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## 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

SEP 11 2020

Mr. Zendo Kern  
Kern & Associates  
194 Wiwoole Street  
Hilo, HI 96720

Dear Mr. Kern:

**SUBJECT; Special Permit No. SPP 19-000212**  
**Applicant: Dierdre and Benjamin Imagire**  
**Permitted Use: To Allow the Development and Operation of a Chiropractic, Acupuncture and Massage Clinic and Related Improvements on and Approximately One-Acre Portion of a Two-Acre Property.**  
**Tax Map Key: 1-6-009:017 (por)**

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The Windward Planning Commission, at its meeting on August 12, 2020, considered the above-referenced request to allow the development and operation of a chiropractic, acupuncture and massage clinic and related improvements on an approximately one-acre portion of a two-acre property. The two-acre subject parcel is located at 16-214 Ilima Street, north of Ainaola Boulevard, South Hilo District, Hawai'i.

Approval of this permit is subject to the following conditions:

1. The applicants, successors or assigns shall be responsible for complying with all stated conditions of approval.
2. Construction of the proposed first dwelling shall be completed within five (5) years from the effective date of this permit. Construction of the proposed second dwelling and change of occupancy for the first dwelling shall be completed within five (5) years from the completion of the first dwelling. Prior to applying for a change of use building permit for the chiropractic, acupuncture and massage clinic, the applicant(s), successor(s) or assign(s) shall secure Final Plan Approval

for the proposed development from the Planning Director in accordance with Section 25-2-71(b), Chapter 25 (Zoning Code), Hawai'i County Code. Plans shall identify all existing and/or proposed structure(s), paved driveway access and parking stalls associated with the proposed development. Landscaping shall be indicated on the plans for the purpose of mitigating any adverse noise or visual impacts to adjacent properties in accordance with the requirements of Planning Department's Rule No. 17 (Landscaping Requirements) and Chapter 25 (Zoning Code), Hawai'i County Code.

3. The applicants shall construct a single driveway to access the subject property from Ilima Street.
4. Landscaping shall be provided to screen the chiropractic, acupuncture and massage clinic from Ilima Street.
5. No signage shall be posted on the subject property advertising the chiropractic, acupuncture and massage clinic.
6. Visitors to the chiropractic, acupuncture and massage clinic shall be by appointment only.
7. Only three staff members shall be permitted at one time for the chiropractic, acupuncture and massage clinic.
8. The hours of operation for the business shall be limited from 8:00 AM to 5:30 PM, Monday through Sunday.
9. A drainage study shall be prepared by professional civil engineer licensed in the State of Hawai'i and submitted to the Department of Public Works prior to issuance of a change of use building permit for the chiropractic, acupuncture and massage clinic. Any recommended drainage improvements, if required, shall be constructed meeting with the approval of the Department of Public Works prior to receipt of a Certificate of Occupancy.
10. In the unlikely event that surface or subsurface historic resources, including human skeletal remains, structural remains (e.g. rock walls, terraces, platforms, etc.), cultural deposits, marine shell concentrations, sand deposits, or sink holes are identified during the demolition and/or construction work, cease work in the immediate vicinity of the find, protect the find from additional disturbance and contact the State Historic Preservation Division at (808) 933-7651. Subsequent work shall proceed upon an archaeological clearance from DLNR-SHPD when it finds that sufficient mitigation measures have been taken.

Mr. Zendo Kern  
Kern & Associates  
Page 3

11. The applicants shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.

Should any of these conditions not be met or substantially complied with in a timely fashion, the 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 Jessica Andrews of the Planning Department at 961-8155.

Sincerely,

Thomas T Raffipiy

Digitally signed by Thomas T Raffipiy  
DN: cn=US, e=tom.raffipiy@gmail.com,  
o=Windward Planning Commission,  
cn=Thomas T Raffipiy  
Reason: I attest to the accuracy and  
integrity of this document.  
Date: 2020.09.11 14:41:32 -10'00'

Thomas Raffipiy, Chair  
Windward Planning Commission

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Enclosure: PC Findings

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

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

**DEIRDRE AND BENJAMIN IMAGIRE**  
**SPECIAL PERMIT APPLICATION (SPP 19-000212)**

Based on the following findings, Special Permit No. 19-000212 is hereby approved to allow the development of a chiropractic, acupuncture and massage clinic and related improvements on an approximately one-acre portion of a two-acre property situated in the State Land Use Agricultural District. The subject property is located at 16-214 Ilima Street, between 35<sup>th</sup> and 36<sup>th</sup> avenue, Orchid Land Estates, Kea‘au, Puna, Hawai‘i, TMK: (3) 1-6-009:017.

