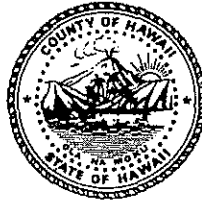


William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

County of Hawaii

PLANNING DEPARTMENT

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

September 1, 2009

Newton J. Chu, Esq.
120 Pauahi Street, Suite 312
Hilo, HI 96720

Dear Mr. Chu:

Use Permit Application (USE 09-000015)
Applicant: Borthwick Hawaii Funeral Home
Request: Crematorium
Tax Map Key: 2-3-18:34 and 54

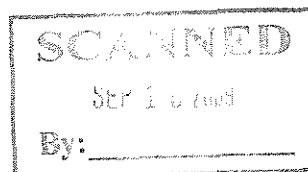
Enclosed is the Windward Planning Commission's Findings of Fact, Conclusions of Law, and Decision and Order regarding the above-referenced application which was approved by the Commission on August 7, 2009.

Sincerely,


BJ LEITHEAD-TODD
Planning Director

Lborthwick02syhf
Enclosure

cc/enc: Mr. David H. Myers
Mr. Mark Ballard
Department of Public Works
Department of Water Supply
Brandon Gonzalez, Esq.
Amy Self, Esq.
Mr. George N. Baker



PLANNING COMMISSION
COUNTY OF HAWAI'I

In the Matter of the Application

of

Borthwick Hawai'i Funeral Home

Use Permit to allow the establishment of a crematorium on 24,572 square feet of land situated within the General Commercial – 7,500 square feet (CG-7.5) zoned district in Hilo, Hawai'i, TMK: (3) 2-3-018:034 & 054.

USE 09-000015

FINDINGS OF FACT;
CONCLUSIONS OF LAW; ORDER;
CERTIFICATE OF SERVICE

Hearing Date: August 7, 2009

FINDINGS OF FACT AND CONCLUSIONS OF LAW

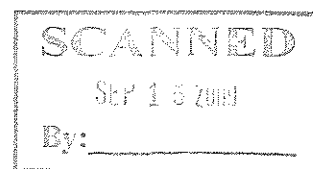
This matter came on for contested case hearing before the Hawai'i County Windward Planning Commission (hereinafter "Planning Commission") on August 7, 2009. Borthwick Hawai'i Funeral Home (hereinafter "Applicant"), was represented by its Counsel, Newton J. Chu of the law firm Torkildson, Katz, Moore, Hetherington & Harris. Intervenor A.P. Baker, Inc. (hereinafter "Baker") was represented by Lynne Venhuizen (hereinafter "Venhuizen"), and the Planning Department was represented by Bobby Jean Leithead-Todd, Director (hereinafter "Director").

The Planning Commission as a whole conducted the hearing on the Use Permit application with Commissioner Rell Woodward as the Chairman.

The Planning Commission reviewed evidence, heard testimony, accepted exhibits, and heard arguments at the hearing held on August 7, 2009, at the County of Hawai'i Aupuni Center Conference Room, 101 Pauahi Street, Hilo, Hawai'i.

All Commissioners voting on the instant Use Permit Application have reviewed the entire record and files herein.

The Planning Commission, having considered the entire record, reviewed the evidence and having heard and considered the arguments, makes the following Findings of Facts and Conclusions of Law:



I. FINDINGS OF FACT

A. Background

1. **Borthwick Hawai'i Funeral Home.** Applicant submitted an application for a Use Permit to allow the establishment of a crematorium on 24,572 square feet of land situated within the General Commercial- 7,500 square feet (CG-7.5) zoned district, located in Hilo, Hawai'i, Tax Map Key No. (TMK): (3) 2-3-018:034 & 54.

2. The Applicant provided statutory notice to the surrounding property owners of the August 7, 2009, Planning Commission hearing.

3. Borthwick Hawai'i Funeral Home operates a mortuary in Hilo, Hawai'i. The Property is owned by Family Funeral Services LLC, who has given authorization to submit the application to Borthwick Hawai'i Funeral Home (hereinafter "Borthwick").

4. Borthwick operates a mortuary on the property located at TMK: (3) 2-3-018:034 & 054.

5. **Applicant's Request.** The Applicant is requesting a Use Permit to allow the operation of a crematorium within the existing facilities of Borthwick.

6. The cremator is a Power-Pak II, smoke-Buster 140 manufactured by Matthews International. The manufacturer suggests a stack height of three feet above the highest elevation of the building roof and three feet above the highest elevation of any building within fifty feet of the stack. After considering the height of their building and the surrounding buildings, the stack height will be twenty seven (27) feet from ground elevation. This will be three feet taller than the current highest elevation of their building, which is twenty-four (24) feet.

7. The Applicant would like to expand the service offered and make available to the community a place for funeral ceremonies followed by cremation as an option for final disposition of the deceased. Additionally, an in-house cremator would allow more flexibility for clients who wish to have services completed in a more timely manner. The installation of a cremator would also create jobs during the installation, and be more environmentally friendly than embalming and burials.

