



County of Hawai'i

WINDWARD PLANNING COMMISSION

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Phone (808) 961-8288 • Fax (808) 961-8742

FEB 23 2016

Mr. Rick Porter
Mr. Justin Porter
P.O. Box 530
Nā'ālehu, HI 96772

Gentlemen:

SUBJECT: Special Permit No. (SPP 15-000186)
Applicants: Rick Porter and Justin Porter
Approved Use: Convert a Portion of an Existing Dwelling into a Certified Kitchen for the Manufacture and Distribution of Salsa
Tax Map Key: 9-4-007:003

The Windward Planning Commission, at its duly held public hearing on February 4, 2016, voted to approve the above-referenced request to convert a portion of an existing single family dwelling into an approximately 500-square foot certified kitchen to accommodate the manufacture and distribution of salsa. The project site is situated within the State Land Use Agricultural District and located along the east side of Amepela Road, approximately 110 feet south of its intersection with Lewa Lani Street in the Mark Twain Estates Subdivision in Papohaku, Ka'u, Hawai'i.

Approval of this permit is subject to the following conditions:

1. The applicants, successor, or assigns shall be responsible for complying with all stated conditions of approval.
2. Conversion of the existing garage and lanai 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, the applicants shall obtain all necessary building permits and complete all required improvements, upon which the applicants shall notify the Planning Department in writing of their intent to commence operations.

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4. Prior to commencing operation of the certified kitchen, the applicants shall comply with the requirements of Chapter 50, Food Safety Code of the State Department of Health' rules.
5. Conversion of the existing garage and lanai area and its operation as 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 of the certified kitchen facility or uses beyond what is represented in these documents shall require an amendment to this permit.
6. Employees associated with the operation of the certified kitchen shall be limited to residents residing on the subject property.
7. The hours of operation shall be limited to Monday through Friday, from 8:00 a.m. to 5:00 p.m.
8. 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.
9. The applicants shall comply with all applicable County, State, and Federal laws, rules, regulations, and requirements including the State Department of Health Wastewater Branch and County Department of Water Supply.
10. 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 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.

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- 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).
- 11. 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.

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 Maija Jackson of the Planning Department at 961-8159.

Sincerely,



Charles Heaulani, Chairman
Windward Planning Commission

LPorterSPP15-184wpc
Enclosure: PC Findings Report

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

COUNTY OF HAWAII
PLANNING COMMISSION FINDINGS

RICK AND JUSTIN PORTER

SPECIAL PERMIT APPLICATION NO. 15-000186 (SPP 15-186)

Based on the following, Special Permit No. 15-000186 is hereby approved by the Planning Commission to convert a portion of an existing single family dwelling into an approximately 500-square foot certified kitchen to accommodate the manufacture and distribution of salsa be approved on a portion of a 20,000-square foot property situated within the State Land Use Agricultural District.

The property is located along the east side of 'Amepele Road, approximately 110 feet south of its intersection with Lewa Lani Street in the Mark Twain Estates Subdivision in Papohaku, Ka'ū, Hawai'i, TMK: 9-4-007:003.

Rick and Justin Porter have submitted an application for Special Permit in order to convert an existing garage and lanai into a certified cold kitchen to produce salsa for distribution to retailers throughout the state. The area to be converted into the certified kitchen is approximately 500 square feet in size and is located on the first floor of the 1,530-square foot dwelling. The certified kitchen will include a walk-in refrigerator, dry storage area, preparation counter, and sinks. The applicants currently distribute their salsa to local retailers, however as the business grows they will hire a distributor to ship and deliver products to stores on other islands. The business will operate Monday through Friday between 8:00 a.m. and 5:00 p.m. and there will be two employees who currently reside in the dwelling. The certified kitchen is not open to the public so there will be no customers to the property.

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 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 20,000 square feet in size and is rectangular in shape. There is an existing two-story, 3-bedroom, 2-bathroom dwelling on the property which was constructed in 1994. The applicants propose to convert the existing garage and lanai on the first floor 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 dwelling 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 the property is not considered prime agricultural land and all activities will take place within an existing structure, it will not adversely affect the preservation and use of the County's prime agricultural land.

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 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 to the north, west and south are similarly zoned A-1a and consist of 20,000-square foot lots within the Mark Twain Estates subdivision. Uses in the subdivision are primarily residential. The lot to the north is vacant and the lot to the south contains a single-family dwelling and storage building. An eleven-acre State-owned property is located directly east of the subject property. It is zoned A-20a and undeveloped. The production of salsa will take place Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m. with no on-site sales. While these activities could generate noise, the existing landscaping, and indoor location of production should control noise to reasonable levels. The applicants are 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 from Kamā'oa Road and 'Amepele Road. 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 other than food product deliveries to the site about once every three months. 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. The applicants have represented that salsa production does not require much water, with the only additional water use to be cleaning of food product and production equipment. In addition, the applicants are aware of the need to stay below the required water limit. The applicants currently has a Hawai'i Department of Health approved cesspool, which, according to DOH is limited to a 1,000 gallon per day capacity. The applicants do not believe the proposed use will significantly increase the amount of wastewater entering the cesspool. That said, the applicants 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 are provided by facilities located in Na'alehu. 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, the surrounding population has grown substantially. Properties in the Mark Twain Estates subdivision, which was established in 1962, are about 20,000 square-feet in size indicating a higher-density, residential use which is ill-suited for extensive or intensive agricultural uses. Although the subject property and surrounding subdivision is 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 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 activities is the fact that the property has been maintained as a home site since 1994. 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 established on the property when a single-family dwelling was constructed on the parcel in 1994. The proposed certified kitchen will be confined within the garage and lanai area 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 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. Lands designated as Rural include existing subdivisions in the State Land Use Agricultural and Rural districts that have a significant residential component such as Mark Twain Estates. 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.

A community development plan is currently being drafted for the Ka'ū district but has not been adopted. The draft plan generally does not support the issuance of Special Permits within the Rural Land Use Policy Map category except for small-scale cottage industry uses such as a certified kitchen. Based on the preceding, approval of this request will not be contrary to the General Plan 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 4 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 applicants remain 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.