The Applicants are applying for a Special Permit to develop a chiropractic, acupuncture and massage clinic and related improvements. According to the Applicants, the proposed use would allow two dwellings on the subject parcel, one for commercial operations of the clinic and one to be used as a residence. The first dwelling would be designed and constructed to meet commercial standards. The Applicants propose to use this structure as their residence while constructing the second dwelling on the subject parcel. Prior to obtaining a final inspection for the second dwelling, the Applicants propose to convert the first dwelling to the proposed clinic and commence commercial operations. Additionally, the Applicants propose to build a small detached structure that would serve as a massage treatment room. The Applicants’ proposed site plan includes the following:

- A 576-square foot dwelling that will obtain a change of use in order to be used as a clinic; and
- A 150-square foot detached massage treatment room.
- A dwelling that will be used as the Applicants’ primary residence;
- A compacted gravel parking area with four (4) regular parking stalls and one (1) ADA parking stall.

The criteria for approving a Special Permit are based on Rule 6-6 in the Planning Commission Rules. Rule 6-6 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 the State Land Use Law and Regulations and Chapter 205, HRS, as amended.** In recognizing that lands within 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. The project site consists of 2 acres situated within the County’s Agricultural (A-1a) zoned district, of which the proposed permit area is a 1-acre portion on the southeastern property line. The proposed permit area is not currently being used for agricultural purposes. The proposed chiropractic, acupuncture and massage clinic will not diminish the potential for any future agricultural activity on the

subject property. Therefore, the subject request is considered an unusual and reasonable use of agricultural land.

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 property is not classified by the State or County as important or prime agricultural land. In fact, soils on the property are classified by the Land Study Bureau's Land Classification System as "E" or "Very Poor" for agricultural productivity. Therefore, the proposed use 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) 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 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 properties are zoned Ag-1a and are also 2-acres in size, except for a 1-acre parcel to the northeast of the subject parcel. Surrounding properties are primarily agricultural and residential uses, with many parcels being vacant. The nearest dwelling is located directly opposite the subject property on Ilima Street. As the proposed use will be constructed in a manner that is residential in nature, it is not anticipated to have an 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.** The requested use will not burden public agencies to provide additional services. Access to the property is from Ilima Street, a private road maintained by the Orchidland Community Association. Traffic in the area would increase by about 2 to 3 vehicles per hour as a result of the proposed use. According to the Department of Water Supply (DWS), the subject parcel is not within the service limits of the Department's existing water system. The Applicants propose to use rainwater catchment tanks to supply non-potable and fire suppression water. However, since the Department of Health does not support the use of private rain catchment systems for drinking purposes, a condition will require that the applicants provide bottled drinking water to clinic patients. The subject property is not currently serviced by the County sewer system. According to the Applicants, wastewater will be disposed of via individual wastewater systems meeting the requirements of the State Department of Health (DOH). The property is situated within an area designated as Flood Zone X, an area determined to be outside the 500-year flood plain. Telephone and electrical services are available to the site. Police, Fire and medical services are located nearby in Pāhoā. A condition of approval will be included to require the applicants meet all applicable County, State and Federal laws, rules, regulations and requirements.

**(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. Many of the subdivisions in Puna that were created during this time on agricultural-zoned land have been transitioning to residential uses. Although 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.

**(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 that is unclassified by the Department of Agriculture’s ALISH Map, and is classified as “E” or “Very Poor” by the Land Study Bureau’s Soil Rating. The properties soil type is classified as ‘Keaukaha’ Series, described as highly decomposed plant material with 2 to 10 percent slopes; it is well drained with a high runoff. The proposed request will be conducted on a 1-acre portion of a 2-acre parcel and therefore will not diminish or foreclose future agricultural opportunities.

**(F) The use will not substantially alter or change the essential character of the land and the present use.** The proposed use will be conducted on a 1-acre portion of a 2-acre parcel, and will be constructed in a manner that is residential in nature. A slight increase in traffic of about two to three vehicles per hour will occur but is not expected to change the character of the land. Thus, the proposed use will not substantially alter or change the essential character of the land or its present use.

**(G) The request will not be contrary to the General Plan, Puna 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 located in an area identified as Rural in the General Plan. This category includes existing subdivisions in the State Land Use Agricultural and Rural districts that have a significant residential component. 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. As the use can be considered a commercial facility that serves the residential and agricultural uses in the area, the request will not be contrary to the LUPAG Map designation for this area. Additionally, the approval of the subject request would support the goals and policies of the Land Use and Economic elements of General Plan.

Land Use Element

- Encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

Economic Element

- Provide residents with opportunities to improve their quality of life through economic development that enhances the County’s natural and social environments.

- Strive for an economic climate which provides its residents an opportunity for choice of occupation.

The primary land use goal of the Puna CDP is to direct urban uses towards “village centers.” The subject property is located outside of the Orchidland neighborhood village center; however, as the chiropractic, acupuncture and massage clinic will be constructed in a manner that is residential in nature, it is considered similar to a home occupation and will provide the applicants an additional source of income. Thus, the request is consistent with the goals and objectives of the Puna CDP.

**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 approximately five miles from the nearest coastline and is not located within the Special Management Area. 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.

Based on the above considerations, the proposed chiropractic, acupuncture and massage clinic and related improvements is an unusual and reasonable use of land which would not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.