

County of Hawai'i

PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

June 30, 2008

Mr. Gregory R. Mooers
P.O. Box 1101
Kamuela, HI 96743

Dear Mr. Mooers:

Use Permit Application (USE 08-000012)

Applicant: Congregation of Jehovah's Witnesses

Request: Church Within the Single Family Residential District

Tax Map Key: 6-8-18:36

The Planning Commission at its duly held public hearing on June 20, 2008, voted to approve the above-referenced application to allow the establishment of a church and related improvements on approximately 1.706 acres of land within the Single Family Residential – 10,000 square foot (RS-10) zoned district. The property is located on the east side of Paniolo Avenue, approximately 130 feet south of the Paniolo Avenue – Hooko Street intersection, Waikoloa Village Subdivision, Waikoloa, South Kohala, Hawaii.

Approval of this request is based on the following:

The request includes the following:

- approximately 4,363-square foot church including a lobby with two restrooms
- 1,943-square foot assembly area with seating for 150
- 260-square foot library
- 370-square foot conference room
- storage areas
- approximately 926-square foot caretaker's residence, including an office
- paved parking stalls and landscaping.

The facility will be used for Sunday services, Watchtower Study, Theocratic Ministry School and Book Study. According to the applicant, the Kamuela congregation was

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bifurcated years ago, with some members joining the Honokaa Congregation, while others joined the Kohala Congregation. The number of individuals in the Waikoloa Congregation has increased to a point where a new congregation is justified. Waikoloa Congregation members must currently travel 36 miles to Hawi or 38 miles to Honokaa for worship services, and many elderly in the congregation are reluctant to drive those distances at night for evening services. The applicant states that the proposed church will provide a meeting place for the Waikoloa congregation that was previously part of the Kamuela Congregation. Sunday services will be held from 10 a.m. to 12 noon; Tuesday and Thursday services or study from 7 to 9 p.m.

This approval does not sanction the specific plans submitted with the application as they may be subject to change given the specific code and regulatory requirements of the affected agencies and is based on the following findings:

Rule 7 (Use Permits) of the Planning Commission's Rules of Practice and Procedure states that the Planning Commission may approve a Use Permit based on the certain criteria. Section 7-6, Criteria for Granting a Use Permit, states:

"The Commission may approve a use permit upon finding that:

- (a) The granting of the proposed use shall be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning Code, and the County General Plan;
- (b) The granting of the proposed use shall not be materially detrimental to the public welfare nor cause substantial, adverse impact to the community's character or to surrounding properties; and
- (c) The granting of the proposed use shall not unreasonably burden public agencies to provide roads and streets, sewer, water, drainage, schools, police and fire protection and other related infrastructure."

The granting of these requests will be consistent with the general purpose of the zoned district, the intent and purpose of the Zoning Code and the County General Plan. The development of a church and related improvements in the State Land Use Urban district and RS-10 zoned district may be allowed through the granting of a Use Permit. The Use Permit process provides an avenue to review and analyze a proposed project on a case-by-case basis relative to infrastructure and impacts on surrounding properties and existing uses as well as the goals and policies of the General Plan.

The intent and purpose of the Zoning Code is to promote health, safety, morals or the general welfare of the community through regulations and restrictions relative to the

location and use of buildings, off-street parking, the percentage of lots that may be occupied, the density of population and land for trade, industry, residence or other purposes.

The proposed project will complement the goals, policies and standards of, among others, the Land Use and Economic Elements of the General Plan. The General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the subject property as Low Density Urban, which includes residential, with ancillary community and public uses, and neighborhood and convenience-type commercial uses. The property is unclassified by the Land Study Bureau's Detailed Land Classification System and ALISH map.

