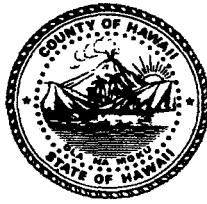


Harry Kim  
Mayor



Michael Yee  
Director

Daryn Arai  
Deputy Director

West Hawai'i Office  
74-5044 Ane Keohokālole Hwy  
Kailua-Kona, Hawai'i 96740  
Phone (808) 323-4770  
Fax (808) 327-3563

**County of Hawai'i**  
**PLANNING DEPARTMENT**

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

February 5, 2018

Mrs. Patrina Niu-Hewett  
P.O. Box 6111  
Kaneohe, HI 96744-9168

Dear Mr. Niu-Hewett:

**Special Permit Application (SPP 12-000132)**

**Applicant: John J. Hegarty**

**Request: To Establish a Convenience Store with a Certified Kitchen**

**Subject: Revocation of Special Permit**

**Tax Map Key: 1-6-008:240 & 241**

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This letter is in response to your January 25, 2018 email requesting that the subject Special Permit be revoked. You have indicated that you have no intention of establishing and operating a convenience store with a certified kitchen on the subject parcels as allowed by the Special Permit. Furthermore, our records indicate that you are in the process of subdividing the subject parcels into four lots for individual conveyance.

Based on the preceding and in accordance with Planning Commission Rule 6-5, SPP 12-000132 is hereby revoked.

If you have any questions, please feel free to contact Christian Kay at 961-8136.

Sincerely,

MICHAEL YEE  
Planning Director

CRK:mad

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cc w/copy of letter: Gilbert Bailado, GIS Section  
SUB-17-001774

FEB - 6 2018



## 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

JUN 19 2012

Mr. John J. Hegarty  
RR3, Box 1174  
Pāhoa, HI 96778

Dear Mr. Hegarty:

Special Permit Application (SPP 12-000132)

Applicant: John J. Hegarty

Request: To Establish a Convenience Store With a Certified Kitchen

Tax Map Key: 1-6-008:240 & 241

The Windward Planning Commission at its duly held public hearing on June 7, 2012, voted to approve the above-referenced Special Permit to allow the establishment of a convenience store with a certified kitchen on two properties covering a total of 4.64 acres of land within the State Land Use Agricultural District, against the recommendation of the Planning Director. The properties are located at the southwestern corner of the 'Āinaloa Boulevard - 37<sup>th</sup> Avenue intersection, directly across from the 'Āinaloa Longhouse complex, Orchidland Estates Subdivision, Kea'au, Hawai'i.

The Planning Director had recommended the denial of this application; however, the Windward Planning Commission based their decision for approval as follows:

The applicant is proposing to build an approximately 4,000-square foot structure that will include a 1,280-square foot convenience store, which will supply necessities and groceries for residents in the area. The remaining 2,750 square feet of the structure will include a certified kitchen, office, warehouse space and bathroom, which will be accessory to the convenience store. The facility will be used as a base for a delivery service that provides hot meals prepared in the certified kitchen and groceries from the convenience store for qualified disabled persons and senior citizens, living within a 3.5 mile radius, that are not able to travel. The applicant is requesting that hours of operation be daily from 6:30 a.m. to 8:00 p.m. Approximately 8 to 10 employees will be hired to

work at the convenience store. Parking will be provided on-site as required by the Zoning Code. The applicant is proposing an asphalt covered parking lot with six (6) standard parking stalls and one accessible parking stall.

After hearing and reading testimony from the applicant and several members of the public including the Board President of the Āinaloa Community Association and the President of the Orchidland Community Association, both of which oppose the granting of a Special Permit for the proposed uses, the Windward Planning Commission voted to approve the Special Permit request subject to conditions based upon the following reasons:

