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County of Hawai'i

LEEWARD PLANNING COMMISSION

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MAR - 6 2020

Mr. Peter J. Piper
75-5994 Kuakini Hwy., Suite 2
Kailua-Kona, HI 96740

Dear Mr. Piper:

SUBJECT; Special Permit No. SPP-19-000204
Applicant: Dana Kern
Permitted Use: Legitimized the Conversion of an Existing Garden Store as a
K-8 Private School for Up to 49 Students
Tax Map Key: 7-4-006:012

The Leeward Planning Commission, at its duly held public hearing on February 20, 2020 considered the above-referenced request insert request to legitimize the conversion of an existing garden store to be used as a K-8 private school for up to 49 students on 3.281 acres of land situated within the State Land Use Agricultural District. The property is located insert at the intersection with Palani Road, Honokōhau 1st, North Kona, Hawai'i.

Approval of this amendment is subject to the following amended conditions:

1. The applicant, successors or assigns shall be responsible for complying with all stated conditions of approval.
2. The change of use from a garden store to the proposed private school shall be completed within five (5) years from the effective date of this permit. Prior to any construction, the applicant shall secure Final Plan Approval from the Planning Director in accordance with the Zoning Code. Plans shall identify all existing and

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proposed structures, signage, fire protection measures, all-weather dust-free driveway access and parking stalls, outdoor lighting (if any), and other improvements associated with the proposed development. Landscaping shall also be indicated on the plans for the purpose of mitigating any adverse noise and visual impacts to adjacent properties in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements). Buffer and yard landscaping shall conform to the standards for separation of a residential zone from a commercial zone as provided for in Planning Department Rule No. 17.

3. The proposed private school shall be conducted in a manner that is substantially representative of plans and details contained within the Special Permit Application dated October 28, 2019, any supplemental material, and the representations made before the Leeward Planning Commission. Any substantial expansion of the facility or uses beyond what is represented in this document shall require an amendment to this permit.
4. All development generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties.
5. The applicant shall implement design measures as per the Traffic Site Distance Plan reviewed by Department of Public Works, Engineering Division.
6. The applicant shall work with Department of Public Works, Engineering Division, on the goal of obtaining a speed limit of 20 m.p.h. for the area from Palani Road Junction to approximately 225 feet past the egress of the school.
7. The applicant shall remove vegetation both north and south of the egress in order to facilitate the Traffic Site Distance Plan.
8. The applicant shall provide fire department access and approved method of fire suppression to the property and private school to meet Fire Department requirements.
9. During the alteration construction phase, measures shall be taken to minimize the potential of both fugitive dust and runoff sedimentation. Such measures shall be in compliance with construction industry standards and practices utilized during construction projects of the State of Hawai'i.
10. All earthwork activity, including grading and grubbing, shall conform to Chapter 10, Erosion and Sedimentation Control, of the Hawai'i County Code.

11. Comply with Chapter 11-55, Water Pollution Control, Hawai'i Administrative Rules, Department of Health, which requires a NPDES permit for certain construction activity.
12. Construction activities must comply with the provisions of Hawai'i Administrative Rules, Chapter 11-46, "Community Noise Control."
13. The applicant shall upgrade the individual wastewater system meeting with the requirements of the Department of Health prior to the issuance of a Certificate of Occupancy.
14. 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 - State Historic Preservation Division (DLNR-SHPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigative measures have been taken.
15. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
16. 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).

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 Jeff Darrow of the Planning Department at 961-8158.

Sincerely,

**Nancy Carr
Smith**
Digitally signed by Nancy
Carr Smith
Date: 2020.03.06
14:37:00 -10'00'

Nancy Carr Smith, Chair
Leeward Planning Commission

LKernSPP19-204lpc

Enclosure: PC Findings

cc: Dana Kern
Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
State Department of Transportation
State DLNR-HPD
Plan Approval Section
GIS Section

COUNTY OF HAWAI'I
PLANNING COMMISSION FINDINGS

DANA KERN

SPECIAL PERMIT APPLICATION (SPP 19-000204)

Based on the following findings, Special Permit No. 19-000204 is hereby approved to legitimize the conversion of an existing garden store to be used as a K-8 private school for up to 49 students. The subject property is located at 74-4820 Māmalahoa Highway, at the intersection with Palani Road, Honokōhau 1st, North Kona, Hawai'i, TMK: (3) 7-4-006:012.

The applicant is requesting a Special Permit application to change the use of the subject property and existing structures from a garden supply store to a private school with students in grades K-8. The school is currently operating on the subject property in two buildings that were previously permitted as a garden supply store. The school is operated by Kuleana Education, Inc., a domestic non-profit corporation, and is licensed by Hawaii Association of Independent Schools (HAIS). According to the applicant, who is presently serving as the school board president, the school has plans for two phases of development. The current Special Permit application is for Phase One, with a maximum of 49 students and 5 staff members. Phase two would add capacity for 122 additional students and 11 additional staff members. Since the subject request is for Phase One only, the school will apply for an amendment to the Special Permit prior to initiating Phase Two.

The applicant's reason for the request is to establish a school campus that provides a natural setting for the students, to support an educational goal of emphasizing agricultural practices and outdoor activities.

The grounds for approving a Special Permit is based on Rule 6-7 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 or Rural District, whichever the case may be; and (b) the proposed use would promote the effectiveness and objectives of Chapter 205, Hawaii 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. The State Land Use Law and Regulations are intended to preserve, protect and encourage the development of lands for those uses to which they are best suited in the interest of the public 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.

