



## County of Hawai'i

### WINDWARD PLANNING COMMISSION

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CERTIFIED MAIL

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OCT 16 2012

Ms. Meleana Smith  
P.O. Box 377525  
Ocean View, HI 96737

Dear Ms. Smith:

Special Permit Application (SPP 12-000136)

Applicant: Mutant, LLC

Request: To Allow a Café-Coffee Shop, Storage-Garage Facility and a  
Park and Sell Lot on 67,945 Square Feet of Land

Tax Map Key: 9-2-015:015

The Windward Planning Commission at a duly advertised public hearing on October 4, 2012, considered the above-referenced request for a Special Permit in accordance with Chapter 205-6, Hawai'i Revised Statutes, and Rule 6 of the Planning Commission, to allow the establishment of a café-coffee shop, storage-garage facility and park and sell lot on 67,945 square feet of land situated within the State Land Use Agricultural District. The property is located along the mauka side of the Hawai'i Belt Road (Highway 11) on the northeast corner of the Highway 11 – Aloha Boulevard intersection, Hawaiian Ocean View Estates Subdivision, Kahuku, Ka'u, Hawai'i.

The Commission voted to deny Special Permit No. 12-000136 based on the following findings:

The applicant is requesting to allow the establishment of a café-coffee shop, storage-garage facility and park and sell lot on 67,945 square feet of land situated within the Hawaiian Ocean View Estates (HOVE) Subdivision. The development will consist of the following:

*Hawai'i County is an Equal Opportunity Provider and Employer*

- **Café-Coffee Shop:** This will include a 12-foot by 16-foot (192 square feet) structure with a parking lot that will provide food (breakfast, lunch and dinner) and coffee, which will reduce the necessity for residents to travel to the main shopping area in HOVE. The hours of operation for the café-coffee shop will be from 5:00 a.m. to 9:00 a.m. for breakfast, from 11:00 a.m. to 2:00 p.m. for lunch, from 4:30 p.m. to 8:30 p.m. for dinner, 7 days a week.
- **Storage-Garage Facility:** This will be an enclosed 80-foot by 58-foot (4640 square feet) consisting of three (3) two-car garage spaces, six (6) one-car garage spaces, twelve (12) small storage spaces and a space for manufacturing. This facility will allow members of the community to store or work on their vehicles in these enclosed garage spaces or to store items in the storage spaces. There will be a private 4-bedroom home built above the facility. The hours of operation for the storage-garage facility will be from 5:00 a.m. to 8:30 p.m., 7 days a week.
- **Park and Sell Consignment Lot:** This is a parking lot on the property that will provide buyers and sellers the most effective and convenient way to buy or sell their used vehicles. The applicant is looking into dealership licensing and other applicable licenses to allow them to conduct this type of operation. The hours of operation for the park and sell lot will be from 5:00 a.m. to 8:30 p.m., 7 days a week.

This denial is based on several negative factors. The primary negative factors are 1) the location of the request is located outside of the Urban Expansion Area designated within the Hawaiian Ocean View Estates Subdivision, and 2) the proposed request is not consistent with the courses of action for Ka'u in the Land Use-Commercial Element of the General Plan. The other negative factors, such as traffic and impacts to surrounding property owners, could potentially be mitigated by conditions.

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 not a reasonable use of land to establish a commercial center within the Agricultural District.** The Planning Director has determined that, although the proposed request is an unusual use of land, it is not a reasonable use of land in this particular location. The use is considered unreasonable primarily because it is clearly inconsistent with the General Plan policies and courses of action for commercial uses in the Hawaiian Ocean View Estates and Hawaiian Ranchos area. These uses should

be located approximately 2 miles to the east of the subject property where the General Plan has identified lands for commercial uses along a concentrated corridor that straddles Highway 11.

**The proposed use will not promote the effectiveness and objectives of Chapter 205, H.R.S., as amended.** Through the passage of Chapter 205, H.R.S., otherwise known as the State Land Use Law, the State Land Use Commission was established. It called for classification of all lands in the State and authorized the adoption of rules of practice and procedure and regulations for land use within the various land use districts. The four land use districts (Agricultural, Rural, Urban and Conservation) created by the State Land Use Commission provided the basic legal framework of land uses in the State of Hawai'i and assisted in the implementation of the long-range land use objectives of the State and Counties. The intent of these statutory provisions is 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 in Hawai'i. The proposed request is located in an area designated Agricultural by the State Land Use Commission. As the requested uses are not permitted in the State Land Use Agricultural District, a special permit is required to allow these uses to be permitted. The establishment of a café-coffee shop, storage-garage facility and park and sell lot and related improvements at this particular location would not be best suited for this area of Ka'u. The requested uses would be better suited within the established urban expansion area, which is approximately 2 miles to the east of the subject property and where similar types of commercial uses have been established.

The granting of a Special Permit must take into account the land use pattern best desired for a community, which in this case seeks to concentrate such commercial uses 2 miles to the east. In many ways, Special Permits can be like zoning, where the location of commercial uses must be weighed against what is appropriate for a community and not just randomly laid out.

