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

August 1, 2006

Mr. Paul Bleck
P.O. Box 4771
Kailua-Kona, HI 96745

Dear Mr. Bleck:

Use Permit No. 99
Applicant: Waikoloa Baptist Church
Request: Time Extension to Condition No. 4 (Final Plan Approval) and No. 5 (Construction)
Tax Map Key: 6-8-2:portions 26 and 31

The Planning Commission at its duly held public hearing on July 21, 2006, voted to approve the above-referenced request for an amendment to Condition No. 4 (time to secure Final Plan Approval) and Condition No. 5 (time to complete construction) of Use Permit No. 99, which allowed the establishment of a church, day care facilities, mission residences, recreational area and related improvements on 12.381 acres of land situated within the County's Single Family Residential – 10,000 square foot (RS-10) zoned district. The property is located within Waikoloa Village at the northwest corner of the Paniolo Drive and Puu-Nui Street intersection, Waikoloa, South Kohala, Hawaii.

Approval of this request is based on the following:

Use Permit No. 99 was approved by the Planning Commission on March 24, 1992, which allowed the establishment of a church, day care facilities, mission residences, recreational area and related improvements on 12.381 acres of land situated within the County's Single Family Residential-10,000 square foot (RS-10) zoned district. The permit was subject in part, to the following Condition No. 4 and Condition No. 5:

"4. Final Plan Approval for Phase II and related improvements shall be secured from the Planning Department within two years from the date of completion of Phase I. To assure adequate time for plan approval review and in accordance with Chapter 25-244 (Zoning Code), plans shall be submitted a minimum of forty-five days

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prior to the date by which plan approval must be secured. Detailed landscaping, parking, and interior traffic circulation patterns shall be included on plans submitted."

"5. Construction of Phase II shall commence (building permit) within one year from the date of receipt of Final Plan Approval for Phase II and shall be completed within one year thereafter (certificate of occupancy)."

On March 1, 1993, Hawaii Baptist Convention requested a 12-month extension of time to comply with Condition No. 2, wherein to secure Final Plan Approval for Phase I. On April 8, 1993 the Planning Director granted an administrative approval for an extension of time to comply with Condition No. 2 until March 24, 1994.

On January 28, 1994, Hawaii Baptist Convention requested a second 12-month extension of time to secure Final Plan Approval for Phase I. The reason for the request was due to the death of the pastor. The Planning Director granted a second administrative approval for an extension of time to comply with Condition No. 2 until March 24, 1995.

On July 7, 1994, Final Plan Approval for the new church and day care center building was issued by the Planning Director.

Building Permit No. 945735 was issued for a day care, church, office, kitchen, hall, covered center lanai, 4 bedrooms, 1 and 1/2 bath and chapel on September 15, 1994 and was completed on August 22, 1996.

On August 1, 1996, the Planning Commission approved an amendment to Condition No. 8 (Curb, Gutter and Sidewalk Improvements) to allow the improvements to be completed in two phases prior to December 31, 1999. According to the applicant, the entire length of the property fronting Paniolo Avenue was completed with curb, gutter and sidewalk as of 1998.

Approval of this request would not be contrary to the General Plan or the Zoning Code. The amendment to Condition No. 4 and Condition No. 5 would not be contrary to the original reasons for granting the Use Permit. The request would be consistent with the Land Use Element of the General Plan which states "Designate and allocate lands in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the County" and to "Encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment." It is felt that the granting of this request at this particular location will provide a convenient service to the growing residential community while maintaining the residential community and the residential character of the area.

The inability of the applicant to comply with the requirements of Condition No. 4 and Condition No. 5 of Use Permit No. 99 is the result of conditions which could not have been foreseen or are beyond the control of the applicant. Delays in constructing the project were due to a change in staff at the Waikoloa Baptist Church, which has caused delays in organizing the project and with the follow-up. Additionally, funding has not been available to build all the components in the time frame originally set. To date the applicant has spent over $260,000 on the construction of the project, all of which as been donated. These events could not have been foreseen and are not the result of their fault or negligence.