8. **State Land Use Designation.** The State Land Use classification is Urban.

9. **County Zoning.** The County zoning is General Commercial (CG-7.5). A crematorium may be permitted within the General Commercial (CG) zoned district with a Use Permit.

10. **General Plan Land Use Pattern Allocation Guide (“LUPAG”) Map.** The property is designated as High Density Urban in the County’s General Plan.

11. **Hilo Community Development Plan.** The Hilo Community Development Plan adopted by Planning Commission Resolution No. 1 on May 21, 1975, identifies the area as CG-7.5.

12. **Special Management Area (“SMA”).** The Property is not within the Special Management Area and is located approximately 3,000 feet from the nearest coastline.

13. **Public Testimony.** Jeanette Ostrander (hereinafter “Ostrander”), Lynne Venhuizen (hereinafter “Venhuizen”) and Louis Rehwinkel (hereinafter “Rehwinkel”) provided public testimony on this matter. Ostrander stated that she is a tenant of the apartment building located next to the Borthwick Mortuary parking lot. Ostrander is concerned about the winds blowing into her apartment. Venhuizen stated that she is the resident manager of the apartment complex and that many residents are unstable and receive help through agencies such as Adult Mental Health. Venhuizen expressed concern of the psychological effects of having a crematorium next door on the people that are unstable living in the apartment. Rehwinkel stated that he works in the maintenance department for Baker. Rehwinkel expressed concern about the wind blowing on the apartments and also expressed concern with odor and emissions from the crematorium.

14. There were other documents and signed petitions received, both in support of and against the proposed request.

15. **Intervenor Standing.** A Petition for Standing in a Contested Case Hearing was received from Mr. George N. Baker, President of A.P. Baker, Inc. on July 28, 2009. Mr. Baker did not attend the contested case hearing. In his place, Venhuizen attended the hearing. There was an issue whether Venhuizen had legal

authority to represent Baker. After some debate by the Commissioners and two executive sessions, the Intervenor was granted standing at the August 7, 2009, Planning Commission hearing.

16. **Intervenor Testimony.** Intervenor's resident manager Venhuizen testified at the contested case hearing. Venhuizen had a general objection to the use permit being granted.

17. Anthony Lombardi, Divisions Operations Manager for Matthew's Cremation ("Lombardi"), whose business address is 2045 Sprinton Boulevard, Apaca, Florida 32703 testified as an expert of the cremator Power-Pak II, smoke-Buster 140 for Applicant. During the course of Lombardi's testimony, he addressed the concerns raised by Intervenor and the public testifiers regarding emissions, noise, and compliance with applicable laws.

B. Description of the Project Site and Surrounding Area

18. **Project Site.** The request involves two properties, Parcels 54 and 34. Parcel 54 is rectangular in shape and is 10,402 square feet in size. Both Parcels are surrounded by Kino'ole Street, Alenaio Street and Kūkūau Street. The mortuary, which is 6,202 square feet in size, is situated mainly on Parcel 54. Parcel 34 is also rectangular in shape and is 14,170 square feet in size. Parcel 34 is located on Kūkūau Street bordering Parcel 54 to the west. The cremator will be located within the portion of the structure that is encroaching on Parcel 34. There is also a dwelling located on Parcel 34.

19. **Surrounding Zoning/Land Uses.** The surrounding properties are similarly zoned CG-7.5 with properties zoned RM-1 further west. To the south across Kūkūau Street is a vacant commercial structure and several dwellings. Further south is the HFS Federal Credit Union. To the west is a three-story apartment complex on the corner of Kūkūau Street and Ululani Street that borders Parcel 34. To the north are dwellings that are situated along Kino'ole Street. To the east across Kino'ole Street are dwellings and a physical therapy office.

20. **USDA Soil Type.** Keaukaha extremely rocky muck, 6 to 20 percent slopes (rKFD).

21. **ALISH.** Existing Urban Development.

22. **LAND STUDY BUREAU Soil Rating.** Existing Urban Development.

23. **FIRM.** The project site is located within Zone X, areas determined to be outside the 500-year flood plain.

24. **Floral and Fauna Resources.** The site has been developed. No impacts to flora and fauna are expected.

25. **Archaeological/Historical Resources.** The properties have been developed with a mortuary, a dwelling and parking area. By letter dated August 25, 2008, the Applicant has requested a letter of “no effect” from the State Department of Land and Natural Resources Historic Preservation Division (“DLNR-HPD”). No one came forward at the contested case claiming any religious or cultural practices on the Property.

26. **Public Access.** There is no public access to the mountain or the shoreline that traverses the Property.

27. **Valued Cultural Resources.** There are no valued cultural, historical or native resources nor has any traditional and customary native Hawaiian rights been practiced on the subject property.

