of the request to allow the expansion of the existing farm supply store, the establishment of retail uses, and the establishment of professional offices and a certified kitchen.

The Planning Director's recommendation is based on the following:

The applicant, HQHQ Inc. dba Pāhoa Feed and Fertilizer, is requesting a Special Permit to allow the continued operation of an existing farm, feed and fertilizer store. The farm supply store has been operating for the past nine years in an existing 2,400-square foot steel storage building. The store offers feed, medications and supplies for domestic

and farm animals and birds, as well as a variety of fertilizers, herbicides, insecticides and soils for farming and gardening. The applicant was not aware that a special permit is required to operate the farm supply business within the State Land Use Agricultural district until she recently applied for a building permit to change the uses of the existing buildings and expand the existing storage building. Required on-site improvements including parking, drainage improvements and landscaping, will be provided by the applicant for the development. Hours of operation for the farm supply store would be Monday-Friday 8:00 a.m. to 5:30 p.m., Saturday-Sunday 9:00 a.m. to 3:00 p.m. Nine workers are employed by the farm supply business. The applicant believes the continued operation of the farm supply store will directly serve the existing rural residents and agricultural community in the lower Puna area so that residents will not have to travel to Hilo for this service.

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, Hawai'i Revised Statutes, as amended.

The proposed use is an unusual and reasonable use of land situated within the Agricultural District that would not be contrary to the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes, as amended. 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. Agriculture is the main industry within the Puna district. The request is unusual in that it is not strictly agricultural in nature; however the use would provide farm supplies that directly serve the agricultural community in lower Puna. Therefore, it is reasonable that this use be allowed in 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 uses 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 for those uses to which they are best suited in the interest of the public welfare of the people of the State of Hawai'i. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential

in agricultural use. The property does not have high agricultural potential due to the poor quality of its soils. In addition, it is a small lot (1.10 acres) and is developed with a dwelling and agricultural storage building. The applicant is currently raising free-range and ornamental chickens on a portion of the property and will continue to do so if a special permit is granted. Because the farm supply store use occurs within an existing building, it will not displace any existing agricultural activity or diminish the agricultural potential of the subject property. Therefore, the continuation of the existing 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.

(B) The desired use would not adversely affect surrounding properties. Surrounding properties are zoned A-1a and RS-10 and consist of agricultural or residential uses. Some of the nearby properties zoned A-1a have received special permits for non-agricultural uses such as a church, farmer's market and self-storage facility. The closest dwellings are located approximately 275 feet to the north and south. Hours of operation for the farm supply store will be limited to 8:00 a.m. to 5:30 p.m. Monday-Friday and 9:00 a.m. to 3:00 p.m. Saturday-Sunday. As a condition of approval, the applicant will be required to provide on-site parking, drainage improvements and landscaping along the property boundaries. These additional requirements should further minimize the possibility of adverse impacts to the surrounding area.

(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 Pāhoa Village Road, which is a County owned and maintained roadway with a 22-foot pavement width with 8-foot wide grass shoulders within a 50-foot right-of-way. There is an approximately 18-foot wide paved driveway off of Pāhoa Village Road. County water is available to the property. Wastewater will be disposed of into an existing cesspool and additional individual wastewater system(s) meeting the requirements of the Department of Health. There is ample room on the property to provide for off-street parking. As a condition of approval, the applicant will be required to dispose of all drainage runoff on-site. All other 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. 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. Since the district boundaries were established, lower Puna’s residential population has grown substantially and the area has transitioned to more diversified agriculture. This has increased demand for businesses that service the agricultural industry.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. Soils on the project site are classified as “E” or “Very Poor” by the Land Study Bureau’s Overall Master Productivity Rating and are unclassified by the Department of Agriculture’s ALISH Map. Additionally, the U.S. Soil Survey identifies the soil type for the property as Pāhoehoe Lava (rLW), which has practically no soil covering and is generally bare of vegetation. Because of this the property is not optimal for growing agricultural crops. However, the applicant will continue to use a portion of the property for raising free-range and ornamental chickens.

(F) The use will not substantially alter or change the essential character of the land and the present use. The essential character of the area is agricultural and residential. The farm, feed and fertilizer supply store has been operating on the property for nine years within an existing storage building. Therefore, there will be no change to the residential and agricultural character of the land and its present use.

