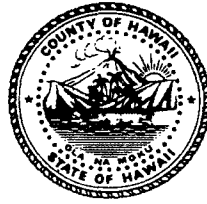


Harry Kim
Mayor

Wil Okabe
Managing Director

West Hawai'i Office
74-5044 Ane Keohokālole Hwy
Kailua-Kona, Hawai'i 96740
Phone (808) 323-4770
Fax (808) 327-3563



County of Hawai'i
PLANNING DEPARTMENT

Michael Yee
Director

Duane Kanuha
Deputy Director

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

September 3, 2019

Ms. Yvonne Rocco
P.O. Box 953
Honaunau, HI 96726

Dear Ms. Rocco:

Special Permit No. 222 (LUC No. 222)

Request: Allow the Establishment of a Restaurant and Cocktail Lounge

Subject: Response to Letter Received August 15, 2019 Requesting a Determination

Tax Map Key: 9-2-085: 022 & 023

This is to acknowledge receipt of your letter received August 15, 2019 requesting a determination if Special Permit No. 222 is still active and that the uses originally established under the permit can be re-established even though they have ceased on the subject properties.

Special Permit No. 222 was approved by the Land Use Commission on November 3, 1972 to allow the reestablishment of restaurant and cocktail lounge complex on 2 acres of land. There were several amendments to the permit. Condition No. 5 of the permit stated the following:

“That if the proposed use ceases for a period of more than twelve (12) months, the special permit shall be deemed null and void.”

The restaurant and lounge were destroyed by fire over a decade ago. Based on the above information, Special Permit No. 222 is deemed null and void.

If you are considering re-applying for a Special Permit on these properties, we would request that you speak with the Planner assigned to Ka'u Community Development Plan to determine if the request would be consistent with the Plan.

Ms. Yvonne Rocco
Page 2
September 3, 2019

If you have any questions, please feel free to contact Jeff Darrow at 961-8158.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Yee". The signature is fluid and cursive, with the first name "Michael" and last name "Yee" clearly distinguishable.

MICHAEL YEE
Planning Director

JWD:mad

P:\wpwin60\Jeff\Letters\Determination Letters\L.Rocco-Determination-SPP222.doc

cc: rocco@roccopizzapub.com
GIS Section

CERTIFIED MAIL

May 30, 1985

Mr. William E. Dodd
S.K. Box 6056
Capt. Cook, HI 96704

Dear Mr. Dodd:

Amendment to Special Permit No. 222
Tax Map Key: 9-2-85:22 and 23

The Planning Commission at its duly held public hearing on May 22, 1985, voted to approve your request for an amendment to Special Permit No. 222 to allow live entertainment as part of the restaurant/cocktail lounge operation at Kahuku, Ka'u, Hawaii.

Approval of this request is based on the following:

The approval of the subject request, to allow live entertainment as part of the existing restaurant/cocktail lounge operation, is an unusual and reasonable use which is not contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. More specifically, there appears to be a need for such a use in the area; the poor soil productivity classification makes it difficult to fulfill the intent of the agricultural designation; there has been no indication of any negative impacts from the existing operation; and, there would not be an unreasonable burden on public agencies to provide necessary services. Furthermore, by allowing the inclusion of the proposed use at this particular area, it would concentrate commercial activities in a centralized location rather than dispersing them throughout the subdivision.

The addition of live entertainment to the restaurant/cocktail lounge operation is not anticipated to increase any of the impacts presently being generated. As such, all of the reasons used to justify the original request will still apply.

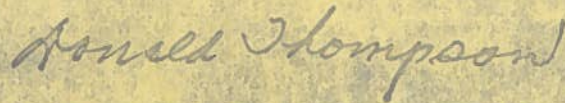
MAY 31 1985

Mr. William E. Dodd
Page 2
May 30, 1985

It should be noted that all of the conditions attached to Special Permit No. 222 shall remain in effect.

Please feel free to contact the Planning Department if there are any questions on this matter.

