



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

OCT 02 2012

Ms. Barbara DeFranco
P.O. Box 972
Captain Cook, HI 96801

Dear Ms. DeFranco:

Special Permit Application (SPP 12-000137)

Applicant: Barbara DeFranco dba Paleaku Gardens Peace Sanctuary

Request: To Allow Existing Greenhouses for Visitor Displays and Retail Plant
& Statuary Sales, and Hold Special Events Within Pavilion & on Grassy Areas

Tax Map Key: 8-3-008:009

The Leeward Planning Commission, at its duly held public hearing on September 20, 2012, voted to approve the above-referenced request to allow existing greenhouses for visitor displays and retail plant and statuary sales, and to hold special events within the pavilion and on grassy areas on approximately 2 acres situated in the State Land Use Agricultural District. The property is located within the Ke'ei 2nd Subdivision on the west side (mauka) of the Painted Church Road, and approximately 2,150 feet south from its intersection with Middle Ke'ei Road, Ke'ei 2nd, South Kona, Hawai'i.

Approval of the request is based on the following:

The applicant has submitted a Special Permit application to allow existing greenhouses to be used for visitor displays and retail plant and statuary sales, and to hold special events within the pavilion and on grassy areas on a 2-acre portion of a 9.1-acre parcel. The applicant has been operating a botanical garden called Paleaku Gardens Peace Sanctuary on the property, which is a non-profit organization. The facility is open daily from 9:00 a.m. to 4:00 p.m. There will be no new construction associated with the request.

The applicant is requesting to utilize the existing greenhouses for the sale of plants and garden statuary, and items for visitors, such as gift cards, art, tee shirts, coffee, macadamia nuts and similar products. Additionally, the applicant is requesting to hold small events or functions, such as vow exchanges (weddings), memorial services, seminars, small community meetings, and other low-impact activities. These events will be held at the existing facilities and grounds, and grassy areas on site. There will be no loud amplified devices used outdoors and events will be catered. Events will end by 9:00 p.m. and the amount of people is not anticipated to exceed 75 persons on-site at any given time. There will be no large buses allowed at the facility.

The criteria for approving a Special Permit are based on Rule 6-7 in the Planning Commission Rules. Rule 6-7 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 District, 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. In recognizing that lands within the Agricultural district 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 9.1 acres in size and is situated within the County's Agricultural (A-5a) zoned district. The applicant is presently conducting a non-profit botanical garden on-site called Paleaku Gardens Peace Sanctuary. She also conducts other agricultural activity on the property including fruit, coffee, and macadamia nut trees. The proposed request will be subordinate and incidental to the principal use of the botanical garden and will not diminish the potential for any future agricultural activity on the property. Therefore, the subject request is considered an unusual and reasonable use of agricultural land.

The land on which the proposed use is located is unclassified by the Agricultural Lands of Importance to the State of Hawai'i (ALISH) Map. Additionally, the soil is classified as "E" or "Very Poor" by the Land Study Bureau's Detailed Land Classification System and is identified as Kaimu Extremely Stony Peat (rKED) and Punaluu Extremely Rocky Peat (rPYD) by the U.S. Soil Survey. These soils are used for mostly for pasture. 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) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. As discussed above, 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. Surrounding properties are similarly zoned A-5a and consists of scattered dwellings, agricultural uses and vacant land. The nearest neighbors are located on the adjoining properties to the north and south on approximately 9-acre parcels. There are dense shrubs planted along the north and south boundaries of the subject property which will minimize any noise impacts. Additionally, no amplified devices will be used outside as part of the special functions and the amount of people on-site at any given time is will be limited to 75 persons. Traffic is not anticipated to increase significantly with the approval of the proposed request. A condition of approval will be added limited the passenger vehicles used to transport visitors to the property to a capacity not to exceed 30 passengers and restricting buses on the property. Based on the above discussion, the proposed uses are not anticipated to have an adverse affect on the 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. Access to the subject property is Painted Church Road, which is a County road. According to the Department of Public Works, it has an approximate 20-foot wide pavement (in fair to good condition), grass shoulders all within an approximate 40-foot right-of-way. It is substandard based on width, alignment and roadside hazard clearances. Traffic in the area is not anticipated to substantially increase as a result of the proposed uses.

