

## County of Hawai'i

### LEEWARD PLANNING COMMISSION

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

DEC 13 2010

Mr. Gregory R. Mooers  
P.O. Box 1101  
Kamuela, HI 96743

Dear Mr. Mooers:

Special Permit Application (SPP 10-000107)

Applicant: Curtis Sylva

Request: To Establish an Agricultural and Veterinary Supply Store in an Existing  
Warehouse and Surrounding Area

Tax Map Key: 6-4-6:1

The Leeward Planning Commission at its duly held public hearing on November 24, 2010, voted to approve the above-referenced application to allow the establishment of an agricultural and veterinary supply store within an existing 5,000 square foot warehouse and upon an approximately 1.184 acre portion of a 5.043 acre parcel situated within the State Land Use Agricultural District. The property is located off the south side of Highway 19 (Māmalahoa Highway) with access between HPM Building Supply and NAPA Auto Parts, Pu'ukapu Homesteads, First Series, South Kohala, Hawai'i.

Approval of this request is based on the following:

The applicant is requesting a Special Permit to establish an agricultural and veterinary supply store within an existing 5,000-square foot warehouse. Materials associated with the supply store will be stored in the warehouse and on approximately 1.184 acres immediately surrounding the warehouse. There will be approximately four to five employees. Hours of operation will be from 7:00 a.m. to 5:00 p.m. Monday through Friday, and 8:00 a.m. to 2:00 p.m. on Saturdays. The applicant anticipates approximately 5 to 8 customers will visit the store each day. Additionally, the business will make deliveries to local farms and ranches and mail supplies to some customers as well.

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 State Land Use Agricultural District and would promote the effectiveness and objectives of the State Land Use Law and Regulations and Chapter 205, HRS, as amended.** 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 Hawai'i. In the case of the Agricultural District, the intent 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 not agricultural in nature but will directly support the agricultural industry in Waimea and surrounding areas by providing agricultural and veterinary supplies to local ranches and farms. This property is situated on soil classified as KfA (Kikoni very fine sandy loam, 0 to 3 percent slopes), which is used for truck crops. The soils are classified as "B" or "Good" by the Land Study Bureau's Overall Master Productivity Rating and designated as Prime Agricultural Land by the Department of Agriculture's ALISH Map. Even though the soil type and classification for the property are good for agricultural uses, the proposed use will occur within an existing warehouse and on a relatively small portion of the surrounding property, and therefore will not foreclose opportunities to use the remainder of the 5-acre property for agriculture. The remainder of the property has a dwelling and is landscaped with grass, which could be utilized for agricultural purposes. Therefore, the proposed agricultural supply store is an unusual but reasonable use within the Agricultural District 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 as follows:

**(A) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.** The subject request is considered an unusual and reasonable use of the agricultural land. Additionally, the

proposed use 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.**

The property is 5.043 acres in size and is flag-shaped with the "pole" portion extending to Māmalahoa Highway. There is an existing 5,000 square-foot warehouse that was constructed in 2000 and a 3-bedroom, 1-bath single family dwelling that was constructed in 1922. For approximately five years, up until August 31, 2010, the warehouse had been used as an auto repair business, without a special permit. The remainder of the property is landscaped with grass.

Immediately surrounding properties to the south and east are zoned A-5a and consist of scattered dwellings. Properties to the north are zoned CN-7.5 and consist of commercial uses such as NAPA Auto Parts and an apartment complex, which is located just north of the warehouse. HPM building supply store is located to the west on property zoned CV-7.5 and CN-7.5.

The proposed use has the potential to increase noise and traffic at the site. The property's driveway is situated between two existing commercial developments, NAPA Auto Parts and HPM Building Supply, and therefore traffic and noise from trucks traveling to and from the site will be similar to the noise and traffic associated with these existing commercial uses. There are tall trees and grasses along the east boundary of the property which provides a natural buffer between the site and adjacent agriculturally-zoned property. Properties to the south and far west of the site are located at a sufficient distance so that noise and traffic from the proposed use will not affect them. The Planning Department Rules and Zoning Code do not normally require landscape buffers between commercial land uses. Thus, a landscaping buffer will not be required along the northern property line fronting the adjoining commercial buildings and apartment complex because these uses are located on commercially-zoned lands. A condition of approval will limit the hours of operation for the store from 7:00 a.m. to 5:00 p.m. Monday through Friday, and 8:00 a.m. to 2:00 p.m. on Saturdays. Based on the above information and the proposed conditions, it is anticipated that use of the 5,000-square foot warehouse and surrounding property will not adversely affect 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.** The property has adequate access via a 17-foot wide paved driveway from Māmalahoa Highway. Based upon the applicant's estimate that approximately 5 to 8 customers will visit the store daily, the proposed use is not anticipated to generate a significant increase in traffic. County water is currently provided to the existing dwelling via a 5/8-inch water meter. The Department of Water Supply (DWS) recommends an additional water meter and backflow prevention assembly be installed to provide water to

the proposed supply store within the existing warehouse. A condition of approval will require the applicant install these water improvements. DWS has indicated that the existing 12-inch waterline fronting the property can provide adequate flow for fire protection for the proposed use. According to the Department of Health (DOH), wastewater from the existing dwelling and warehouse is disposed of into an existing cesspool. DOH has indicated that a separate individual wastewater system may be required for the proposed use if 20 or more persons per day will utilize the store. A condition of approval will require the applicant comply with all DOH rules and regulations related to wastewater disposal. Electrical and telephone services are available to the site. Police, fire and medical services are available nearby in Waimea.