Sincerely,



Donald Thompson
Chairman, Planning Commission

cc: State Land Use Commission
Department of Public Works
Department of Water Supply
County Real Property Tax Division
County of Hawaii, Kona Office

bcc: Plan Approval Section



STATE OF
HAWAII

DEPARTMENT OF PLANNING AND ECONOMIC DEVELOPMENT
LAND USE COMMISSION

P. O. BOX 2359 • HONOLULU, HAWAII 96804

November 9, 1972

#222
JOHN A. BURNS
Governor

SHELLEY M. MARK
Director Department
of Planning and Economic
Development

GORO INABA
Commission Chairman

EDDIE TANGEN
Vice Chairman

TATSUO FUJIMOTO
Executive Officer

COMMISSION MEMBERS
Alexander J. Napier
Shelley M. Mark
Sunao Kido
Eddie Tangen
Leslie E. L. Wung
Tanji Yamamura
Stanley S. Sakahashi

Hawaii County Planning Commission
25 Aupuni Street
Hilo, Hawaii 96720

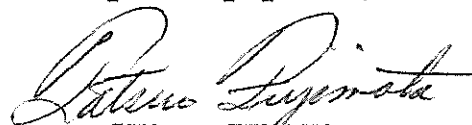
Attention: Mr. Raymond Suefuji
Planning Director

Gentlemen:

At its meeting on November 3, 1972, the Land Use Commission voted to approve a special permit to Theron Darling (SP72-137) to allow the establishment of a restaurant and cocktail lounge complex on approximately 2 acres of land described as Tax Map Key 9-2-85: 22 and 23, situated at Kahuku, Ka'u, Hawaii, subject to the conditions set forth by the Hawaii County Planning Commission.

A copy of the staff report is enclosed for your information.

Very truly yours,


TATSUO FUJIMOTO
Executive Officer

Encls.

cc: Theron Darling

Hawaii District Office, Dept. of Taxation
Property Technical Office, Dept. of Taxation
Tax Maps Recorder, Dept. of Taxation
Real Property Tax Assessor, Dept. of Taxation

DOGER

STATE OF HAWAII
LAND USE COMMISSION

Discovery Room
Kona Hilton Hotel

November 3, 1972
10:30 a.m.

STAFF REPORT

SP72-137 - THERON DARLING (Ka'u, Hawaii)

A special permit to allow the establishment of a restaurant and cocktail lounge complex on approximately 2 acres of land situated within the Agricultural District at Kahuku, Ka'u, Hawaii has been requested by Mr. Theron Darling. The subject property is located at the eastern end of the Hawaiian Ocean View Estates subdivision and fronts the mauka side of the Hawaii Belt Road, approximately 600 feet west of Tiki Lane. The Waiohinu and Naalehu Urban Districts are situated approximately 12 and 14 miles respectively to the east of the subject land. The property is identified as Tax Map Key 9-2-85: 22 and 23.

Mr. Darling plans to convert an existing residence and former Ocean View Estates tract office into the proposed restaurant and cocktail lounge. The petitioner has submitted a sketch of the existing structure and a rough plan for the proposed facilities. The residence-office contains approximately 4,000 square feet of space under roof and a spacious parking area adjacent to the building.

In substantiation of his request, the petitioner states that:

1. The facilities will be situated on the main highway with adequate off-street parking.
2. Adequate water can be provided by the existing 19,000 gallon catchment tank and a 1,000 gallon tanker for consumption and fire protection.
3. The local residents have requested an establishment of this type to be located in the area.
4. The existing structure on the property can readily be converted into a restaurant and cocktail lounge.
5. A business establishment will help establish needed employment.
6. The proposed use will not be contrary to the objectives of the Master Plan and plan of the state or county.

The applicant further informs that the tract office served as a polling place in previous years and that the Lieutenant Governor has again requested that the office be used for this year's elections.

A major portion of the surrounding lands are vacant and characterized by extensive lava fields. Soil classification by the Land Study Bureau indicates that the subject property is comprised of aa clinkers with no soil material and is very poorly suited for overall crop use. The mean annual rainfall is approximately 85 inches and the elevation is approximately 1,900 feet above sea level. Electricity and telephone services are

available from the Belt Road. However, water is provided for by catchment since no water system is available.

County Recommendation

At its September 14, 1972 meeting, the Hawaii County Planning Commission voted to recommend approval of this special permit based on the following considerations:

- "1. That there is a need for such a facility for that area. Presently, the nearest operating restaurant/bar facility is situated in the village of Naalehu, approximately fourteen (14) miles away. While a special permit for a similar facility was granted to Harry McKee in September, 1962, it is still not in operation. The area, to date, is still unserved by such facility;
- "2. That the subject area has a very poor soil productivity classification, thus making it difficult to fulfill the intent of the agricultural designation; and
- "3. That there would not be an unreasonable burden on public agencies to provide the necessary services. The only utility unavailable at the moment, is a county waterline. It is nevertheless felt that the proposed facility can be adequately served by the roof catchment method."

