



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

MAR 27 2012

Ms. Dee L. Hyde-Begany
P.O. Box 1064
Nā'ālehu, HI 96772-1064

Dear Ms. Hyde-Begany:

Special Permit Application (SPP 12-000129)

Applicant: Dee L. Hyde-Begany

Request: To Allow the Establishment of a Home Occupation for Clinical Massage
And Myoskeletal Alignment

Tax Map Key: 9-4-023:064

The Windward Planning Commission, at its duly held public hearing on March 1, 2012, voted to approve the above-referenced Special Permit to allow the establishment of a home occupation for clinical massage and myoskeletal alignment within an existing 3-bedroom single family dwelling situated on 14,000 square feet of land within the State Land Use Agricultural District. The property is located at 94-1735 Wakea Avenue, Discovery Harbour Subdivision, Unit I, Ka'u, Hawai'i.

Approval of the request is based on the following:

The applicant is requesting a Special Permit to allow the establishment of a home occupation for clinical massage and myoskeletal alignment within an existing 3-bedroom single family dwelling situated on 14,000 square feet of land. The applicant is proposing to use two (2) of the three (3) bedrooms and a bathroom for the home occupation business. One room will be for the office and entry room where the client would fill out forms. The other room would be used for massage and treatment.

The applicant previously operated a home occupation business for the same activity as being requested in the state of New Mexico for eleven years and would like to

establish a similar home occupation business at her new residence in the Discovery Harbour Subdivision. The applicant will be the only employee for the business. The business will operate by appointment only. There will be a total of 4 clients per day for a maximum of 20 clients per week. The home occupation business will be conducted on Tuesdays through Saturdays between the hours of 10:00 a.m. and 4:30 p.m. Off-street parking will be available for the clientele of the home occupation business and for the occupants of the residence.

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. 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. The subject property is 14,000 square feet in size and situated within the County's Agricultural (A-1a) zoned district. The applicant will reside in one bedroom in the existing dwelling and the remaining two (2) bedrooms will be utilized for the home occupation business. The home occupation business will be confined to the dwelling and will not diminish any agricultural activity occurring on the property. The soil classification for the property is very poor for agriculture purposes. Therefore, the subject request is considered an unusual and reasonable use of 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 on soil characterized as Kaimu extremely stony peat. The use will be located within an existing 3-bedroom dwelling, which 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 bed and breakfast use will be subordinate and incidental to the principal use of the residence. The proposed use will not displace any existing agricultural activity or diminish the agricultural potential of the subject property. 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) The granting of this request would promote the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes, as amended. The subject request is considered an unusual and reasonable use of the agricultural land and 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 located on Wakea Avenue in the Discovery Harbour Subdivision. Currently, there is a 3-bedroom single-family dwelling on the site that was constructed in 2005. The adjacent properties are similarly zoned A-1a. There are Open zoned areas within the subdivision that consist of the Discovery Harbour Golf Course. Uses in the immediate area consist of scattered dwellings, vacant land and agricultural uses. The nearest residences are located on the adjacent properties to the north and south. It is not anticipated that the requested use will have an adverse affect on the surrounding properties due to the limited number of clients and overall scope of activity that will not detract from the existing single family residential use of the 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. The requested use will not burden public agencies to provide additional services. Access to the property from Wakea Avenue, which is a County road with a 20-foot pavement within a 60-foot right-of-way. Electricity and telephone are available to the property. County water is available to the property. The applicant will utilize an existing cesspool system for wastewater. The property is situated within an area designated as Flood Zone X, an area determined to be outside the 500-year flood plain. A condition of approval will be included to require that the applicant meet all applicable County, State and Federal laws, rules, regulations and requirements.

(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, various “non-agricultural” services may be allowed.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. The property is situated on soil identified as Kaimu extremely stony peat, 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 request will be conducted entirely within the existing main dwelling. Based on the above information, the land on which the proposed use is sought is unsuited for the uses permitted within the agricultural district.

