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

December 24, 2008

Ms. Juli Szilagyi
Hawi Jodo Mission
P.O. Box 55
Hawi, HI 96719

Dear Ms. Szilagyi:

Use Permit (USE 07-000009)
Applicant: Hawi Jodo Mission
Request: Amendment to Allow Preschool
Tax Map Key: 5-5-11:39

The Planning Commission at its duly held public hearing on December 11, 2008, voted to approve the above-referenced request for an amendment to Use Permit No. 07-000009 to include a pre-school. Use Permit No. 07-000009 initially allowed the establishment of an elementary school (K-6). Also requested are time extensions to Condition No. 2 (submittal of water usage calculations and water commitment) and Condition No. 3 (submittal of plans for plan approval) and deletion of the paved driveway access and paved parking requirements in Condition No. 3. The property is located at the southeast corner of Highway 270 (Akoni Pule Highway) and Ilina Road, Kahei House Lots, North Kohala, Hawaii.

Approval of this request is based on the following:

The applicant is requesting several amendments to Use Permit No. 07-000009, which initially allowed the establishment of an elementary school (K-6), which consists of a 3,060-square foot school building with a maximum school capacity of 105 students. The amendments include the following:

- Add a pre-school to the approved elementary school (K-6). The maximum amount of 105 students will not increase.

- A six-month time extension to comply with Condition No. 2 (submittal of water usage calculations and water commitment).

- A six-month time extension to comply with Condition No. 3 (submittal of plans for plan approval).

- Deletion of the paved driveway access and paved parking requirements as required in Condition No. 3.

The preschool was not initially requested because the previous persons involved in applying for the use permit were not interested in having a licensed preschool. Currently, there is a new director for the school who is qualified to teach early childhood education and preschool aged children. The Hawi area has a shortage of early childhood education centers and there is a need in the community for quality licensed preschools.

The applicant also needs additional time to comply with the requirements of Condition Nos. 2 and 3.

Lastly, the applicant is requesting to delete the requirement to pave the driveway access and provide paved parking stalls as required in Condition No. 3. There is currently a large flat surface area covered with gravel leading from the highway to the school. The surface is regularly driven on by vehicles and is used as a parking area with no problem. At this time, the paving requirement would be too expensive for the applicant to undertake.

In considering a Use Permit for any proposed use, Rule 7 of the Planning Commission relating to Use Permits requires that such action conform to the following guidelines:

A. The granting of the proposed use shall be consistent with the general purpose of the zoned 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, sewers, water, drainage, school improvements, police and fire protection and other related infrastructure.

The proposed amendments to the school facility meets the guidelines for approval of a Use Permit, for the reasons outlined below:

The granting of the proposed amendments shall be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning Code, and the County 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 use is situated within the State Land Use Urban district and County's Single Family Residential (RS-15) zoned district. According to the Zoning Code, schools may be permitted in the RS district provided that a Use Permit is obtained from the Planning Commission. 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 proposed amendment will add a preschool to the recently permitted elementary school (K-6) without increasing the total amount of students.

The applicant is also requesting a 6-month time extension to comply with Condition No. 3, which is the time to submit plans for Plan Approval. Plan Approval provides a method of allowing closer inspection of the proposed development in order to ensure conformance with the General Plan, to assure that the intent and purpose of the Zoning Code as described above are carried out, and to ensure that any pertinent conditions of previous approvals related to the development have been implemented. Based on this information, the proposed amendment requests are consistent with the general purpose of the zoning district and the intent and purpose of the Zoning Code.

The County of Hawaii's General Plan is the policy document for the long range comprehensive development of the island of Hawaii. 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 Low Density Urban, which allows for residential, with ancillary community and public uses, and neighborhood and convenience-type commercial uses with an overall residential density of up to six units per acre.

The amendment to the school facility will be consistent with the following goals, policies and standards of the Economic and Land Use elements of the General Plan:

Economic Element

- Economic development and improvements shall be in balance with the physical, social and cultural environments of the island of Hawaii.

- Provide an economic environment that allows new, expanded, or improved economic opportunities that are compatible with the County's cultural, natural and social environment.

Land Use Element

- Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the County.

- Promote and encourage the rehabilitation and use of urban areas that are serviced by basic community facilities and utilities.

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

Land Use Element - Single Family Residential

- To provide single-family residential areas conveniently located to public and private services, shopping, other community activities and convenient access to employment centers that takes natural beauty into consideration.

- To enhance the overall quality of life in our residential communities.

Based on the above information, the proposed amendments are consistent with the General Plan designation and are in keeping with the goals, policies and standards of the General Plan.

The granting of the proposed amendments shall not be materially detrimental to the public welfare nor cause substantial, adverse impact to the community's character or to surrounding properties. Surrounding properties are similarly zoned RS-15. To the north across Akoni-Pule Highway is the Kohala Mission School and the Seventh Day Adventist Church. To the east bordering the property is the Hawi Jodo Mission Church and further east is the Sacred Hearts Catholic Church. To the west and southwest are single family dwellings. To the south is a vacant property owned the by State of Hawaii that is approximately 25 acres in size.