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.** This criterion has not been met based on the previous discussion listed above, mainly that the use is considered unreasonable primarily because it is clearly inconsistent with the long range General Plan for commercial uses in the Hawaiian Ocean View Estates and Hawaiian Ranchos area. These uses should be located approximately 2 miles to the east of the subject property where the urban expansion area has been identified for commercial uses on the General Plan Land Use Pattern Allocation Guide (LUPAG) map for this area.

**(B) The desired use would adversely affect surrounding properties.** The surrounding properties within the Hawaiian Ocean View Estates Subdivision are approximately one acre in size and are zoned Agricultural (A-1a) by the County. Lands makai of Hawai'i Belt Road within the Hawaiian Ranchos Subdivision differ in size and are zoned Agricultural (A-3a) by the County. Both subdivisions consist primarily of scattered dwellings and vacant lands. The nearest dwelling is located northwest directly across Aloha Boulevard from the project site. There are other dwellings in the immediate area as well.

The applicant will be utilizing the property for several types of commercial uses including a café-coffee shop, a storage-garage facility and a park and sell lot. These uses are proposed to operate seven (7) days a week from 5:00 a.m. to 8:30 p.m. All of the proposed uses associated with the request will create adverse impacts to the surrounding properties, including but not limited to, traffic generated by the multiple uses and noise starting at an early hour and continuing until later in the evening, daily.

This area is not an area that should be considered for a commercial use of this size, but should be located in an area where the noise and traffic impacts can be minimized. Based on the above, this criterion has not been met.

**(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 proposed use places a burden on public agencies to provide safe ingress and egress to and from the Hawai'i Belt Road and places people traveling on the Hawai'i Belt Road at risk given the increased traffic added by the proposed request on a highway with a 55-mph speed limit.

Access to the project site is from Aloha Boulevard, which gains access from the Hawai'i Belt Road between the 79 and 80 mile markers. This is a two-lane State Highway that has a 42-foot paved roadway with paved shoulders within an 80-foot wide right-of-way. There is no left turn or right turn lanes to allow for safer access in this area.

The Department of Transportation (DOT) recommends that this Special Permit application be denied. DOT Highway Division has expressed concerns regarding numerous intersections of the Hawai'i Ocean View Estates (HOVE) subdivision with the State Highway and that commercial development in HOVE should be deferred until such time as the County of Hawai'i institutes a planning process to evaluate and plan for upgrades to the intersections with the State Highway.

DOT also stated that should the County of Hawai'i decide to continue processing the subject permit, DOT recommends that the applicant/landowner prepare a traffic

assessment report which recommends mitigation of any traffic impact attributable to the operation of the subject project for the review and acceptance of the DOT Highways Division.

Any necessary improvements to the intersection would be required to be provided by the applicant at no cost to the State. If an approval for this request requires extensive improvements, it would be better to locate the use in an area that already has the infrastructure in place.

Safety is a priority when recommending an approval for any permit application. This request places people traveling on the Hawai'i Belt Road at risk given the increased traffic that will be added on a highway with a 55-mph speed limit. This will also place an unreasonable burden on public agencies such as police and fire, who will have to respond to accidents that may occur as a result of unsafe conditions.

**(D) Unusual conditions, trends, and needs have arisen since district boundaries and regulations were established.** This criterion has been partially met, in that the population growth in the Ka'u region has created a need for areas that allow for commercial and/or light industrial uses such as the propose request, for which there is a shortage of available zoned areas.

Prior to the General Plan revision in 2005, commercial uses in this area were established by Special Permits. All of the main commercial centers in HOVE and Ranchos were established by a Special Permit and not through a change in zoning, which is the proper means of establishing a commercial center. In the 2005 General Plan revision, courses of action listed in the Land Use-Commercial element of the General Plan specifically encouraged that commercial activity to be centralized in Ocean View and not to allow strip or spot commercial development on the highway outside of the designated urban areas.

In 2007, the County Council adopted concurrency standards for roads and water that apply when an applicant submits a zoning amendment application or an application for extension of time to perform a condition of the zoning amendment. The ordinance stated that "A zoning amendment application shall not be granted unless: (1) the department of water supply has determined that it can meet the water requirements of the project and issue water commitments using its existing system; or (2) specific improvements to the existing public water system, or a private water system equivalent to the requirements of the department of water supply will be provided to meet the water needs of the project and conditions of zoning delay occupancy until the necessary improvements are actually constructed."

For rural areas such as Ocean View where County water was not available, the County Council created an allowance to change the zoning without County water or requiring the construction of an extensive private water system. The ordinance stated "To facilitate the development of village centers in rural areas that are not currently served by a public water system, the council may waive the water supply requirements for zoning amendments for commercial or light industrial uses in areas that do not currently have a public water system, and where the department of water supply has no plans to build a public water system, and which are (1) designated as an "urban and rural center" or "industrial area" on table 14-5 of the general plan and (2) designated for urban use on the land use pattern allocation guide map of the general plan; provided that conditions of zoning shall require water supply consistent with public health and safety needs such as sanitation and fire-fighting."