The desired use will not be materially detrimental to the public welfare nor cause substantial adverse impact to the community's character or surrounding properties. The proposed request, if approved, will allow the development of a church and related improvements within the RS-10 zoned district. Surrounding properties are zoned RS-10 with the primary use being single-family residences. There are two churches in the area; Waikoloa Community Church on Paniolo Avenue immediately north of and adjacent to the project site, and the Waikoloa Baptist Church and Early Childhood Education Center located approximately 450 feet southwest of the site. Therefore, the proposed use will not detract from the present character of the area. Due to the existing noise and traffic inherent to the activities already established in the area, it is not anticipated that noise and traffic associated with the proposed use will adversely impact surrounding properties. The applicant intends to limit their activities to mitigate potential noise emanating from the church. Landscaping will be required during Final Plan Approval. Church services offered by the proposed use will continue to supplement existing religious services in the community. Short-term potential noise impacts will be limited to construction noise associated with earthmoving equipment.

The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, police and fire protection, and other related infrastructure. Water is available to the site from the Waikoloa Water Company. According to the applicant, access to the property is from Lahilahi Street instead of Paniolo Avenue, as there is a 10-foot wide no-access easement identified along Paniolo Avenue under Subdivision No. 5486. Both Lahilahi Street and Paniolo Avenue front the property. Lahilahi Street is a County roadway with an approximate 40-foot wide pavement, asphalt curbs and no sidewalks within a 60-foot wide right-of-way. Paniolo Avenue is a County street with an approximate 60-foot wide pavement in good condition, with curb, gutter and sidewalk, all within an approximate 80-foot right-of-way. The applicant's, as well as the Police Department's preferred access is from Paniolo Avenue. The Department of Public Works (DPW) states that should the applicant request an amendment to the subdivision map to gain access from Paniolo Avenue, access shall meet

with the approval of the DPW and be limited to one approach. The Environmental Assessment states that "the applicant will apply for a modification of a subdivision condition prohibiting access from Paniolo Drive, as this street is more suitable for access to a church than the frontage on Lahilahi Street." An individual wastewater treatment system will be installed, meeting with the approval of the Department of Health. Any impacts from soil erosion and runoff during site preparation and construction phases can be adequately mitigated through compliance with existing County erosion and sedimentation control regulations as well as standard construction practices, and additional conditions proposed in this permit.

All other utilities are available to the site. Police and fire stations are located less than 1.5 miles from the property. The North Hawaii Community Hospital is located in Waimea.

The subject request is not contrary to Chapter 205A, Hawaii Revised Statutes, relating to Coastal Zone Management Area. The property is not located in the Special Management Area. There are no identified recreational resources, historic resources, public access to the shoreline or mountain areas, scenic and open space preserves, coastal ecosystems, marine resources or other natural and environmental resources in the area. Thus, the proposed request and use of the property will not adversely impact those resources. According to the applicant, an archaeological survey was performed by Bishop Museum in 1972. The project site was included in the survey, and five sites were recorded, none of which required further work or preservation. A subsequent reconnaissance survey in December, 2007 revealed no apparent archaeological features on the site. In a letter dated May 7, 2008, the DLNR-HPD stated that no historic properties will be affected by this undertaking because residential development/urbanization and previous grubbing/grading have altered the land.

According to the applicant, a walk-through biological survey was conducted by Patrick Hart, Ph.D., and Ron Terry, Ph.D., in January 2008. The existing vegetation consisted mostly of alien buffel grass and kiawe trees, with various herbs, grasses and shrubs. The site does not contain the habitat that supports native animals. No listed or proposed threatened or endangered animal or plant species were found on the site.

According to the applicant, as part of an Environmental Assessment conducted for Waikoloa Park Improvements in 2002, Mr. Jiro Yamaguchi was interviewed. According to Mr. Yamaguchi, no archaeological sites are present, and there is no evidence of traditional activities occurring on or near the project site. The applicant further states that, as part of the current request, the Office of Hawaiian Affairs and the South Kohala Hawaiian Civic Club were contacted; however, no response was received from either organization.

There is no record of a designated public access to the shoreline or mountain areas that traverses the property. According to the Flood Insurance Rate Map (FIRM), the property is located in Zone "X", an area outside of the 500-year flood plain. There are no valued cultural, historical or natural resources on the property and there is no evidence of any traditional and customary Native Hawaiian rights being practiced on the site. Thus, it is not anticipated that the proposed request will have any adverse impact on cultural or historical resources in the area.