Due to population growth in Puna, more commercial businesses are needed. Specifically, the convenience store with certified kitchen would enhance the social well-being of residents of the Āinaloa and Orchidland Estates subdivisions by providing groceries and other necessities within the subdivisions so that residents do not have to travel on Highway 130 to obtain these necessities elsewhere. The Commission also strongly supports the establishment of a certified kitchen on the property to provide warm meals to senior citizens and disabled persons within the surrounding community. The location of the proposed use is not consistent with the "Rural" General Plan LUPAG Map designation and is not located within one of the village centers identified in the Puna Community Development Plan (CDP). According to the Board President of the Āinaloa Community Association (ACA), the area designated as a village center on Figure 5-8 "Āinaloa Neighborhood Village Center", which consists of two vacant properties totaling 8.25-acres and is owned by the Association, is intended to be developed with community facilities rather than commercial facilities. The Association does not want any commercial development within the subdivision. Therefore, the Puna CDP does not address the needs of the residents in this particular area of Puna with regards to a future commercial center. Based on testimony provided at the hearing, there are a number of senior citizens that need the types of services that will be provided by the applicant and they should not have to travel to Hilo to get these services. The Commission believes that due to the size and population of the geographic area surrounding Orchidland Estates and Āinaloa, the agricultural subdivisions within the District are underserved by having only one commercial center in each of the subdivisions as designated in the Puna CDP. The Commission finds that the proposed use is appropriate for the subject property because due to its location between the two village centers identified in the Puna CDP, it will serve residents of both subdivisions.

The Commission believes that concerns related to increasing traffic, public safety, and nuisances can be reduced or eliminated through conditions of the permit. According to the Institute for Transportation Engineers, Trip Generation Manual, 7<sup>th</sup> Edition, a convenience store that is 1,250 square feet in size will generate approximately

46 vehicle trips during the p.m. peak hour period. The Commission finds that because the convenience store will be utilized mainly by residents of the Orchidland Estates and Āinaloa subdivisions, any increase in traffic is expected to be minimal. However, to ensure that traffic does not significantly increase on the area roadways, a condition of the permit will limit the size of the convenience store.

To reduce the impact of the proposed use on surrounding properties, a condition will limit the hours of operation. The applicant will also be required to install bufferyard landscaping to reduce any adverse noise or visual impacts of the proposed use.

The property fronts 37<sup>th</sup> Avenue and Āinaloa Blvd. 37<sup>th</sup> Avenue is a two-lane gravel roadway within a 40-foot wide right-of-way that is owned and maintained by the Orchidland Estates Community Association (OCA). Āinaloa Blvd is a two-lane paved roadway within a 60-foot wide right-of-way that is owned and maintained by the County.

In letters dated May 1, 2012 and June 4, 2012 the Orchidland Estates Community Association asked that if the Commission should approve a Special Permit for the proposed commercial use against their recommendation of denial, conditions be added to the permit to either prohibit access on 37<sup>th</sup> Avenue or require the applicant pave and maintain the portion of 37<sup>th</sup> Avenue fronting the subject property if access is permitted. The OCA also believes that the establishment of a convenience store on the subject property will increase traffic on 37<sup>th</sup> Avenue, even if there is no direct access onto 37<sup>th</sup> Avenue, and requests that the applicant pay a commercial-rate road maintenance fee to mitigate the effects of the use of this road by patrons traveling to and from the convenience store.

In a letter received June 4, 2012, the Āinaloa Community Association (ACA) expressed concerns regarding traffic and pedestrian safety on Āinaloa Blvd should the proposed use be permitted. Specifically, the ACA is concerned that the roadway was not designed and built to handle a high volume of traffic traveling at high speeds. There are sight distance deficiencies due to the undulating topography of the roadway. Although the posted speed limit is 25 mph, motorists travel at higher speeds and the ACA is concerned that improvements have not been made by the County to address these deficiencies.

Based on the concerns of the OCA and ACA, the Commission has determined that access onto Āinaloa Blvd should be limited to a right-in/right-out only access and access onto 37<sup>th</sup> Avenue should be provided for vehicles needing to turn left into or out of the site. Additionally, the Commission agrees with the OCA's request to have the applicant pave and maintain 37<sup>th</sup> Avenue and pay commercial-rate road maintenance fees.

It should be noted that the County does not have funds to improve Āinaloa Blvd; therefore, if any necessary improvements are not provided by the applicant, an

unreasonable burden will be placed on a public agency (County) to provide these improvements at some point in the future when funds become available.

The Āinaloa Community Association and neighbors living within the subdivision have testified that they would like the park and playground located across Āinaloa Blvd at the Āinaloa Longhouse property to remain as an alcohol and drug-free zone and asked that a condition be included in the permit prohibiting the sale of alcohol at the convenience store. State law (HRS 281-39.5) grants County liquor commissions the authority to deny or restrict a liquor sale license for new establishments located within 500 feet of a public or private school or public playground used extensively by minors. Although the Āinaloa Longhouse playground and park are on private property, the Commission agrees that this playground and park should remain as a safe place for children to play and therefore believes that a condition prohibiting the sale of alcohol is reasonable in this particular situation.