The school is located within a structure that has been constructed since 1905 on an approximate one-acre parcel. The school will operate at staggered times to avoid traffic conflicts with the Kohala Mission School located across the street. This will help minimize any traffic impacts in the area. Therefore, it is anticipated that the granting of the proposed amendment requests will not be materially detrimental to the public welfare nor cause substantial, adverse impact to the community's character or to surrounding properties.

The granting of the proposed amendments will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, police and fire protection and other related infrastructure. Access to the property is from Akoni-Pule Highway, which is a State highway that has a 22-foot pavement with paved shoulders within an 80-foot right-of-way. The project site is located within an area adequately served with essential services and facilities such as water, transportation systems, and other utilities and will not unreasonably burden public agencies.

The applicant is requesting a 6-month time extension to comply with Condition No. 2, which is the time to submit water usage calculations and a water commitment. Additionally, the applicant is requesting to delete the requirement in Condition No. 3 to pave the driveway access and provide paved parking. There is currently a large flat surface area covered with gravel leading from the highway to the school that is regularly driven on by vehicles and is used as a parking area with no problem. It is recommended that a gravel driveway access and parking area be allowed for the school as long as the amount of students does not increase beyond the permitted amount of 105 students. In the future, if the applicant decides to apply for an amendment to increase the school size or amount of students, a condition will be added to provide a paved driveway access and paved parking.

The amendment requests are 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.

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", area outside of the 500-year flood plain. The entire site has been completely cleared and in urban use for over several decades. As such, there are no valued cultural, historical or natural resources on the property and 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.

The proposed request will not have a significant adverse impact to traditional and customary Hawaiian Rights. In view of the 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: No formal archaeological reconnaissance survey, oral history of kamaaina accounts of the area, historical survey of documentary records, botanical and/or fauna study was submitted.

The valuable cultural, historical, and natural resources found in the project area: The property is not adjacent and/or proximate to the shoreline. As such, gathering of marine life and coastal access is not an issue. There are no known established valued cultural rights being exercised on the property. The likelihood of any rare or endangered species, habitat of flora or fauna or any archaeological features is remote in this area based on urbanization and the development that has occurred. The Department of Land and Natural Resources-State Historic Preservation Division has issued a "no-effect" letter dated October 31, 2008 stating that they have determined that no historic properties will be affected by this project because residential development/urbanization has altered the land. The letter also stated that any building over 50 years old to be scheduled for modification or demolition as part of this school project, must consult with DLNR-SHPD's architecture branch regarding required photographic documentation. A condition of approval will be added to reflect their request.

Possible adverse effect or impairment of valued resources: As the entire site has been completely cleared and in urban use for over a century, it is not anticipated that there will be any adverse effect or impairment of valued resources.

Feasible actions to protect native Hawaiian rights: To the extent to which traditional and customary native Hawaiian rights are exercised, the proposed action will not affect traditional Hawaiian rights and no action is necessary to protect these rights. A condition of approval will be included to require the applicant to notify the DLNR-SHPD should any unidentified sites or remains be encountered, and proceed only upon an archaeological clearance form the DLNR-SHPD.

Based on the above findings, the amendment request is approved subject to the following conditions (material to be deleted is bracketed and struck through and material to be added is underscored):

1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.

2. Prior to the issuance of a water commitment by the Department of Water Supply, the applicant shall submit the anticipated maximum daily water usage calculations as recommended by a registered engineer, and a water commitment deposit in accordance with the "Water Commitment Guidelines Policy" to the Department of Water Supply within one hundred and eighty days from the effective date of this

[~~permit~~]amendment. The applicant shall install a backflow preventer (reduced pressure type), if required, by a licensed contractor on the applicant's property after the meter meeting with the approval of the Department of Water Supply.

3. The applicant, successors or assigns shall submit for Plan Approval for the school from the Planning Director within one hundred and eighty (180) days from the effective date of this amendment in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawaii County Code. Plans shall identify all existing and/or proposed structures, [~~paved~~] gravel driveway accesses and gravel 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).

4. The school shall be limited to 105 students. Any increase in the amount of students will require an amendment of the Use Permit before the Planning Commission.

5. All development-generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties.

6. A Solid Waste Management Plan shall be submitted to the Department of Environmental Management for review and approval prior to the issuance of a Certificate of Occupancy.

7. The applicant shall provide fire protection measures appropriate for the school use meeting with the approval of the Fire Department.

8. The applicant shall consult with the Department of Land and Natural Resources – State Historic Preservation Division's architecture branch regarding required photographic documentation for any building over 50 years old to be scheduled for modification or demolition as part of this school project.

[~~8.~~]9. 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.

[~~9.~~]10. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.

[~~10.~~]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 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).~~]If the applicant should require an additional extension of time, the applicant shall submit the request to the Planning Commission for appropriate action.

Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate the revocation of the Use Permit.

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,

Rodney Watanabe, Chairman
Planning Commission

Lhawijodomissionuse07-000009PC

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