**(D) Unusual conditions, trends, and needs have arisen since district boundaries and regulations were established.** The project site and some of the 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 be established. Since the district boundaries and regulations were established changes to the County General Plan have been made and the South Kohala Community Development Plan (SKCDP) has been adopted. These plans illustrate the desired land use pattern for the Waimea community and specifically indicate that more intensive urban uses are appropriate in the area of the subject property. Due to the property’s Medium Density Urban LUPAG Map designation it would be appropriate for rezoning to a Neighborhood Commercial (CN) zoning district. However, the property configuration limits the potential for commercial zoning because it is a flag-lot with a very narrow access pole of 20.32 feet, which is not wide enough to meet the Subdivision Codes commercial driveway standards. Thus, the Special Permit is the best option for promoting the land use pattern desired by the General Plan and SKCDP, but allowing restrictions to manage the types of land uses permitted on the property in light of its site restrictions.

**(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district.** The land on which the proposed use is located is classified as Prime Agricultural Land by the Agricultural Lands of Importance to the State of Hawaii (ALISH) Map and on “B” or “Good” soil according to the Land Study Bureau Soil Rating classification. The land upon which the proposed use is sought has good soil for agricultural productivity. The supply store will operate within an existing warehouse and 1.184-acre portion of an approximately 5-acre parcel and therefore should not diminish the agricultural potential of the property.

**(F) The proposed use will not substantially alter or change the essential character of the land and present use.** The proposed use will not substantially alter or change the character of the land and its present use as the surrounding land uses to the north and west (HPM, NAPA Auto Parts, apartment building) are commercial and urban

in nature and the proposed use will take place within an existing warehouse structure and on a small portion of the property.

**(G) The request will not be contrary to the General Plan and official Community Development Plan (CDP) 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 Medium Density Urban on the LUPAG Map, which allows for village and neighborhood commercial and single family and multiple family residential and related functions (multiple-family residential -- up to 35 units per acre). The applicant's request is consistent with the goals of the South Kohala CDP, which was adopted by the County Council in 2008, because the property is located in an area of existing urban development in the Waimea town center and the proposed use is considered an agricultural-related business that will directly support local ranches and farms.

**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.** The property is located over ten miles from the shoreline and is outside of the Special Management Area (SMA) and tsunami evacuation zone. There is no designated public access to the mountain or shoreline areas over the property. Therefore, the proposed use will not adversely impact any recreational resources, including access to and along the shoreline, scenic and open space nor visual resources, coastal ecosystems, and marine and coastal resources. Further, the property will not be affected by any coastal hazards or beach erosion. Therefore, the proposed use is not contrary to the objectives of Chapter 205A, Hawai'i Revised Statutes.

Based on the above considerations, the request to establish an agricultural and veterinary supply store within an existing 5,000 square-foot warehouse and upon an approximately 1.184-acre portion of a 5.043-acre parcel situated within the State Land Use Agricultural District would not be contrary to the objectives sought to be accomplished by the State Land Use Law Rules and Regulations. Approval of this request is subject to the following conditions:

1. The applicant, successors or assigns shall be responsible for complying with all stated conditions of approval.
2. The permit area shall be limited to an area of 1.184 acres, inclusive of the warehouse.

3. Hours of operation shall be limited to 7:00 a.m. to 5:00 p.m. Monday through Friday, and 8:00 a.m. to 2:00 p.m. on Saturdays.
4. Prior to commencement of the proposed use, the applicant shall secure Final Plan Approval from the Planning Department in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code. Plans shall identify all existing and/or proposed structures, paved driveway access and parking stalls associated with the proposed development. The existing natural landscape buffer along the eastern boundary of the property shall be retained.
5. Prior to commencement of the proposed use, the applicant shall secure and finalize all building, electrical and plumbing permits required by the Building Division-Department of Public Works for the change in use from a warehouse to agricultural and veterinary supply store (including installing a restroom). The permits shall be finalized within six (6) months from the effective date of this permit.
6. The applicant shall submit estimated daily water usage calculation for the proposed supply store, prepared by a professional engineer licensed in the State of Hawai'i, for review and approval to the Department of Water Supply. Prior to commencement of the proposed use, the applicant shall install an additional water meter and backflow prevention assembly to provide County water to the proposed supply store, as required by the Department of Water Supply.
7. Prior to commencement of the proposed use, the applicant shall install a wastewater system meeting the requirements of the State Department of Health for the supply store (including one restroom).
8. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
9. An initial extension of time for the performance of conditions 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.

Mr. Gregory Mooers

Page 7

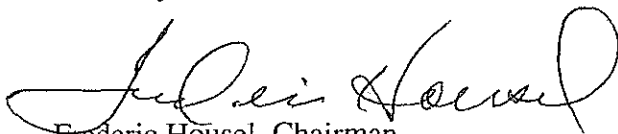
- C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
- D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up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

Should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke 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 (808) 961-8288.

Sincerely,



Frederic Housel, Chairman  
Leeward Planning Commission

Lcurtissylva01lwpc

cc: Mr. Curtis Sylva  
Department of Public Works  
Department of Water Supply  
County Real Property Tax Division  
Planning Department - Kona  
State Land Use Commission  
Mr. Gilbert Bailado ✓