(G) The request will not be contrary to the General Plan and Puna Community Development Plan (CDP). 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 an area identified as Low Density Urban in the General Plan. Low Density Urban allows for residential uses, with ancillary community and public uses, and neighborhood and convenience-type commercial uses; overall residential density may be up to six units per acre. The farm supply store use is not consistent with the LUPAG Map designation because it is not a neighborhood or convenience-type commercial use. However, because the use has existed on the property for nine years and would directly serve the agricultural community of lower Puna it is reasonable to allow it within the Low Density Urban designated area.

Commercial activity in the Puna district primarily consists of small rural enterprises that serve the surrounding rural-residential and agricultural communities. The communities of Kea’au and Pāhoa are the regional commercial centers of the district. The applicant’s request is consistent with the following course of action for commercial development in the Puna District, as stated in the General Plan:

- Centralization of commercial activities in Pāhoa Town, rather than along the Pāhoa By-Pass, to serve the residents of Lower Puna shall be encouraged.

The applicant's request is consistent with this action of the General Plan because the subject property is located close to Pāhoa Town along Pāhoa Village Road.

In addition, the Puna CDP identifies Pāhoa as a regional town center meant to provide a wide range of services and amenities. The plan supports the approval of use permits for existing commercial uses in the town center that do not presently have appropriate land use entitlements, and for proposed uses at appropriate nearby locations, provided the size and use of the expansion area conforms to the criteria for a regional town center. Although the subject property is located outside of the Pāhoa regional town center, it is close to the town center boundary (230 feet away) and therefore would be reasonable to allow the existing farm supply store use to continue.

The request is not contrary to Chapter 205A, Hawai'i Revised Statutes, relating to Coastal Zone Management.

The subject property is located more than three miles from the shoreline and will not be impacted by coastal hazards or affect beach erosion, coastal ecosystems and marine resources. Additionally, it is not located in the Special Management Area. There is no record of a designated public access to the shoreline or mountain areas that traverses the property. According to the applicant, no valued cultural or natural resources exist on the property and there is no evidence of any traditional and customary Native Hawaiian rights being practiced at the site. In a letter dated September 16, 2008 the DLNR-SHPD determined that no historic properties will be affected by the proposed development because the site has previously been grubbed and graded. Thus, the applicant's request is not contrary to Chapter 205A, Hawai'i Revised Statutes.

Based on the above considerations, approval of the request to allow the continued operation of a farm, feed and fertilizer supply store 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, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
2. 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 (180) days from the effective date of this permit.

3. The applicant shall install a reduced pressure type backflow prevention assembly within five feet of the meter on private property, which must be inspected and approved by the Department of Water Supply.
4. Within one hundred eighty (180) days of approval of this permit 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. Plans shall identify all existing structures, fire protection measures, parking stalls, and other improvements associated with the use. Landscaping for the property boundaries shall be indicated on the plans and be provided for the purpose of mitigating any adverse noise or visual impacts to adjacent properties.
5. Prior to continuation of the farm supply store use, the applicant shall secure and finalize any building permits required by the Department of Public Works-Building Division.
6. The hours of operation shall be limited to 8:00 a.m. to 5:30 p.m. daily.
7. Parking shall be provided on-site.
8. If required by the Department of Public Works, the applicant shall install curbs, gutters and a sidewalk along its property frontage with Pāhoa Village Road.
9. A drainage study shall be prepared by a licensed civil engineer and submitted to the Department of Public Works prior to issuance of Final Plan Approval. Any recommended drainage improvements, if required, shall be constructed meeting with the approval of the Department of Public Works prior to receipt of a Certificate of Occupancy.
10. All development-generated runoff shall be disposed of on site and shall not be directed toward any adjacent properties.
11. The applicant shall install any individual wastewater system(s) required by the State Department of Health, prior to the issuance of a Certificate of Occupancy.
12. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to Final Plan Approval.

13. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources - State Historic Preservation Division (DLNR-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigative measures have been taken.
14. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
15. 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 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 these conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke this permit.