(F) The use will not substantially alter or change the essential character of the land and the present use. The request will be conducted entirely within an existing dwelling that was constructed in 2005. 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. Typical lot sizes vary from 9,000-square feet to two acres. 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 use will be conducted entirely within the proposed dwelling, 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

- Designate and allocate land areas in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the County.
- 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.
- Economic development and improvements shall be in balance with the physical, social and cultural environments of the island of Hawai'i.
- Provide an economic environment that allows new, expanded, or improved economic opportunities that are compatible with the County's cultural, natural and social environment.
- Strive for an economic climate which provides its residents an opportunity for choice of occupation.
- Encourage the development of a visitor industry that is consistent with the social, physical and economic goals of the residents of the County.

The proposed request will allow the applicant an opportunity to improve their quality of life and provide an economic environment that allows this new, economic opportunity for Hawai'i.

The proposed use is not contrary to the objectives sought to be accomplished by Chapter 205A, Hawai'i Revised Statutes, relating to coastal zone management program. Given the fact that the property has been cleared, landscaped and developed, it is unlikely that any archaeological features and threatened species of plant or animal are present on the property. There is no designated public access to the mountain areas over the property. It is adjacent to existing residences and vacant lands. The property is not located within the Special Management Area. 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.

The proposed request will not have a significant adverse impact to traditional and customary Hawaiian Rights. In view of the Hawai'i State Supreme Court's "PASH" and "*Ka Pa'akai O Ka'Aina*" decisions, the issue relative to native Hawaiian gathering and fishing rights must be addressed in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site:

Investigation of valued resources: No formal archaeological reconnaissance survey, oral history of kamaaina accounts of the area, historical survey of documentary records, botanical and/or fauna study was submitted.

The valuable cultural, historical, and natural resources found in the permit area: As the property has been cleared, landscaped and developed, an archaeological inventory survey of the site was not conducted. The property has been cleared, landscaped and developed with a single-family dwelling. The applicant has submitted a request for a “no-effect” determination from the Department of Land and Natural Resources-State Historic Preservation Division, but has not received a response.

Possible adverse effect or impairment of valued resources: The property does not abut the shoreline, therefore Hawaiian gathering and fishing rights is not an issue.

Feasible actions to protect native Hawaiian rights. To the extent to which traditional and customary native Hawaiian rights are exercised, the proposed action will not affect traditional Hawaiian rights and no action is necessary to protect these rights. A condition of approval will be included to require the applicant to notify the DLNR-SHPD should any unidentified sites or remains be encountered, and proceed only upon an archaeological clearance form the DLNR-SHPD.

Lastly, this approval is made with the understanding that the applicant remains responsible for complying with all other applicable governmental requirements in connection with the approved use, prior to its commencement or establishment upon the subject properties. Additional governmental requirements may include the issuance of building permits, the installation of approved wastewater disposal systems, compliance with the Fire Code, installation of improvements required by the American with Disabilities Act (ADA), among many others. Compliance with all applicable governmental requirements is a condition of this approval; failure to comply with such requirements will be considered a violation that may result in enforcement action by the Planning Department and/or the affected agencies.

Based on the above considerations, the proposed home occupation business is an unusual and reasonable use of land, which would not be contrary to 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, successor or assigns shall be responsible for complying with all stated conditions of approval.

Ms. Dee L. Hyde-Begany

Page 7

2. The home occupation business shall be limited to the use of two (2) bedrooms for office and treatment activities associated with the proposed use.
3. The home occupation business shall be limited to Tuesdays through Saturdays between the hours of 10:00 a.m. and 4:30 p.m.
4. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
5. Should any of these conditions not be met or substantially complied with in a timely fashion, the 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.

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

Sincerely,



Zendo Kern, Chairman
Windward Planning Commission

Lhyde-beganyspp12-129

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