



## 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

MAY 13 2014

Mr. John Habermann  
13-6531 Kapoho Kalapana Road  
Pāhoa, HI 96778

Dear Mr. Habermann:

Special Permit (SPP 14-000159)

Applicant: John Habermann

Request: To Establish an Auto Repair Shop on .91 Acre of Land in the State Land Use  
Agricultural District

Tax Map Key: 1-5-016:169

---

The Windward Planning Commission, at its duly held public hearing on May 1, 2014, voted to approve the above-referenced request to establish an auto repair shop on .91-acre of land situated in the State Land Use Agricultural District. The property is located on the southwest side of 33<sup>rd</sup> Avenue, approximately 1,000 feet northwest of its intersection with Maku'u Drive, Hawaiian Paradise Parks Subdivision, Kea'au, Puna, Hawai'i.

Approval of the request is based on the following:

1. The applicant shall be responsible for complying with all of the stated conditions of approval.
2. The life of the permit for the auto repair shop shall be for ten (10) years from the effective date of this permit or upon rezoning or upon new industrial zoned lands becoming available within an approximate 4-mile radius from the subject property, within a reasonable period to effect the relocation, whichever occurs first.

MAY 13 2014

3. The auto repair shop shall be conducted in substantial conformance with representations made in the Special Permit application dated January 21, 2014 and to the Planning Commission.
4. Construction of the proposed auto repair shop shall be completed within (5) years from the effective date of this permit. Final Plan Approval from the Planning Director shall be secured within six (6) months from the effective date of this permit in accordance with the Zoning Code, Sections 25-2-71(f), 25-2-72, 25-2-76 and 25-2-77. Plans shall identify existing and proposed structures, the number, type and location of heavy equipment, fire protection measures, landscaping, signage, paved parking stalls, paved loading area, paved driveway and other improvements associated with the uses. Landscaping for all property boundaries, shall also be indicated on the plans and be provided for the purpose of mitigating any adverse noise or visual impacts to adjacent properties. Landscaping shall be established and maintained at a minimum height of ten (10) feet and minimum depth of four (4) feet only along the property boundary of Highway 130 to be designed to provide a complete visual screen the highway when the landscaping is fully mature.
5. The required landscaping shall be installed prior to the occupancy of the auto repair shop on the subject property.
6. The applicant shall connect to the County water system for the proposed auto repair shop. Prior to the issuance of a water commitment by the Department of Water Supply, the applicant shall submit the anticipated maximum daily water usage calculations as recommended by a registered engineer, and a water commitment deposit in accordance with the "Water Commitment Guidelines Policy" to the Department of Water Supply within one hundred and eighty days from the effective date of this permit.
7. Access to the subject property shall be limited to 33<sup>rd</sup> Avenue.
8. Signage shall not be visible from Kea`au-Pāhoa Road (Highway 130).
9. No further subleasing of the property shall occur for auto repair or other business-related activities.
10. The hours of operation of the auto repair business shall be limited from 7:00 a.m. to 6:00 p.m., Mondays through Fridays, and from 8:00 a.m. to 12:00 noon on Saturdays.

11. All auto repair related equipment and supplies shall be stored within the proposed structure(s).
12. All vehicles shall be parked on the subject property in a designated area and shall be limited to no more than ten (10) vehicles at any time, excluding the applicant's personal vehicles.
13. The applicant shall comply with all applicable laws, rules and regulations of the State and County agencies for the proposed uses.
14. 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*.
15. An initial extension of time for the performance of conditions, with the exception of Condition No. 2, 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 applicants, 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 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 fashion, the Director may initiate procedures to revoke this permit.

Mr. John Habermann

Page 4

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.

Approval of this permit is based on the reasons given in the attached recommendation report.

Should you have any questions, please contact Daryn Arai of the Planning Department at 961-8288, ext 8142.

Sincerely,



Ronald Gonzales., Chairman  
Windward Planning Commission

LJhabermanspp14-159wpc

Enclosure: PC Recommendation Report

cc: All Aina Services  
Department of Public Works  
Department of Water Supply  
County Real Property Tax Division  
State Land Use Commission  
State DLNR-HPD  
Mr. Gilbert Bailado

**COUNTY OF HAWAI‘I  
PLANNING COMMISSION RECOMMENDATION**

**JOHN HABERMANN**

**SPECIAL PERMIT APPLICATION NO. 14-000159 (SPP 14-000159)**

The applicant is proposing to establish an auto repair shop on 0.91-acre of land situated in the State Land Use Agricultural District on TMK: 1-5-016:169. The auto repair shop will include a 2,400-square foot metal building, which will include an ADA parking stall and loading zone, seven (7) additional parking stalls, and a 6-foot chainlink perimeter fence along with the required landscaping and planting screen.