Since this ordinance was adopted, there has been one change of zone from agricultural to commercial-industrial mixed and the submittal of a second change of zone from agricultural to village commercial, which has not been approved as of the date of this writing. These properties are located within the General Plan LUPAG map Urban Expansion Area in HOVE.

The proposed request should not be approved through the Special Permit process but through a change of zoning. This would require the property to be located within the Urban Expansion Area on the General Plan LUPAG map, which is located approximately 2 miles to the east.

**(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 characterized as Aa lava, which has almost no soil covering and is rough and broken. The soil is classified as "E" or "Very Poor" for agricultural productivity and unclassified by the Agricultural Lands of Importance to the State of Hawai'i (ALISH) Map. Based on the above information, the land is unsuited for agricultural uses that are permitted within the Agricultural District and therefore, this criterion has been met.

**(F) The proposed use will not substantially alter or change the essential character of the land and present use.** The property will be utilized for commercial uses including a café-coffee shop, a storage-garage facility and a park and sell lot. The surrounding area is characterized as a rural community with scattered dwellings and vacant land. The proposed use will substantially change the essential character of the land by departing from the concept of concentrating commercial uses within a corridor located 2 miles to the east. Based on the above information, this criterion has not been met.

**(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 an area identified as Rural in the General Plan, which includes existing subdivisions in the State Land Use Agricultural and Rural districts that have a significant residential component. 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 proposed request will be creating a commercial center along the highway in a rural setting, the request will be contrary to the LUPAG Map designation for this area.

Additionally, the subject request would conflict with the courses of action for the Ka'u District within the Land Use-Commercial element of General Plan. The courses of action state the following:

- "Centralization of commercial activity in the communities of Pahala, Naalehu and Ocean View and the area of the Volcanoes National Park shall be encouraged."
- "Do not allow strip or spot commercial development on the highway outside of the designated areas."

Within this particular section of the Ka'u District, commercial facilities have been centralized in HOVE with the establishment of the Ocean View Town Center and the Ocean View Market, and in the Ranchos Subdivision with the establishment of Pohue Plaza, which are located approximately 2 miles east of the project site. These commercial developments were established within an area identified on the General Plan LUPAG map as Urban Expansion Area, and they have been approved to allow similar uses that are being proposed by the applicant for this area.

The proposed request fails to address the fundamental problems associated with the development of the commercial uses in this particular area, which is the inability to establish an effective land use pattern. Effective land use planning requires a regional perspective towards establishing a proper land use pattern within a given area. The proposed commercial uses will be located approximately 2 miles away from the designated commercial centers in the HOVE and the Ranchos Subdivisions. This area has already established itself as the central commercial area for such services for this particular section of Ka'u. The Planning Department has sought to concentrate commercial and light industrial types of uses in this area in an attempt to control traffic and related infrastructure improvements within a localized area. Until such time regional

infrastructure is able to accommodate widespread urban level of development, it would not be prudent to sanction the spread of such traffic-generating uses in a manner which would frustrate the government's efforts to control the amount of impacts such uses will create.

Another consideration is the potential for encouraging strip commercial development should the request be approved. Approval of the request would establish two separate commercial nodes that may attract the "in-filling" of lands between these nodes by other commercial developments. Such strip development would create rapid growth increase in adverse impacts to traffic as multiple access points would be required for such developments. This is clearly discouraged within the courses of action for commercial activity for this area in Ka'u listed in the Land Use-Commercial element in the General Plan, which is stated above.

Lastly, the Ka'u Community Development Plan (CDP) is well along in the creation process. There have been numerous community meetings seeking input for the direction of land use for Ka'u. The Ka'u CDP Steering Committee has been established and has adopted community objectives based on extensive community input. The proposed request is not consistent with following goals and objectives adopted by the Steering Commission:

- Establish or expand retail, service, dining, and entertainment centers in rural villages and towns capable of supporting Ka'u-appropriate growth.
- Encourage future settlement patterns that are safe, sustainable, and *connected*. They should protect people and community facilities from natural hazards, and they should honor the best of Ka'u's historic precedents: *concentrating new commercial and residential development in compact, walkable, mixed-use town/village centers*, allowing rural development in the rural lands, and limiting development on shorelines (emphasis added).

In summary, the proposed request is not consistent with the General Plan LUPAG map, the courses of action for Ka'u in the Land Use-Commercial element of the General Plan, and is not consistent with the goals and objectives adopted by the Ka'u CDP Steering Committee.

Based on the above reasons, this request is denied by the Windward Planning Commission.



Ms. Meleana Smith

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As stated in Rule 6-10, "The Commission's decision is appealable to the Third Circuit Court."

Should you have any questions on this matter, please contact Daryn Arai of the Planning Department at 961-8288, x8142.

Sincerely,

A handwritten signature in black ink, appearing to read 'Zendo Kern', written in a cursive style.

Zendo Kern, Chairman  
Windward Planning Commission

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cc: Mutant, LLC  
State Land Use Commission  
Department of Public Works  
Department of Water Supply  
Ivan Torigoe, Esq.