The recommendation for approval was contingent upon the following conditions:

- "1. That the proposed development comply with all applicable regulations, codes, including 'Plan Approval';
- "2. That the petitioner be responsible for providing his own water catchment system, including compliance with the National Board of Fire Underwriters requirements regarding the fire protection;
- "3. That access to the subject area be from Tiki Lane only and that direct access to the Hawaii Belt Road be closed off by incorporation of planting along the property line bordering the Hawaii Belt Road;

- "4. That the petitioner be responsible for securing a building permit and assuring construction started for the restaurant/bar facility within one (1) year from the date of official approval and that the facility shall be in operation within eighteen (18) months from the date of approval. For clarification, construction is defined as the actual placing of construction materials in their permanent position; and
- "5. That if the proposed use ceases for a period of more than twelve (12) months, the special permit shall be deemed null and void."

The county zoning for the subject property is A-1a and the General Plan designates the area for extensive agricultural uses and alternate urban expansion.

At the hearing, it was reported that the subject land had no severe physical constraints which would render the land unusable for the proposed use, and that "no record of flood inundation problems, historic features, or distinct landforms of significant importance are attributed to this property".

The State Highways Division recommended that, should this request be approved, the following conditions be attached: "Access to said parcels be from Tiki Lane only and that access to the Hawaii Belt Road be closed off by incorporation of a planting easement along the property line bordering the Hawaii Belt Road". The County Research and Development Department noted that "a properly located eating and drinking facility would add to visitor satisfaction of those traveling on the southern route of the Big Island. The number of people presently

residing in the area and visitors taking the southern route, however, are limited".

The Hawaiian Ocean View Estates Subdivision, the community which the petitioner proposes to serve, consists of approximately 10,000 one-acre lots. As of September, 1972, it was estimated that there were about 85 dwellings in this subdivision.

In the past, a number of special permits have been requested for commercial and industrial uses in this area as follows:

1. SP(T)62-21 - Harry McKee - Granted in October, 1962 to construct a restaurant-bar-office and motel/complex. The grant was made with no time limitation for initiation of construction. Although the special permit is still active, the proposed uses have not been totally established.
2. SP66-32 - Ben Hess - Granted in October, 1966 to construct a motel-restaurant facility. This special permit expired after several time extensions were granted.
3. SP66-33 - David E. Erwine - Granted in October, 1966 to construct a contractor's yard and warehouse. This permit expired since no construction was initiated within the one-year time limitation.
4. SP69-60 - Helen Devine - Granted in January, 1969 to construct an eight-unit apartment building, restaurant-

bar and shopping facilities. Expired since no construction was started within the one-year stipulation.

5. SP72-132 - Ocean View Investment Co. - Granted in September, 1972, to establish a community-commercial center to include a post office, shops, offices, service station, market, warehouse and other convenience facilities. The county has given approval for the construction of the building that will house the post office, grocery store and limited commercial activity, and will incrementally grant approval for the service station and the warehouse uses upon satisfactory completion of earlier approvals. This special permit is within 25 acres of land in the Hawaii Ocean View Ranchos Subdivision. It is situated just over a mile west of the property now under consideration.

As the above indicates, a high rate of failure to perform has been experienced in the past after special permits have been granted by the Land Use Commission.

Upon evaluation of this request, staff finds that:

1. The recently granted special permit to the Ocean View Investment Co. does not include the establishment of a restaurant or bar facility in their request.
2. Approval of the request under the County's stipulation

would not unreasonably burden public agencies to provide services and facilities.

3. The proposed use would not adversely affect the nearby properties since the surrounding area is vacant and not used for any agricultural pursuits. The property is classified as poorly suited for agricultural use according to the Land Study Bureau, and the requested use would not remove any lands from agricultural production.
4. Presently, there are no restaurant-bar facilities within 14 miles of the subject area which can service residents of the Ocean View Estates subdivision or people traveling to and from Hilo and Kona. Although Mr. McKee's special permit duplicates the subject request and is still active, his lack of performance in establishing this convenience facility leaves considerable doubt that his promises will be fulfilled in the near future.

Therefore, based on the above, the staff concurs with the findings and recommendations of the Hawaii County Planning Commission and also recommends approval of this petition, subject to the conditions imposed by the County.

October 23, 1980

Mr. Bruce Sutherland
Star Route Box 6207
Captain Cook, Hawaii 96704

Dear Mr. Sutherland:

Amendment to Special Permit No. 72-137
and Deletion of Condition No. 3 (LUC 222)
Tax Map Key 9-2-85:22 and 23

The Planning Commission at its duly held public hearing on October 14, 1980, considered your request for an amendment to Special Permit No. 72-137 (LUC 222) to allow the conversion of portions of the existing building for a real estate office and a laundromat. Also a request to delete Condition No. 3 of the Special Permit regarding access to the facility. The area involved is the site of the existing Five Loaves and Two Fishes Restaurant, along the mauka side of Hawaii Belt Highway and between Tiki Lane and King Kamehameha Boulevard, Hawaiian Ocean View Estates Subdivision, Kahuku, Ka'u, Hawaii.

