



## 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

MAR 06 2015

Ms. Cathee Malapit  
72-3990 Māmalahoa Highway  
Kailua-Kona, HI 96740

Dear Ms. Malapit:

Special Permit (SPP 14-000173)  
Applicant: Cathee Malapit  
Request: Convert Existing 2-Car Garage into a Certified Kitchen  
Tax Map Key: 7-2-008:035

The Leeward Planning Commission, at its duly held public hearing on February 19, 2015, voted to approve the above-referenced request to convert an existing two-car garage into a certified kitchen on approximately 562.5 square feet of land. The project site is situated within the State Land Use Agricultural District located near the 32 Mile Marker on Māmalahoa Highway (Hawai'i Belt Road) in the Kona Ocean View Properties Subdivision, Pu'ukala, North Kona, Hawai'i.

Approval of this permit is subject to the following conditions:

1. The applicant, successor or assigns shall be responsible for complying with all stated conditions of approval.
2. Conversion of the existing garage into a certified kitchen shall be completed within five (5) years from the effective date of this permit.
3. Prior to commencing operation of the certified kitchen facility, the applicant shall obtain all necessary and related building permits and complete all required improvements, upon which the applicant shall notify the Planning Department in writing of their intent to commence operations.
4. Conversion of the existing garage and its operation as into a certified kitchen shall be conducted in a manner that is substantially representative of plans and details contained within the Special Use Permit Application. Any substantial expansion

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of the certified kitchen facility or uses beyond what is represented in these documents shall require an amendment to this permit.

5. Employees associated with the operation of the certified kitchen shall be limited to residents residing on the affected property.
6. The hours of operation shall be limited from 8:00 a.m. to 12:00 noon daily.
7. The applicants shall install a reduced pressure type backflow prevention assembly within five (5) feet of the existing water meter and any additional water meters on private property, which must be inspected and approved by the Department of Water Supply.
8. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements including the State Department of Health and County Department of Water Supply.
9. An initial extension of time for the performance of conditions within the permit may be granted by the 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 the granting of the permit.
  - d) The time extension 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).
10. Should any of these conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke this Special Permit.

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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 Findings Report.

Should you have any questions, please contact Christian Kay of the Planning Department at 961-8136.

Sincerely,



Brandi K. Beaudet, Chairman  
Leeward Planning Commission

LCmalapitSPP14-173lpc

Enclosure: PC Findings Report

cc: Department of Public Works  
Department of Water Supply  
County Real Property Tax Division - Hilo  
Department of Health  
Mr. Gilbert Bailado

**COUNTY OF HAWAI'I**  
**PLANNING COMMISSION FINDINGS**

**CATHEE MALAPIT**

**SPECIAL PERMIT APPLICATION NO. 14-000173 (SPP 14-173)**

The applicant is proposing to convert an existing two-car garage into a certified kitchen on approximately 562.5 square feet of land situated within the State Land Use Agricultural District. The project site is located near the 32 Mile Marker on Māmalahoa Highway (Hawai'i Belt Road) in the Kona Ocean View Properties Subdivision, Pu'ukala, North Kona, Hawai'i, TMK: 7-2-008:035.

The applicant plans to establish an approximately 562.5-square-foot certified kitchen in the existing two-car garage in the applicant's home in order to produce salsa and chips for retail sale at local retailers and markets. The applicant is currently leasing commercial kitchen space on a month-to-month lease and is planning ahead so she does not lose any production time while she is looking for alternate accommodations should her current lease end. According to the applicant, salsa and chip production would take place daily between the hours of 8:00am and 12:00 noon. The applicant and two other family members, who live in the house, are the only employees of the business. The certified kitchen will not be open to the public so there will be no customers and there is sufficient additional paved space to provide parking for residents of the home.

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 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 Chapter 205, Hawai'i 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. The subject property is 8,376 square feet in size, is rectangular in shape, and slopes to the west from Māmalahoa Highway with an approximate elevation difference of 10 feet. There is an existing 3-bedroom/3-bathroom dwelling on the property which was constructed in 2006 and the property is landscaped on the front and sides to screen the dwelling from surrounding neighbors. The applicant proposes to convert the existing two-car garage of the dwelling into a certified kitchen. The proposed use is unusual since it is not agricultural in nature. The limited nature of the proposed use as a small operation within the existing garage with no on-site sales conveys the reasonableness of the applicant's request. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use. Because all activities will take place within an existing structure, it will have no impact on the property's agricultural potential, nor will it adversely affect the preservation and agricultural use of the County's prime

agricultural land. Finally, the proposed use 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 following criteria listed under Section 6-3(b)(5) (A) through (G) of its rules of practice and procedure:

**(A) 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 a prime agricultural land, and due to its small size and poor soil characteristic, the property does not have a high potential for sustained agricultural yields. In addition, the requested use will be fully contained within the existing garage of the single-family dwelling already on the property. Thus, this request is not contrary to the objectives of State Land Use Law for the Agricultural District.