Services offered by the applicant will include basic vehicle maintenance and light service, including engine oil and filter changes, engine cooling system flushes, brake system flushes, grease servicing, tire rotations, belt replacements and other vehicle fluids, filters and serviceable parts. Additional services will include high level vehicle electrical and mechanical system diagnostics, battery testing, maintenance and replacement, including correct and proper disposal procedures, replacement of exhaust systems, the rebuilding of engines and transmissions, suspensions and steering systems.

In recognizing the lack of commercial and industrial lands in the vicinity of Hawaiian Paradise Park Subdivision and Orchidland Estates Subdivision, the Planning Department is supportive of the recommendations of the revised Hawaiian Paradise Park Community Master Plan and the Puna Community Development Plan to allow light industrial types of uses on 33<sup>rd</sup> Avenue within the Hawaiian Paradise Park Subdivision.

Within the last five years, there have been five (5) Special Permits approved for light industrial type uses on 33<sup>rd</sup> Avenue between Paradise Drive and Maku‘u Drive in Hawaiian Paradise Park. This applicant would be the sixth Special Permit request for this area on 33<sup>rd</sup> Avenue. Each of the approved Special Permits have a condition limiting the life of the permit to five (5) years, or upon new industrial (or commercial in some cases) zoned lands or suitable sites becoming developed under special permit within the LUPAG “industrial” areas available within a 4-mile radius from the subject property, whichever occurs first.

The Planning Department finds that this area within Hawaiian Paradise Park on 33<sup>rd</sup> Avenue between Maku‘u Drive and Paradise Drive is in possible transition to becoming a Light Industrial area. The Hawaiian Paradise Park Community Master Plan, which was revised in September of 2005, included a statement that the 46 one-acre lots that front 33<sup>rd</sup> Avenue between Maku‘u and Paradise Drive should be re-designated light industrial to reflect the original 1995 Master Plan proposal with modifications.

Additionally, the Puna Community Development Plan (PCDP), which was adopted by Ordinance 08-116 by the Hawai‘i County Council on September 10, 2008, identified an area on 33<sup>rd</sup> Street for light industrial development so long as the necessary infrastructure and thick landscaping to shield the site from Highway 130 and adjacent residences is provided first.

Although this area is not designated as Industrial in the General Plan, there may be a possibility of a future General Plan amendment to allow for light industrial uses on 33<sup>rd</sup> Avenue based on the recommendations of the Hawaiian Paradise Park Community Master Plan and the Puna Community Development Plan. However, as the proposed changes for the General Plan and any land use changes must still be approved by the County Council and/or State Land Use

Commission, the Planning Director supports approval of this Special Permit with a 10-year life to allow time to see if this area does transition in the future. If the area does not transition into a light industrial area, the applicant will need to comply with the condition requiring them to relocate to any area within a 4-mile radius that becomes available for industrial uses.

Additionally, four of the five previous permits had a condition stating that there would be no time extension of the life of their permit granted unless 33<sup>rd</sup> Avenue is paved to provide a 20-foot wide pavement from Maku'u Drive to their subject properties, meeting the approval of the Hawaiian Paradise Park Homeowner's Association. 33<sup>rd</sup> Avenue has been paved just past the Tavares property, which includes the subject property for this application and a majority of the applicants have since come in for amendments to extend the life of their Special Permit.

**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, Hawaii Revised Statutes (HRS), as amended.** 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. In addition, 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 Hawaii. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use.

The subject property is a vacant 0.91-acre parcel that is not in agricultural use. The applicant proposes to establish an auto repair shop and related uses on the subject property in the Hawaiian Paradise Park Subdivision. The land on which the proposed use will be located is classified as "E" or "Very Poor" for agricultural productivity by the Land Study Bureau and unclassified by the Agricultural Lands of Importance to the State of Hawaii (ALISH) Map. Additionally, the soil is classified as rLW (lava flows, Pahoehoe). As a result, the proposed use will not adversely affect the preservation and agricultural use of the County's prime agricultural lands.

It is therefore determined that the proposed use is an unusual and reasonable use within the Agricultural District and will not be contrary to the objectives of Chapter 205, HRS, as amended.