C. Public Facilities, Utilities and Services

28. **Access.** Access to the subject property is from Kino‘ole Street onto Alenaio Street. Kino‘ole Street is a County-owned roadway with an approximate 30-foot asphalt paved road with curb, gutter and sidewalks within an approximate 60-foot wide right-of-way. Alenaio Street is a County owned roadway with an approximate 18-foot asphalt paved road within an approximate 30-foot wide right-of-way.

29. **Traffic Impacts.** According to the applicant, there will be no impact on traffic conditions.

30. **Water.** County water is available to the facility.

31. **Wastewater.** The mortuary is connected to the County sewer system from Parcel 34.

32. **Solid Waste.** Solid waste will be handled by private haulers.

33. **Other Essential Utilities and Services.** Electricity, telephone, and other services are available at the site. Police and fire protection services are available within one mile from the property.

II. CONCLUSIONS OF LAW

Based on the foregoing Findings of Fact, the Planning Commission makes the following Conclusions of Law:

1. The Planning Commission has jurisdiction over this application.
2. The granting of the request to allow the establishment of a crematorium within the existing Borthwick building on the property zoned General Commercial (CG-7.5) on 24,572 square feet of land located at the western corner of Kino'ole Street and Kūkūau Street, Kūkūau 2nd, South Hilo, Hawai'i, TMK: (3) 2-3-018:034 and 054 is consistent with the general purpose of the zoned district, the intent and purpose of the Zoning Code, and the County General Plan.
3. The proposed use is not materially detrimental to the public welfare nor will it cause substantial, adverse impact to the community's character or to surrounding properties.
4. The proposed use will not unreasonably burden public agencies to provide roads and streets, sewer, water, drainage, schools, police and fire protection and other related infrastructure.
5. The proposed use will not impact any recreational resources, including access to and along the shoreline, mountain access, scenic and open space nor visual resources, coastal ecosystems, and marine coastal resources.
6. The proposed use is not contrary to the objectives and policies of the Coastal Zone Management Program.
7. The proposed use will not have any adverse impact on cultural, historical, or native resources in the area.
8. Therefore, the Planning Commission finds and concludes that Use Permit Application No. 09-000015 should be granted.

III. ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Windward Planning Commission grants approval of Use Permit Application No. 09-000015 subject to the following conditions:

1. The applicant, successor or assigns shall be responsible for complying with all stated conditions of approval.
2. The applicant shall consolidate Parcels 54 and 34 within two (2) years from the effective date of this permit.
3. The crematorium shall be established within two (2) years from the effective date of this permit.
4. The crematorium shall be operated without smoke (smokeless) and without odor (odorless).
5. The crematorium shall not emit particulate matter that settles on surrounding properties.
6. The crematorium shall operate without noise that is audible to the surrounding properties.
7. The applicant shall have a backup generator for the crematorium.
8. The applicant shall utilize the crematorium business only in conjunction with Borthwick Hawai'i Funeral Home. No outsourcing of the crematorium business shall be allowed.
9. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements, including the Department of Health, Department of Environmental Management, Department of Public Works and the Environmental Protection Agency (EPA) for this use.
10. Any complaints received by the applicant shall be forwarded to the Planning Director. The Planning Director shall investigate and, if necessary, suspend the permit. If the complaint(s) is not resolved, the Planning Director shall then refer the matter to the Planning Commission to revoke the permit. Upon appropriate findings by the Planning Commission, if the applicant fails to comply with the conditions of approval or has caused any unreasonable interference or nuisance on the surrounding community, the permit may be revoked.

11. 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 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 within a timely fashion, the Director may initiate procedures to revoke the permit.

Dated: Hilo, Hawai'i, SEP 01 2009.

By Rell Woodward

Rell Woodward, Chairman
Windward Planning Commission

PLANNING COMMISSION
COUNTY OF HAWAI'I

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USE 09-000015

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was served upon the following
by hand delivery or mailing the same, postage prepaid, on SEP 01 2009 :

	<u>U.S. MAIL</u>	<u>HAND DELIVERY</u>
Mr. George N. Baker, President A.P. Baker, Inc. 3091 East Manoa Road Honolulu, HI 96822-1505	X	
Newton J. Chu, Esq. Torkildson, Katz, Moore, Hetherington & Harris 120 Pauahi Street, Ste. 312 Hilo, HI 96720	X	
Ms. Bobby Jean Leithead-Todd Planning Director Planning Department 101 Pauahi Street, Suite 3 Hilo, HI 96720		X
Brandon Gonzalez, Esq. Corporation Counsel County of Hawai'i 101 Aupuni Street, Suite 325 Hilo, HI 96720		X

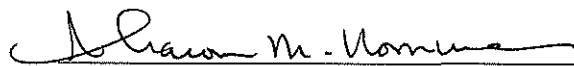
U.S. MAIL

HAND DELIVERY

Amy Self, Esq.
Corporation Counsel
County of Hawai'i
101 Aupuni Street, Suite 325
Hilo, HI 96720

X

DATED: Hilo, Hawai'i, SEP 01 2009



Sharon Nomura, Secretary
Windward Planning Commission