The Commission voted to approve the above stated requests, based on the following considerations:

The original condition which closed off direct access to the subject property from the Hawaii Belt Road and allowed access from Tiki Lane only was imposed because of concerns for traffic safety and serviceability along a major highway. The limited access provision was placed as a means of controlling or reducing the possibilities of traffic conflicts at intersections and/or entry-exit points. This is a long-standing engineering and planning principle.

In evaluating the applicant's request, the Commission believe that the question is whether there are peculiar circumstances now which justify deviation or "variance" from this principle. From that perspective, it should be noted that

OCT 24 1980

Mr. Bruce Sutherland
Page 2

over the past eight (8) years, the property was used intermittently as a restaurant. While there was a legal prohibition against a direct access from the Highway, the access was nevertheless used. During that period, there were no recorded traffic mishaps resulting from that access.

It should also be pointed out that representations made by the public and applicant indicate that the subject property is being used as a school bus pick-up and drop-off point. As such, vehicles tend to congregate along the roadside waiting to pick up children. There apparently is a general expectation of vehicular interruption in that area, similar to a roadside stand or visitor look out area.

As such, the legal confirmation of a direct access, as well as improvements thereto, would improve the present roadside use of that area by both patrons of the restaurant and students and parents. Off-street parking would be available and it would be away from the main highway.

We also note that at this particular location there is reasonable sight distance from both sides of the Hawaii Belt Road. The property is located along a straight-away section of the Belt Highway and not along or near curves.

In view of the foregoing and while being mindful of the concerns of the Department of Public Works, it is felt that there are bases for deleting the no-access requirement.

It should be noted that the continued allowance of direct access would generate problems and defeat the concept of the Belt Highway. As such, this favorable action should not be interpreted as condoning further direct accesses. As noted above, there are extenuating circumstances in this case.

Further, it is acknowledged that the actual violation contributed to our understanding of the traffic concerns. However, it should be made clear that this position is not designed to legitimize or confirm a violation. We do not wish to suggest at all that one can or should violate first and hope to have this violation legalized later.

The Commission is also approving the request to allow the conversion of a portion of the existing building for a real estate office and laundromat. The recommendation to approve this portion of the request is based on the following findings:

In 1972, the State Land Use Commission voted to grant a Special Permit request to allow a restaurant and bar facility on the subject property. This approval established a commercial use on the subject property within a single structure. The applicant is requesting that he be allowed to convert a portion of the existing building for a real estate office and a laundromat. Therefore, approval of the subject request will not involve a physical expansion of commercial activity on the property.

Allowing the conversion of the existing building for a real estate office and laundromat will not be in conflict with the reasons for the originally approved Special Permit. More specifically that there is a need for such facilities in the area; that the poor soil productivity classification makes it difficult to fulfill the intent of the agricultural designation; and that there would not be an unreasonable burden on public agencies to provide necessary services. Furthermore, by allowing the inclusion of the proposed uses at this particular area, it would concentrate commercial activities in a centralized location rather than dispersing them throughout the subdivision.

Based on the above, it is determined that the granting of the requested amendments to Special Permit 72-137 is reasonable and would not violate the spirit and intent of the State Land Use Law and Regulations.

Approval of the requests is subject to the following conditions:

1. That the petitioner or his authorized representative shall submit plans and receive final plan approval within one year of the effective date of approval of this amendment request.
2. That the petitioner or authorized representative provide a paved driveway to the highway built to commercial standards. Furthermore, the number of parking stalls, including adequate area for drop-off and pick-up of school students, shall meet with the requirements of the Zoning Code; provided further, that the parking area shall be improved with an oil-treated surface prior to issuance of occupancy permit for the restaurant and any other commercial uses considered by this Special Permit No. 72-137.

Mr. Bruce Sutherland
Page 4

3. That construction of the required improvements shall commence within one (1) year from the date of receipt of final plan approval and be completed within one (1) year thereafter.
4. That all other applicable rules, regulations, and requirements be complied with.

Should any of the foregoing conditions not be met, the Special Permit may be deemed null and void.

Should you have any questions, please feel free to contact the Planning Department at 961-8288.

Sincerely,

Tina Whitmarsh
for

WILLIAM J. PARIS, JR.
Chairman, Planning Commission

lgv

cc: Chief Engineer, Public Works
Building Division, Public Works
Kona Services Office
State Land Use Commission

bcc: Masa, et al