Lastly, because the issuance of Special Permits are considered and evaluated on an individual basis, based on the merits of the proposed use and the surrounding area and environment, the approval of this permit would not set a precedent for approval of other commercial uses in the Orchidland Estates or Āinaloa subdivisions that are inconsistent with the long-range plans for these subdivisions.

Based on the above, the request to allow the establishment of a convenience store with a certified kitchen on 4.64 acres of land is an unusual and reasonable use of land situated within the State Land Use Agricultural District and shall be subject to the following conditions:

1. The applicant, successors or assigns shall comply with all of the stated conditions of approval.
2. The construction and operation of the proposed development shall be conducted in a manner that is substantially representative of plans and details contained within the Special Permit Application dated January 21, 2012 and the representations made before the Windward Planning Commission.
3. The applicant shall secure Final Subdivision Approval to consolidate TMK 1-6-008:240 and TMK 1-6-008:241 prior to receipt of Final Plan Approval.
4. Construction of the proposed development shall be completed within five (5) years from the effective date of this permit. Prior to construction, the applicant shall secure Final Plan Approval from the Planning Director in accordance with the Zoning Code. Plans shall identify all existing and proposed structures, signage, fire protection measures, paved driveway access and paved parking stalls, outdoor lighting (if any), and other improvements associated with the proposed

development. Landscaping shall also be indicated on the plans for the purpose of mitigating any adverse noise and visual impacts to adjacent properties in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements). Bufferyard landscaping shall conform to the standards for separation of a residential zone from a commercial zone as provided for in Planning Department Rule No. 17.

5. Alcohol shall not be sold at the convenience store.
6. The convenience store shall be limited in size to approximately 1,250 square feet.
7. Hours of operation for the proposed development shall be limited to 6:30 a.m. to 8:00 p.m., daily.
8. The proposed development shall be accessed via one right-turn in and right-turn out access on Āinaloa Boulevard and one full movement access on 37<sup>th</sup> Avenue. Prior to issuance of a Certificate of Occupancy for the development, the applicant shall improve 37<sup>th</sup> Avenue from the Āinaloa Boulevard intersection to the subject properties northern property line by providing a twenty four (24)-foot wide asphalt pavement (chip seal is not permitted) roadway with eight (8)-foot wide compacted gravel shoulders in a manner meeting with the approval of the Orchidland Community Association. The applicant shall maintain this portion of 37<sup>th</sup> Avenue in good condition at all times.
9. The applicant shall pay commercial-scale road maintenance fees in a timely manner to the Association as established by the Orchidland Community Association.
10. The Department of Public Works will monitor the traffic condition along Āinaloa Boulevard and at its intersection with 37<sup>th</sup> Avenue that includes traffic generated by the approved commercial uses. If and when warranted by the Department of Public Works, the applicant, its successors or assigns shall construct and/or install any traffic control device(s) along and within Āinaloa Boulevard, which may include street lighting, to mitigate any adverse impacts generated by the approved commercial uses upon vehicular and pedestrian movements and safety.
11. A wastewater system meeting the requirements of the Department of Health shall be provided for the proposed development.
12. The applicant shall develop sufficient water storage to meet the requirements of the Department of Health and the Fire Department for sanitation and firefighting

purposes for the proposed development, prior to receipt of a Certificate of Occupancy. The water storage facility shall be designed with two connections independent of each other as described in Exhibit 6, shall be situated on the property in a location approved by Fire Department, and shall be kept filled with enough water to meet the applicable Department of Health and Fire Department requirements. If an improvement district or similar project is proposed which would make county water available to the property, the owner shall participate and pay its fair share of any applicable construction costs.

13. All development-generated runoff shall be disposed of onsite and shall not be directed toward any adjacent properties.
14. All earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control of the Hawai'i County Code.
15. An Underground Injection Control (UIC) permit as required by Hawai'i Administrative Rules, Title 11, Chapter 23 shall be obtained from the Department of Health.
16. 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.
17. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
18. 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 the Zoning Code.
  - C. Granting of the extension would not be contrary to the original reasons for the granting of the permit.

Mr. John J. Hegarty  
Page 7

- 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 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,



Zendo Kern, Chairman  
Windward Planning Commission

Lhegartyspp12-000132wpc

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  
Plan Approval Section  
Orchidland Community Association  
Ainaloa Community Association  
Mr. Gilbert Bailado