In view of the recent Hawaii State Supreme Court's "PASH" and "*Ka Pa'akai O Ka'Aina*" decisions, the issue relative to native Hawaiian gathering and fishing rights must be addressed in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site:

Investigation of valued resources: Although no formal studies were submitted, several studies conducted earlier indicate that no valuable cultural, historical, and natural resources exist within the project area. The DLNR-HPD concurs with these findings.

The valuable cultural, historical, and natural resources found in the project area:

According to the applicant, no listed or proposed threatened or endangered animal or plant species was found on the site, and the DLNR-HPD states that no historic properties will be affected by this undertaking because previous grubbing/grading and urbanization has altered the land. However, a condition will be included to require the applicant to notify the DLNR-HPD should any archaeological sites be encountered during the course of development.

Possible adverse effect or impairment of valued resources: The proposed development will require site grading and grubbing, and construction of various improvements. Native plants could be destroyed by construction and ground alteration. The proposed development will also alter the existing fauna on the site.

Feasible actions to protect native Hawaiian rights: There is no evidence of any traditional and customary Native Hawaiian rights being practiced on the site, nor existence of any known valued cultural, historical or native resources in the area. Therefore, no action is necessary to protect these rights.

Based on the above, the construction of a church and related improvements would be compatible with the existing land uses and the physical and social environment of the area and would promote the effectiveness and objectives of the Zoning Code and General Plan. Approval of the request is subject to the following conditions. Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke this permit.

1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.
2. Construction of the proposed development shall be completed within five (5) years from the effective date of this permit. Prior to construction, the applicant, successors or assigns shall secure Final Plan Approval for the proposed development from the Planning Director in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawaii County Code. Plans shall identify all existing and/or proposed structures, paved driveway accesses and parking stalls associated with the proposed development. Landscaping shall be included on the plans to mitigate any potential adverse noise or visual impacts to adjacent properties in accordance with the Planning Department's Rule No. 17 (Landscaping Requirements) and Chapter 25, (Zoning Code), Hawaii County Code for a commercial area adjoining a residential area, where it abuts residential lots.
3. Access to the property, including the location of the approach and provision of adequate sight distances, shall meet with the approval of the Department of Public Works and be limited to one approach.
4. All driveway connections shall conform to Chapter 22, Streets and Sidewalks, of the Hawaii County Code.
5. A drainage study shall be prepared and submitted to the Department of Public Works for review and approval, prior to submittal of plans for Plan Approval review. Drainage improvements, if required, shall be constructed, meeting with the approval of the Department of Public Works prior to the issuance of a Certificate of Occupancy.
6. The applicant shall comply with Chapter 11-55, Water Pollution Control, Hawaii Administrative Rules, Department of Health, which requires an NPDES permit for certain construction activity.
7. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties.
8. Septic tank(s) shall be installed, meeting with the standards and requirements of the State Department of Health, prior to the issuance of a Certificate of Occupancy.
9. A Solid Waste Management Plan shall be prepared and submitted for approval to the Department of Environmental Management for review and approval prior to the issuance of a Certificate of Occupancy.

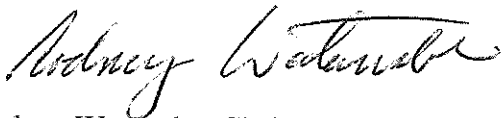
10. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings or walls be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-HPD when it finds that sufficient mitigative measures have been taken.
11. The applicant shall comply with all other applicable County, State, and Federal laws, rules, regulations and requirements.
12. An initial extension of time for the performance of conditions within the permit may be granted by the Planning 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 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 the conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate rezoning of the area to its original or more appropriate designation.

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Should you have any questions, please contact Norman Hayashi of the Planning Department at 961-8288.

Sincerely,



Rodney Watanabe, Chairman
Planning Commission

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cc: Mr. Newton Chung
Department of Public Works
Department of Water Supply
County Real Property Tax Division - Kona
Planning Department - Kona
DOT-Highways, Honolulu