**(B) The desired use would not adversely affect surrounding properties.** The surrounding properties are similarly zoned A-5a with A-3a zoning to the south, A-500a zoning to the north, and A-900a to the east across Māmalahoa Highway. Uses in the immediate area consist of single-family dwellings and vacant land. The nearest residences are located on the adjacent properties to the south along Māmalahoa Highway. The production of salsa and chips will take place daily between the hours of 8:00am and 12:00 noon with no on-site sales. While these activities could generate noise, the naturally sloping topography, existing landscaping, and indoor location of production should control noise to reasonable levels. The applicant is expected to comply with all applicable requirements of affected agencies, such as the State Department of Health, to manage the proper disposal of waste products and food preparation associated with a certified kitchen. Based on the preceding, it is not anticipated that the requested use will have a significant, adverse effect 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 via a single a private driveway from Māmalahoa Highway. The certified kitchen will not be open to the public and all of the employees of the business live on the subject property, so there will be no increase in traffic to the property. According to the Department of Water Supply (DWS), one unit of water (Average 400 gallons/day, Maximum 600 gallons on any one day) is available to the parcel, however DWS voiced some concern that this amount would not be sufficient to service both the home use and certified kitchen use. The applicant has represented that salsa production does not require much water, with the only additional water use to be cleaning of buckets and production equipment, in addition, the applicant stated in writing that she would stay below the required limit. DWS also requested that the applicant contact the Fire Department to determine if there are additional fire protection requirements needed relative to fire flow. Subsequent conversations with the Fire Department indicated that the applicant should conduct a fire hydrant pressure test to determine actual fire-flow to determine any additional needs. The applicant currently has a Hawai'i Department of Health approved septic system, which, according to DOH will need to be enlarged to handle additional, certified kitchen related wastewater. As discussed above, the applicant does not feel that she will significantly increase the amount of wastewater entering her septic system and she is working with DOH to determine alternatives. That said, the applicant will have to comply with DOH wastewater requirements as a condition of this permit. There is no expected increase in storm water runoff as this use will take place in an existing single-family dwelling. Electricity and telephone service is available to the property. Police and fire services for the proposed

Project are provided by facilities located at the Hawai'i County police station and fire station located in Kailua-Kona or Keauhou. The nearest available health facility is the Kona Community Hospital in Kealahou. Based upon the preceding, the proposed use will not burden public agencies to provide additional services to support the requested use.

**(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. Since the district boundaries were established in the 1960's, Kona's population has grown substantially. The subject parcel is designated within the within the Kona CDP Urban Area and, despite the A-5a zoning, the lots in the applicant's subdivision are generally under 10,000 square-feet in size indicating a higher-density, residential use which is ill-suited for extensive or intensive agricultural uses. Although the Property and surrounding areas are designated for agricultural uses by both State and County land use regulations, through the issuance of a Special Permit, various "non-agricultural" uses may be allowed, including small-scale, home occupation type uses.

**(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 "D" or "poor" for agricultural productivity by the Land Study Bureau and is unclassified by the Agricultural Lands of Importance to the State of Hawai'i (ALISH). The property is relatively small (8,376 square feet) and has not been used for commercial agriculture in the past due to its size and poor soil qualities, both not ideal conditions for producing sustained, high agricultural yields. Further restricting use of the property for agricultural activates is the fact that the property has been maintained as a home site since 2006. Thus, the land upon which the proposed use is sought is unsuited for the uses permitted within the Agricultural 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 subject property and surrounding area is rural residential. Residential uses were establish on the property when a farm dwelling was constructed on the parcel in 2006. The proposed certified kitchen will be confined within the garage of the existing dwelling. As such, there will be no change to the essential rural residential character of the land and its present use.

**(G) The request will not be contrary to the General Plan, Kona 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 Low-Density Urban (LDU) in the General Plan. Lands designated as Low Density Urban are defined as residential, with ancillary community and public uses, and neighborhood and convenience-type commercial uses; overall residential density may be up to six units per acre.

The Kona Community Development Plan (KCDP) directs growth in the Kona Urban Area and Rural TOD. The proposed project is located inside the Kona Urban Area, where future growth is encouraged to occur in the form of compact, village-style development. While the

KCDP does not speak specifically to Special Permits, including home occupation type uses on agricultural land, this home occupation would appear to be consistent with Village Design Guidelines definition of home occupation and also supports the live/work concept set forth in the Kona CDP.

Based on the preceding, approval of this request will not be contrary to the General Plan, Kona CDP, or other Design Plans.

**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 subject property is located over 5 miles to the nearest shoreline and therefore will not cause beach erosion or affect marine resources, coastal ecosystems, and coastal recreational opportunities. Nor will the property be affected by coastal hazards. Additionally, there is no designated public access to the ocean or mountain areas over the property. There is no record of traditional Hawaiian rights being practiced on the property. Therefore, the proposed use is not contrary to the objectives of Chapter 205A, Hawai'i Revised Statutes.

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. 14-000173 is approved to convert an existing two-car garage into a certified kitchen on approximately 562.5 square feet of land situated within the State Land Use Agricultural District on TMK 7-2-008:035.