The applicant is requesting time extensions for Condition No. 4 and Condition No. 5 to obtain Final Plan Approval and to commence and complete construction of the remainder of the development. The approval of the amendment requests will allow the applicant to complete the remainder of the development in a timely manner.

Based on the above, it is recommended that the request for amendment to Condition No. 4 and Condition No. 5 be approved.

Approval of this amendment is subject to the following conditions (new material is underscored and deleted material is bracketed):

1. The petitioner, its successors or assigns shall be responsible for complying with all conditions of approval.

2. Final Plan Approval for Phase I and related improvements shall be secured from the Planning Department within one year from the effective date of this permit. To assure adequate time for plan approval review in accordance with Chapter [~~25-244~~]25-2-72 (Zoning Code), plans shall be submitted a minimum of forty-five days prior to the date by which plan approval must be secured. Detailed landscaping, parking, and interior traffic circulation patterns shall be included on plans submitted.

3. Construction of Phase I shall commence (building permit) within one year from the date of receipt for Final Plan Approval and shall be completed within two years thereafter (certificate of occupancy).

4. Final Plan Approval for [~~Phase II~~]the remainder of the development and related improvements shall be secured from the Planning Department within two (2) years from the [~~date of completion of Phase I~~] effective date of this amendment. To assure adequate time for plan approval review and in accordance with Chapter [~~25-244~~]25-2-72 (Zoning Code), plans shall be submitted a minimum of forty-five days prior to the date by which plan approval must be secured. Detailed

landscaping, parking, and interior traffic circulation patterns shall be included on plans submitted.

5. Construction of [~~Phase II~~]the remainder of the development shall commence (building permit) within one year from the date of receipt of Final Plan Approval for [~~Phase II~~]the remainder of the development and shall be completed within [~~one~~]ten years thereafter (certificate of occupancy).

6. The applicant shall prepare and submit a drainage study of the subject property for the review and approval by the Department of Public Works. The applicant shall provide all drainage improvements as may be required by the Department of Public Works prior to the issuance of a certificate of occupancy of the proposed development.

7. Access to the project site, including adequate sight distance, shall meet with the approval of the Department of Public Works prior to the issuance of a certificate of occupancy for any structure in Phase I. The applicant shall also restripe that portion of Paniolo Drive in the vicinity of the subject property to include a left turn lane at a time to be determined by and in the manner meeting with the approval of the Department of Public Works.

8. Curb, gutter and sidewalk improvements shall be installed in two phases. The first phase of curb, gutter and sidewalk installation shall include the property frontage beginning at the northern boundary of the property to and including any access points and be completed prior to the issuance of a certificate of occupancy for Phase I of the development. The second phase of curb, gutter and sidewalk installation shall include the remainder of the property frontage and be completed prior to December 31, 1999.

9. Should any unidentified sites or remains such as artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings or walks be encountered, work in the immediate area shall cease and the Planning Department shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the Planning Department when it finds that sufficient mitigative measures have been taken.

10. [~~Comply with all other applicable laws, rules, regulations and requirements.~~]The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.

11. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the approval of [~~the permit~~]this amendment. The report shall

include, but not be limited to, the status of the development and to what extent the conditions of approval are being complied with. This condition shall remain in effect until all of the conditions of approval have been complied and the Planning Director acknowledges that further reports are not required.

12. [~~An 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 or 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).~~]<u>If the applicant should require an additional extension of time, the applicant shall submit its request to the Planning Commission for appropriate action.</u>

Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director [~~shall~~]<u>may</u> initiate procedures.

This approval does not, however, sanction the specific plans submitted with the request as they may be subject to change given specific code and regulatory requirements of the affected agencies.

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

Sincerely,

C. Kimo Alameda, Chairman
Planning Commission

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cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
Planning Department - Kona
Waikoloa Baptist Church