The proposed use is unusual in that a school is not normally considered agricultural in nature. It is reasonable for a school to be considered within the Agricultural district because communities within agricultural districts require certain services that support the agricultural community in which they are located, including schools.

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. 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 Hawai'i. 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 3.281 acres in size and is developed with a garden supply store, concrete decks, paved driveway and parking areas. It is situated within the State Land Use Agricultural district and the County's Agricultural 1-acre (A-1a) zoning district. The land on which the proposed use is located is categorized as "Other Important Agricultural Land" by the Agricultural Lands of Significance 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 mainly as Kaimu, extremely stony peat, (rKED) by the U.S. Soil Survey.

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, 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) The granting of this special permit request would promote the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes, as amended. As evaluated above, the proposed 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 lands to the south and west are similarly zoned A-1a. Further south are properties zoned A-5a, FA-1a, FA-2a, and RA-.5a. To the north and east are properties zoned A-20a and A-3a. Surrounding land uses consist mainly of residential and rural uses, with some large acreage agricultural lands located to the north and west of the subject property. The Grace Community Church is located nearby to the south of the subject property. In the immediate area there are small-scale agricultural operations that produce coffee, avocado and mango. The nearest dwellings are located across Māmalahoa Highway to the east and across Palani Road to the west. The subject property currently has trees and vegetation that will help minimize any possible adverse noise and visual impacts.

Based on the above discussion, the proposed use is not anticipated to have a substantial adverse impact on the surrounding properties, but any possible impacts can be minimized through conditions of approval.

(C) Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. The proposed use will not burden public agencies to provide additional services. The existing public access to the subject property is from Māmalahoa Highway, which is a county dedicated roadway with a 40-foot right-of-way. There is also an existing service access located 350 feet south of the main access, also on Māmalahoa Highway. There is no access from Palani Road, either existing or proposed. Parking will be entirely on site, with no parking allowed on the

access road. An additional point of access is proposed from Māmalahoa Highway, to allow a dedicated ingress and egress for vehicular traffic. Electricity and telephone are available to the property. The property is situated within an area designated as Flood Zone X, an area determined by FEMA to be an Area of Minimal Flood Hazard. A condition of approval is included to require that the applicant meet all applicable County, State and Federal laws, rules, regulations and requirements.

A Traffic Flow Study and Traffic Site Distance Study were prepared during the review process. Existing traffic volumes in the project area are moderate and it is not anticipated that the school will substantially increase traffic volumes. The applicant is proposing to provide a school zone speed limit of 20 m.p.h., according to the Traffic Site Distance Study. Additionally, the applicant proposes removing vegetation that is located to the north and south of the main egress, to provide a 225-foot sight distance.

According to the Department of Water Supply, water is available for up to a maximum daily usage of 1,200 gallons per day from an existing 8-inch waterline on Māmalahoa Highway. The property is assigned three (3) units of water, which equates to an average usage of 400 gallons per day per unit of water (1,200 gpd). The existing 8-inch waterline within Māmalahoa Highway and Palani Road are inadequate to provide the required 2,000 gallons per minute of flow for fire suppression, as per the Department's Water System Standards for schools. As an alternative solution, the applicant has stated that they intend to install fire sprinklers throughout the school buildings, and they will work with the Fire Department to ensure compliance during the building permit review process.

Currently, there is no municipal wastewater system serving the subject property. There is an existing septic system, however the applicant has stated that they will upgrade the wastewater disposal system as needed to comply with Department of Health standards.

(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" services may be allowed, including a private school.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. The property is situated on soil identified as Kaimu extremely stony peat, classified as "E" or "Very Poor" by the Land Study Bureau's Overall Master Productivity Rating and is categorized as "Other Important Agricultural Land" by the Department of Agriculture's ALISH Map. The proposed school will be conducted within the existing building. Based on the above information, the land on 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 proposed school will be conducted within two existing structures on the property, with a combined gross floor area of 5,424 square feet, used previously for a plant nursery and garden supply store. Special Permit No. 825 was approved by the Planning Commission on October 29, 1992 to allow the establishment of a gardening supply store on the

subject property. There will be no significant changes to the existing structures and only minimal changes to the property, to accommodate a redesigned access drive and parking area. Although the proposed school will alter or change the present use of the property, the changes are not be anticipated to be substantial.

(G) The request will not be contrary to the General Plan and other documents such as Design Plans. The County of Hawai'i's General Plan is the policy document for the long-range comprehensive development of the island of Hawai'i. One of the purposes of the General Plan is to guide the pattern of future development in this County based on long-term goals. The General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the property as Urban Expansion, which allows for a mix of high density, medium density, low density, industrial, industrial-commercial and/or open designations in areas where new settlements may be desirable, but where the specific settlement pattern and mix of uses have not yet been determined. Schools are typically found within and adjacent to urban/residential areas and thus would be consistent with this LUPAG designation.

In addition, the proposed use would support the goals and policies of the Land Use element of General Plan.

Land Use Element

- Designate and allocate land areas in appropriate proportions and mix and in keeping with the social, cultural and physical environments of the County.
- Encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

Economic Element

- Economic development and improvements shall be in balance with the physical and social environments of the island of Hawaii.
- Shall provide an economic environment which allows new, expanded, or improved economic opportunities that are compatible with the County's natural and social environment.
- Shall strive for an economic climate which provides its residents an opportunity for choice of occupation.

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 over three (3) miles from the closest shoreline and is not located within the Special Management Area. Given the fact that the property has been cleared, landscaped and developed, 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, the request to legitimize the conversion of an existing garden store to be used as a K-8 private school for up to 49 students is approved.