

## 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

June 23, 2010

Brooks and Wanphen Maloof  
HCR 1, Box 5150  
Keaau, HI 96749

Dear Mr. and Mrs. Maloof:

Special Permit Application (SPP 09-000098)

Applicant: Brooks and Wanphen Maloof

Request: Establish an Agricultural and Non-Agricultural Products Outlet,  
Restaurant, Real Estate Office, and Commercial Kitchen

Tax Map Key: 1-6-10:137

---

The Windward Planning Commission at its duly held public hearing on June 4, 2010, voted to approve the above-referenced application to allow the establishment of a commercial retail and office building, which will include a restaurant, real estate office, an outlet for local farmers, fishermen and businesses to sell products, and related uses on approximately 0.50 acre of land situated within the State Land Use Agricultural District. The property is located at the northwest corner of the Kea'au-Pāhoā Road (Highway 130) and Orchidland Drive intersection, Orchidland Estates, Kea'au, Puna, Hawai'i.

Approval of this request is based on the following:

The applicants are requesting a Special Permit to allow the establishment of a 3,900 square foot (approximately 39' x 100') commercial retail and office building and related uses on a 0.50 acre of land. The proposed uses will include a Thai food restaurant with certified kitchen and restrooms, a real estate office, and warehouse space to be partitioned for vendors, including farmers, fishermen, and small businesses to sell agricultural products, fish, arts and crafts and second hand items.

The site plan shows two accesses proposed on Orchidland Drive, on-site parking and landscaping along the northern, southern and western borders of the property. There

will be 2-4 employees for the restaurant at any given time, 1-2 employees for the real estate office, and 8-12 vendors in the products sales area. The proposed hours of operation are from 6:00 a.m. to 6:00 p.m. daily with the restaurant staying open until 9:00 p.m.

The Windward Planning Commission, after hearing testimony from the applicant and several members of public, including the president of the Orchidland Community Association, voted to approve the Special Permit request subject to conditions.

There were several reasons for approving this Special Permit application. The proposed commercial retail and office building and related uses is consistent with the Puna Community Development Plan as the property is situated within the Orchidland Neighborhood Village Center, identified within the plan as supporting a service population of 3,000 to 6,000 residents with convenience-type retail uses and personal services. The property is also located near the Medium Density Urban node identified in the General Plan LUPAG Map, which allows for village and neighborhood commercial uses.

A condition of approval has been included to address traffic concerns at the intersection of Orchidland Drive and Kea'au-Pahoa Road near the subject property. The condition states that the applicant will not receive Certificate of Occupancy for the commercial retail office building until the traffic light at the intersection of Shower Drive, Pohaku Drive and Highway 130 is complete. Additionally, no building permit for any portion of the proposed commercial retail office building will be granted until the contract for the installation of the traffic light is awarded. The intention of adding this condition is that once the traffic light at the intersection of Shower Drive, Pohaku Drive and Highway 130 is complete, it will allow for breaks in traffic heading southbound towards Pahoa, which will give relief to the delays at the Orchidland Drive-Highway 130 intersection and allow for left turns out of Orchidland Drive.

The applicants have taken measures to mitigate impacts to surrounding property owners, mainly the Nagai's to the southwest and the Udani's to the northwest, which is addressed in Condition No. 6. The applicants have agreed to erect a 6-foot high by 90-foot long rock wall and provide a thick landscaping hedge along the boundary with the adjacent property to the southwest owned by the Nagai's. Additionally, the applicants have agreed to erect a 6-foot high chain link fence with barbwire along the boundary with the adjacent property to the northwest owned by the Udani's. There is a concern that the barbwire may not be permitted by the Department of Public Works, so the condition will allow the barbwire if approved by the Department of Public Works.

Lastly, the Windward Planning Commission finds that the applicants' facility will provide a valuable service and benefit to the Orchidland community by providing services

and jobs for people in the immediate area, which will reduce the need for the community utilize Highway 130 to obtain these services and benefits elsewhere.

Based on the above, the request to allow the establishment of a commercial retail and office building, which will include a restaurant, real estate office, an outlet for local farmers, fishermen and businesses to sell products, and related uses on approximately 0.50-acre of land is approved subject to the following conditions:

1. The applicants, successors or assigns shall comply with all of the stated conditions of approval.
2. The construction of the commercial retail and office building and the operation of all its related activities shall be conducted in a manner that is substantially representative of plans and details as contained within the Application for Special Use Permit for Brooks and Wanphen Maloof submitted on December 2, 2009.
3. Construction of the proposed development shall be completed within five (5) years from the date that the contract for the construction of the traffic light at the Shower Drive, Pohaku Drive and Highway 130 intersection is awarded by the State Department of Transportation. This time period shall include securing Final Plan Approval from the Planning Director in accordance with the Zoning Code. Plans shall identify proposed structure(s), fire protection measures, access roadway, driveway and parking stalls. Landscaping shall be indicated on the plans for the purpose of mitigating any potential adverse noise or visual impacts to adjoining parcels. Landscaping shall be provided in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements) standards for CV zones adjoining a RS zone, and supplemented by Condition No. 6 as detailed below.
4. No building permit for any portion of the proposed commercial retail office building shall be granted until the contract for the construction of the traffic light at the Shower Drive, Pohaku Drive and Highway 130 intersection is awarded by the State Department of Transportation. Certificate of Occupancy shall not be approved until the traffic light at the Shower Drive, Pohaku Drive and Highway 130 intersection is complete.
5. The applicants shall comply with the design guidelines in the development of the proposed regional trade center as detailed by the Orchidland Estates Community Association in the Orchidland Estates Design Plan 2007.
6. The applicants shall erect a 6-foot high by 90-foot long rock wall and provide a thick landscaping hedge along the common boundary with the adjacent property to the southwest identified as TMK: 1-6-10:86. Additionally, the applicants shall

erect a 6-foot high chain link fence, with barbwire if approved by the Department of Public Works, along the common boundary with the adjacent property to the northwest identified as TMK: 1-6-10:136.

7. Access to the subject property from Orchidland Drive shall be designed and engineered to substantially conform to the Department of Public Works specifications for commercial driveways, without sidewalks, prior to the issuance of a certificate of occupancy for the proposed development.
8. Applicants shall pay their reasonable share for infrastructure improvements that may be required of other commercial development in the immediate area.
9. 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.
10. 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-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigative measures have been taken.
11. The applicants shall comply with all applicable County, State and Federal laws, rules, regulations and requirements including the Department of Health and the Fire Department for fire-flow requirements.
12. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the approval of the permit. The report shall include, but not be limited to, the status of the development and to what extent the conditions of approval are being complied with. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.
13. An initial 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.

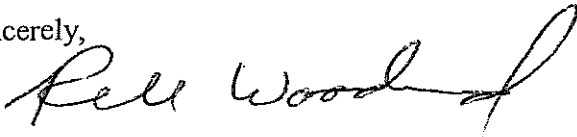
- B. Granting of the time extension would not be contrary to the General Plan or the Zoning Code.
- C. Granting of the extension would not be contrary to the original reasons for the granting of the permit.
- D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).
- E. If the applicant should require an additional extension of time, the Planning Department shall submit the applicants' request to the Windward Planning Commission for appropriate action.

Should any of the conditions not be met or substantially complied with in a timely manner, the Planning Director may initiate the revocation of the 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,



Rell Woodward, Chairman  
Windward Planning Commission

Lmaloofsp09-000098wwpc

cc: Mr. Jeffrey Melrose  
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  
Mr. Gilbert Bailado