Upon review of the request against the guidelines for granting a Special Permit, the Planning Director also recommends that the request to allow the expansion of the existing farm supply store; the establishment of retail uses; and establishment of professional offices and a certified kitchen be denied by the Planning Commission. The denial recommendation is based on the following findings:

The applicant, HQHQ Inc. dba Pāhoa Feed and Fertilizer, is requesting a Special Permit to allow the expansion of the existing farm supply store and retail uses within an approximately 3,840 square foot addition to the existing storage building. In addition, the applicant proposes to convert an existing 4-bedroom dwelling into professional offices and a certified kitchen for rent/lease. Potential tenants for the offices include a volunteer organization, building contractor, internet business, accountant, insurance agent, and

temporary employment service, although specific tenants may change over time depending on the needs of the community. The certified kitchen would be available for rent to mobile lunch wagon operators, sandwich distributors, and any organization for fundraising activities. The professional offices and retail uses would operate between Monday-Friday 9:00 a.m. to 5:00 p.m. and the certified kitchen would operate with flexible hours.

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 uses (a) are an unusual and reasonable use of land situated within the Agricultural or Rural District, whichever the case may be; and (b) the proposed uses would promote the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes, as amended.

The proposed uses are an unusual and reasonable use of land situated within the Agricultural District that would be contrary to the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes, as amended.

The proposed uses are not agricultural in nature, but are commercial uses that should be conducted on commercially zoned land. Additionally, a special permit is typically granted for a specific use such as a hardware store or bakery rather than a general type of use such as retail. The proposed retail use is not specific enough to determine whether it would indirectly serve agricultural development in Puna and promote the effectiveness and objectives of Chapter 205, HRS.

(B) The desired uses would adversely affect surrounding properties.

In Exhibit 6, the Police Department stated that the public safety concern for the proposed uses was a substantial increase in vehicular traffic above the 80-100 trips per day anticipated for the farm supply store. The proposed uses have the potential to generate a significant amount of traffic and noise, and therefore would likely adversely affect surrounding properties.

(F) The uses will substantially alter or change the essential character of the land and the present use. The proposed uses will increase traffic and noise at the site which will likely alter the agricultural and residential character of the land by making it more commercial in character.

(G) The request will be contrary to the General Plan and Puna Community Development Plan (CDP). The subject property is located in an area identified as Low Density Urban in the General Plan LUPAG Map. Low Density Urban allows for residential uses, with ancillary community and public uses, and neighborhood and convenience-type commercial uses; overall residential density may be up to six units per

acre. The proposed uses are not consistent with the LUPAG Map designation because they are not neighborhood or convenience-type commercial uses, but rather are village commercial uses that would be more appropriate in an area designated Medium Density Urban, such as downtown Pāhoa. In addition, the applicant's request is not consistent with the Puna CDP, which encourages new commercial uses inside of the Pāhoa regional town center. The subject property is located approximately 230 feet outside the Pāhoa regional town center.

Based upon the information above, approval of the request to expand the farm supply store and establish retail space, professional offices and a certified kitchen would not support the objectives sought to be accomplished by the Land Use Law and Regulations.

The Planning Commission after considering the entire record and public testimony on this matter accepted the Planning Director's Recommendation and proposed conditions as outlined above, but also approved the expansion of the farm supply store and the certified kitchen.

Therefore, in summary, the Planning Commission **approves** the continued operation of the existing farm, feed, and fertilizer supply store on 1.10 acres of land in the State Land Use Agricultural District; the expansion of the farm supply store, and the establishment of a certified kitchen in the existing 4-bedroom dwelling; and **denies** the applicant's request for the establishment of retail space and professional offices. The applicant shall comply with all stated conditions of approval as outlined above.

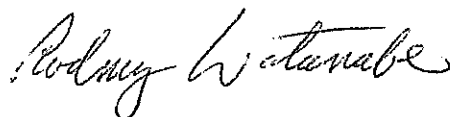
This partial approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

Ms. Mona Lisa Hyatt

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Should you have any questions, please contact Norman Hayashi of the Planning Department at 961-8288, x205.

Sincerely,



Rodney Watanabe, Chairman
Planning Commission

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cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
Department of Land & Natural Resources-HPD
DOT-Highways, Honolulu
Department of Health
The Honorable Emily I. Naeole, County Council
Ms. Jennifer Rosse, All Aina Services
Mr. Gilbert Bailado