



County of Hawai'i

LEEWARD PLANNING COMMISSION

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NOV 12 2013

Ms. Rebecca J. Jacobs
P.O. Box 44372
Kamuela, HI 96743

Dear Ms. Jacobs:

Special Permit Application (SPP 13-000154)

Applicant: Rebecca J. Jacobs

Request: Establishment of an Acupuncture Clinic Within an Existing Garage

Tax Map Key: 5-9-006:034

The Leeward Planning Commission, at its duly held public hearing on October 17, 2013, voted to approve the above-referenced request to allow the establishment of an acupuncture clinic within the garage of an existing single family dwelling that is located on three acres of land situated within the State Land Use Agricultural District. The property is located at 59-337 Ho'okela Place, approximately 1,250 feet north of the intersection of Ho'okela Place and Ala Kahuā Drive at Kahuā 1st, Kahuā and Waikā, North Kohala, Hawai'i.

Approval of the request is based on the following:

The applicant requests a Special Permit to establish an acupuncture clinic within the garage of an existing single-family dwelling. The applicant will be the only employee, and the proposed hours of operation are three days a week from 10:00 a.m. to 4:30 pm; maximum of fifteen patients per week. The applicant desires the flexibility of working from home to contain overhead costs and providing affordable fees. An acupuncture clinic will complement existing healthcare choices and provide quality, full service healthcare at a convenient location for Kohala coast residents and visitors.

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 Chapter 205, Hawai'i Revised Statutes (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 district may 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 considered unusual since it is not agricultural in nature, but it is a reasonable use as it will provide the landowner with a supplemental source of income upon land that is very poorly suited for agricultural activities. The limited nature of the proposed use for a single-employee operation within an existing garage conveys the reasonableness of the applicant's request, as the property is approximately three acres in size and improved with a single-family dwelling. As such, the proposed use is considered an unusual and reasonable use of agricultural land that will not adversely affect the preservation and agricultural use of the County's prime agricultural lands.

Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. The subject property is not classified as prime agricultural land, and due to its poor soil characteristics does not have a high potential for sustained agricultural yields. The requested use will be contained within a small, approximately 250-square foot area within a portion of an existing garage on a property improved with a single-family dwelling since 1998. Thus, this request is not contrary to the objectives of the State Land Use Law for the Agricultural District.

The desired use would not adversely affect surrounding properties. Surrounding properties are zoned A-3a and largely vacant or in residential use. The closest dwellings are located adjacent to the property to the west/northwest and approximately 100 feet lower in elevation. The neighbors were properly notified of the applicant's request, and no comments were received from the adjacent landowner. The applicant is expected to comply with all applicable requirements of affected agencies, including the State Department of Health. It is not anticipated that the use of a small portion of the property for the proposed non-agricultural use will have an adverse impact upon surrounding properties as the acupuncture clinic will be solely contained in an existing garage.

The proposed 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 property is from Ala Kahuā Drive to Ho'okela Place, both County roadways in good condition. Water is available from the Kohala Ranch Water Company. The property is serviced by a cesspool. All essential utilities are available to the site. County police and fire facilities, as well as the North Kohala Community Hospital are located approximately twelve miles from the property in Waimea.

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 uses may be permitted which may not be allowed by zoning. Since the district boundaries were established in the 1960's, the population of North Kohala and the adjacent South Kohala district has grown steadily over the years and health related services such as an acupuncture clinic have not grown to meet the increased demand for such services. Unfortunately, the State Land Use Commission has not designated new urban lands where these uses can be established and therefore a Special Permit is the only alternative to provide these services to the community. Approval of this Special Permit will provide a homeowner with an occupational opportunity of a limited scale in an area that does not accommodate these types of activities.

The land upon which the proposed use is sought is unsuited for the uses permitted within the district. Soils on the property are classified as "E" or "Very Poor" for agricultural productivity by the Land Study Bureau and is unclassified by the Agricultural Lands of Importance to the State of Hawaii (ALISH) Map. The U.S. Soil Survey identifies the property as Kawaihae very rocky very fine sandy loam, a soil type poorly suited for agriculture. The property has not been used for residential purposes in the past and due to its poor soil qualities is not ideal for producing sustained high agricultural yields. The property is improved with landscaping including plants and gravel, various grasses and kiawe trees.

Further restricting use of the property for agricultural activities is the fact that the property has been maintained as a homesite since 1998. Thus, the land upon which the proposed use is sought is unsuited for the uses permitted within the district.

The use will not substantially alter or change the essential character of the land and the present use. The essential character of the area is rural residential. Residential uses were established on the property when a farm dwelling was constructed in 1998. The proposed acupuncture clinic will be established in an existing garage and will be confined to an existing garage. As such, there will be no change to the character of the land and its present use.

The request will not be contrary to the goals, policies, objectives and actions of the General Plan, North Kohala 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 property is designated Extensive Agriculture, which includes lands not capable of producing sustained, high agricultural yields without the intensive application of modern farming methods. Grazing and pasturing are also included in the Extensive Agriculture category.

The applicant did not specifically address the appropriateness of this request against the guidelines in the North Kohala Community Development Plan (NKCDP), and proposed uses such as acupuncture clinics are not specifically addressed in the NKCDP. However, Strategy 4.9 (Increase Community Awareness of Healthcare Services in Kohala) is noted under "Action/Strategy" in the Implementation Matrix contained in the document and the availability of a variety of healthcare services is recognized as an important component of overall adequacy of healthcare in a community. Acupuncture is a characteristic component of traditional Chinese medicine (TCM) and categorized as a complementary health approach to modern medicine.

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 mauka of the Akoni Pule Highway, at approximately the 640-foot elevation, 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. Due to the property's distance from the ocean, the property will not be affected by any coastal hazards or beach erosion. As such, the proposed use is not contrary to the objectives of Chapter 205A, Hawai'i Revised Statutes. Finally, the applicant will be required to comply with all agency requirements and stated conditions of approval.

Based on the above, the approval of the request to allow the establishment of an acupuncture clinic within the garage of an existing single-family dwelling on three acres of land situated within the State Land Use Agricultural District would support the objectives sought to be accomplished by the State 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 of the stated conditions of approval.
2. The proposed acupuncture clinic shall be established within two (2) years from the effective date of this permit. Within two (2) years from the effective date of this permit, the applicant shall secure and finalize any building permits that may be required by the Department of Public Works - Building Division to allow for the conversion of a portion of the existing garage to accommodate the acupuncture clinic.
3. Only one (1) employee residing on the property shall be allowed to operate the establishment.
4. The hours of operation shall be limited to no more than three (3) days a week, Monday through Friday from 10:00 a.m. to 4:30 p.m.
5. The method of sewage disposal shall meet the standards and requirements of the State Department of Health.
6. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
7. 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.

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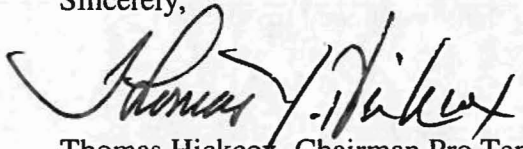
- B. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
- C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
- D. The time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year).

Should any of these conditions not be met or substantially complied with in a timely manner, the Planning Director may initiate procedures to revoke this 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,



Thomas Hickcox, Chairman Pro Tem
Leeward Planning Commission

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