



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

February 2, 2009

Ms. Michelle A. Wall-O'Connor
P.O. Box 377408
Ocean View, HI 96737

Dear Ms. Wall-O'Connor:

Special Permit Application (SPP 08-000070)

Applicant: Michelle A. Wall-O'Connor

Request: Massage Therapy Business Within Existing Single Family Dwelling

Tax Map Key: 9-2-80:57

The Planning Commission at its duly held public hearing on January 15, 2009, voted to approve the above-referenced application to allow the establishment of a massage therapy business within an existing single-family dwelling on one acre of land situated within the State Land Use Agricultural District. The property is located at 92-8746 Lehua Lane, approximately 150 feet southeast of the Lehua Lane-Luau Drive intersection, Hawaiian Ocean View Estates, Ka'ū, Hawai'i.

Approval of this request is based on the following:

The applicant is requesting a Special Permit to establish a massage therapy business within an approximately 324-square foot portion of an existing three bedroom, two bathroom dwelling. The applicant will be the only employee and anticipates treating 2-3 clients per day. The business will operate by appointment only, four to five days per week, between 9:00 a.m. and 7:00 p.m. All parking will be provided on-site.

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 District; 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. 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. Although the one-acre property is zoned Agricultural by the County and designated Agricultural by the State Land Use Commission, its soils are considered very poor and are therefore not optimal for agricultural use. The proposed use is unusual in that it is not agricultural in nature, but is reasonable because it will take place completely within an existing dwelling and therefore will not reduce the potential for the land to be used for agriculture in the future. Therefore, the subject request is considered an unusual and reasonable use of the agricultural land.

The granting of this request would promote the effectiveness and objectives of Chapter 205, Hawai'i 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 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 is situated within an area where soils are classified as "E" or "Very Poor" by the Land Study Bureau's Overall Master Productivity Rating and is unclassified by the Department of Agriculture's ALISH Map. The proposed use will be located within an existing single-family dwelling, and will be subordinate and incidental to the principal use of the residence by the applicant. 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 because the proposed use is considered an unusual and reasonable use of the agricultural land that will not adversely affect the preservation and agricultural use of the County's prime agricultural lands.

(B) The desired use would not adversely affect surrounding properties. Surrounding properties are zoned Agricultural (A-1a) and consist of scattered dwellings and vacant land. The nearest dwelling is located across Lehua Lane one lot to the north.

It is unlikely that any noise will be generated by the proposed use as it is quiet activity and will occur within the existing dwelling. Additionally, parking is available on the subject property. Therefore, it is not anticipated that the requested use will have an adverse affect on the surrounding properties.

(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 via private subdivision roadways that are owned collectively by the subdivision lot owners and maintained by the Hawaiian Ocean View Estates Road Corporation. Electricity and telephone service is available to the property. The applicant will utilize an existing cesspool system for wastewater and an existing water catchment system for potable water. Medical and fire services are available about 2 miles from the property, in Ocean View. Based upon the above, the proposed use will not burden public agencies to provide additional services.

(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. Since then the Hawaiian Ocean View Estates subdivision has become more residential in nature; however, 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, various "non-agricultural" services may be allowed. The request to allow a massage therapy business within an existing dwelling 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 land classified as "E" or "Very Poor" by the Land Study Bureau's Overall Master Productivity Rating and is unclassified by the Department of Agriculture's ALISH Map. The property is currently not being used for agricultural purposes. However, as the proposed use will be conducted entirely within the existing dwelling, use of the land for agricultural purposes in the future will not be diminished.

(F) The use will not substantially alter or change the essential character of the land and the present use. The character of the land in this area is residential and agricultural in nature. The massage therapy business will be conducted entirely within the existing dwelling as a home occupation on the one-acre parcel. The only change in the present use of the land will be an increase of traffic. However, the applicant expects

only 2-3 clients per day which will create a minimal increase in traffic. Therefore, the proposed request will not substantially alter or change the essential character of the land or its present use.

(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 Rural in the General Plan. This category includes existing subdivisions in the State Land Use Agricultural and Rural districts that have a significant residential component. These subdivisions may contain small farms, wooded areas, and open fields as well as residences. 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. As the massage therapy business will be conducted entirely within the proposed dwelling and soils on the property are considered very poor for agricultural use, the request 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

- 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.

Approval of the proposed request will allow the applicant an opportunity to improve her quality of life while providing a service to residents in the community.

The proposed use is not contrary to the objectives sought to be accomplished by Chapter 205A, Hawai'i Revised Statutes, relating to the coastal zone management program. In a letter dated October 15, 2008 the DLNR-SHPD determined that no historic resources will be affected by the proposed use. The subject property is located over five miles to the nearest shoreline and therefore will not cause beach erosion or affect marine

resources, coastal ecosystems, and coastal recreational opportunities. Nor will the property be affected by coastal hazards. Additionally, there is no designated public access to the mountain areas over the property. There is no record of traditional Hawaiian rights being practiced on the property. Therefore, the proposed use is not contrary to the objectives of Chapter 205A, Hawai'i Revised Statutes.

Based on the above considerations, the proposed massage therapy business is an unusual and reasonable use of land, and would promote the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes.

Approval of this request is subject to the following conditions:

1. The applicant, successor or assigns shall be responsible for complying with all stated conditions of approval.
2. The applicant shall conduct the business entirely within the existing dwelling.
3. Only one employee shall be permitted in addition to household members.
4. The hours of operation for the business shall be limited from 9:00 a.m. to 7:00 p.m.
5. No signage shall be posted on the subject property advertising the massage therapy business.
6. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.

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 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.

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

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
DOT-Highways, Honolulu
Mr. Gilbert Bailado /