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.** The subject request is considered an unusual and reasonable use of the agricultural land and will not adversely affect the preservation and agricultural use of the County's prime agricultural lands. Therefore, the proposed request is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

**(B) The desired use would not adversely affect surrounding properties.** The subject property is 0.91-acre in size and is rectangular in shape. It is located on the mauka side of 33<sup>rd</sup> Avenue off of Maku'u Drive in the Hawaiian Paradise Park Subdivision. The property is

currently vacant of uses and structures. The property is situated within the State Land Use Agricultural district and the County's Agricultural (A-1a) zoning district.

Immediate surrounding lands are predominantly vacant with some scattered single-family residential uses, which are zoned A-1a. Additionally, there have been several Special Permits approved in the immediate area. The adjacent property to the west has a Special Permit for a contractor's warehouse and baseyard. The nearest dwellings are located across 33<sup>rd</sup> Avenue. The auto repair shop will meet the minimum required yard setbacks and required landscaping through the Plan Approval process to further minimize any adverse noise and visual impacts that may be generated by the proposed request. All of the proposed activities will occur during off-peak traffic periods and the applicant will be providing sufficient on-site parking.

The Planning Department is recommending a condition be added for the applicant to install appropriate landscaping along the Kea'au-Pāhoā Road prior to the property being occupied as an auto repair shop. This concern was generated based on the recommendations of the PCDP as stated above. Lastly, the Planning Department has not received objections from the community regarding the proposed request. Based on the above discussion, no significant adverse impacts to surrounding properties are expected.

**(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 Hawaiian Paradise Park Subdivision is from Kea'au-Pāhoā Road (Highway 130), a two-lane highway with a 100-foot right-of-way, then onto Maku'u Drive and 33<sup>rd</sup> Avenue to the subject property. Maku'u Drive is a private road with an approximate 20-foot wide pavement within a 60-foot right-of-way. Direct access to the subject property from the Kea'au-Pāhoā Road is prohibited.

County water can be made available to the property from an existing 12-inch waterline within the Kea'au-Pāhoā Road. There is an existing service lateral to the parcel, which is suitable for serving one unit of water through a 5/8-inch meter. Wastewater disposal will comply with Department of Health regulations via a new onsite Individual Wastewater System (IWS) as a municipal sewer system is not available in the vicinity of the property. Lastly, electrical and telephone service are available to the property.

Based on the above discussion, the requested use will 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. 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 allowed.

**(E) 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 Type for the subject property is Pāhoehoe lava flows, (rLW). Pāhoehoe lava has no soil covering and is typically

bare of vegetation except for mosses and lichens. The property has not been used for commercial agriculture in the past and due to its poor soil qualities is not ideal for producing sustained high agricultural yields. Thus, the land upon which the proposed use is sought is unsuited for the uses permitted within the district.

**(F) 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 but is also in transition to allow industrial types of uses on 33<sup>rd</sup> Avenue. The proposed use will alter the character of the land, but it will not be a substantial change. The proposed auto repair shop will be developed in harmony with the existing permitted industrial uses as well as the rural character of the neighborhood.

**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 designated Rural. This designation includes existing subdivisions in the State Land Use Agricultural and Rural districts that have a significant residential component, including the Orchidland Estates, 'Āinaloa, and Hawaiian Paradise Park (HPP) subdivisions. 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. The proposed use will be a facility that will provide necessary and needed services for residents within the Hawaiian Paradise Park subdivision and surrounding areas. The request is not contrary to the Land Use Pattern Allocation Guide (LUPAG) Map designation for this area and complements the Land Use and Economic elements of the General Plan.

Additionally, the revised Hawaiian Paradise Park Community Master Plan states that the 46 one-acre lots that front 33<sup>rd</sup> Avenue between Maku'u and Paradise Drive should be re-designated light industrial. Lastly, the Puna Community Development Plan identified 33<sup>rd</sup> Street in the Hawaiian Paradise Park Subdivision for light industrial development so long as the necessary infrastructure and thick landscaping to shield the site from Highway 130 and adjacent residences is provided first.

Therefore, the proposed request is not contrary to the General Plan, the revised Hawaiian Paradise Park Community Master Plan and the Puna Community Development Plan.

**The granting of this request would promote the effectiveness and objectives of Chapter 205A, Hawai'i Revised Statutes, relating to the Coastal Zone Management Program.** The property is not located within the Special Management Area and is over four miles from the nearest coastline. There is no record of a designated public access to the shoreline or mountain areas traversing the property. Due to the project site's distance from the shoreline, the property will not impact any recreational resources, scenic and open space or visual resources, coastal ecosystems and marine coastal resources.

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, Special Permit No. 14-000159 is approved to establish an auto repair shop on 0.91-acre of land situated in the State Land Use Agricultural District on TMK: 1-5-016:169.