County water is available to the property from an existing 5/8-inch meter. The property is assigned one (1) unit of water, which equates to an average usage of 400 gallons per day. The Department of Water Supply (DWS) has concerns regarding the average daily usage through the existing 5/8-inch meter serving the subject parcel, which was approximately 3,950 gallons per day over the past three billing cycles (February through June of 2012). DWS has stated that the current water usage is already exceeding the capacity of the existing meter and additional water cannot be made available. In regards to the present situation with the applicant, DWS does not mediate the exceeding water usage unless the case is extreme where the usage causes problems with the County water system in the area. According to DWS, if this Special Permit were not submitted,

they would not disconnect or charge extra fees for the water usage beyond what is allotted. In reviewing the request, the water overage is most likely caused by the irrigation of the botanical garden. The requested uses of the visitor displays and retail plant and statuary sales, and to allow special events on-site do not appear to be uses that would significantly increase water demand.

Wastewater is presently disposed of into an existing cesspool but the applicant will comply with the State Department of Health regulations, including the installation of a new septic system. The property is situated within an area designated as Flood Zone X, an area determined to be outside the 500-year flood plain. Electricity and telephone are available to the property. A condition of approval will be included to require the applicant meet all applicable County, State and Federal laws, rules, regulations and requirements. Based on the above discussion, the requested use should not burden public agencies to provide additional services.

(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. Although 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. Although the land is unsuited for agricultural uses based on poor soil in the area and on-site, the applicant has utilized the majority of the property as a botanical garden. The proposed uses will be conducted mainly within the existing greenhouses and a portion of the grounds. The uses will be accessory to the main use of the garden. Therefore the use will not diminish or foreclose any future agricultural opportunities.

(F) The use will not substantially alter or change the essential character of the land and the present use. The proposed uses will be accessory to the principal use of a botanical garden and will not diminish the agricultural potential of the property. Thus, the proposed use 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 an area identified as Important Agriculture Lands in the General Plan. Important Agricultural Lands are those with better potential for sustained high agricultural yields because of soil type, climate, topography, or other factors. The request will not be contrary to the LUPAG Map designation for this area. Additionally, the approval of the subject request would support the following goals and policies of the Land Use and Economic elements of General Plan.

Land Use Element

- 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.
- 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 use is not contrary to the objectives sought to be accomplished by Chapter 205A, Hawai'i Revised Statutes, relating to coastal zone management program. The subject property is located approximately 2 miles from the closest shoreline and is not located within the Special Management Area. Given the fact that the property has been cleared and has been developed with a botanical garden and with multiple structures in which the proposed use will occur, it is unlikely that any archaeological features and threatened plant, animal or avian species will be adversely affected. There is no designated public access to the mountain 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 resources, coastal ecosystems, and marine and coastal resources. Further, the property will not be affected by any coastal hazards or beach erosion.

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 property. 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 request to allow the existing greenhouses for visitor displays and retail plant and statuary sales, and to hold special events within the pavilion and on grassy areas on approximately 2 acres 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, successors or assigns shall be responsible for complying with all stated conditions of approval.
2. Within one year from the effective date of the permit, the applicant shall secure and finalize any building permits required by the Department of Public Works Building Division. The applicant shall submit evidence that the proper permits were secured and finalized to the Planning Department.
3. The hours of operation for the functions on the property shall be limited to 9:00 a.m. to 9:00 p.m., daily.
4. Passenger vehicles used to transport visitors to the property shall be limited to a capacity not to exceed 30 passengers. No large buses will be allowed on the property.
5. Concerts shall be prohibited on the subject property.
6. Access to Painted Church Road shall meet with the approval of the Department of Public Works. The applicant shall remove any encroachments or obstructions (signs and any obstructive vegetation) within the County right-of-way along the subject property frontage.
7. 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-SHPD when it finds that sufficient mitigative measures have been taken.

8. If the applicant fails to comply with the conditions of approval or is unable to resolve any public complaint(s), the Planning Director shall investigate and, if necessary, enforce the appropriate conditions. The Planning Director may, as part of any enforcement action, refer the matter to the Planning Commission for review. Upon appropriate findings by the Planning Commission, that the applicant has failed to comply with the conditions of approval or has caused an unreasonable adverse impact on surrounding properties, the permit may be suspended or revoked.
9. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
10. 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. The 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.
 - C. Granting of the time extension would not be contrary to the original reasons for 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.
11. 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.

Ms. Barbara DeFranco

Page 8

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

Sincerely,

A handwritten signature in cursive script that reads "Geraldine Giffin".

Geraldine Giffin, Chairman
Leeward Planning Commission

Ldefranco01lpc

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
Planning Department - Kona
State Land Use Commission
Department of Land & Natural Resources-HPD
Mr. Gilbert Bailado