

PLANNING COMMISSION OF THE PLANNING DEPARTMENT

COUNTY OF HAWAII

In the Matter of the Appeal)
 of)
 SAM MONET)
)
Tax Map Key 6-4-29:15)
_____)

Special Permit Application
No. 337

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND
DECISION AND ORDER

PLANNING COMMISSION OF THE PLANNING DEPARTMENT

COUNTY OF HAWAII

In the Matter of the Appeal)
 of)
 SAM MONET)
)
Tax Map Key 6-4-29:15)
_____)

Special Permit Application

No. 337

FINDINGS OF FACT
CONCLUSIONS OF LAW
AND
DECISION AND ORDER

The above-entitled matter was brought on for a public hearing on the 4th day of March, 1976, before the Planning Commission of the Planning Department, County of Hawaii, at the Waimea School Cafetorium, Waimea, South Kohala, Hawaii.

The Planning Commission having heard the testimony and having examined the exhibit does hereby declare its Findings of Fact, Conclusions of Law, and Decision and Order.

FINDINGS OF FACT

1. A special permit application to allow the construction of a caretaker's quarters within the State Land Use Agricultural District was received on January 28, 1976.

2. The property involved comprised of 1.49 acres and is situated approximately 1,000 feet off of the Old Mamalahoa Highway and one-half mile Honokaa side of the Mud Lane-Mamalahoa Highway intersection, within the Waimea Vacationland Subdivision, Unit I, Puukapu, South Kohala, Tax Map Key 6-4-29:15.

3. The petitioner intended to construct a 320 square foot structure which would have been used as a caretaker's quarters. It would have been occupied as a living unit by a couple who would maintain the existing single family dwelling and the yard of the subject property.

4. In support of the request, the petitioner stated the following:

- a. Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. Both my wife and myself are self-employed on a full time basis. We now spend approximately \$120 per month on yard and house maintenance. Just finding people suitable for cleaning and yard work in the Waimea area is very difficult. The couple who will live in these quarters will be responsible for yard and house maintenance. They will receive no wages, but will live on the property rent free in exchange for 40 hours labor per month. At present, I have 20 young fruit trees on the property, which require water, fertilizer, spraying, pruning, and eventually, harvesting. The couple living in the proposed structure will be responsible for maintaining these trees. The entire 1.49 acres have been cleared and landscaped. Maintenance of the lawn requires 4-1/2 hours every two weeks with a 21 hp lawn tractor.
- b. The desired use shall not adversely affect surrounding properties. By having someone there to maintain the property, it will only enhance the value of the surrounding properties. The new structure will not be offensive and will be enclosed by trees and other shrubs, as is the main house on the property.

- c. Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. The couple will have no children so they will not be and additional burden on schools. The property taxes will go up considerably per year, so we will be paying for schools but will not be receiving any of those services. The water and roads are in and the pressure is adequate. I have at present a 1" mainline coming from the meter to my house; the caretaker's quarters will feed off of this with a 3/4" line. A separate cesspool will be put in for the structure. The presence of people on the property at all times will ease the burden for the police. At present, my wife and myself leave the island at least two weekends per month. We now have to call the police and ask our neighbor to keep an eye on things. With the couple in the caretaker's quarters, we will no longer have to trouble the police and our neighbors.
- d. The land upon which the proposed use is sought is unsuited for the uses permitted within the district.
- e. The proposed use will not substantially alter or change the essential character of the land and the present use. The structure is only 380 square feet and the couple will be without children.
- f. The proposed use will make the highest and best use of the land involved for the public welfare. I cannot maintain the yard and do my job at the same time, and neither can my wife. We cannot go on spending \$120 per month in labor for maintenance and we cannot keep on

looking for people to do the work. I am trying to use the land for Agricultural use. I will not be able to maintain the trees by myself. I feel that the fruit trees are my highest and best use and someday they will provide myself and perhaps the community with lower cost local produce. This will not be possible without help.

5. The County Zoning designation is Agricultural 1-acre (A-1a). The General Plan land use pattern allocation guide map designates the area for Intensive Agricultural uses. According to the General Plan, Intensive Agriculture includes sugar, orchards, diversified agriculture and floriculture.

6. The soil of the area is of the Maile series which consists of well-drained silt loams that formed in volcanic ash. The surface layer and subsoil are about 14 inches and 46 inches thick respectively. Permeability is moderately rapid, runoff is slow, and the erosion hazard is slight. The land capability subclass is IV which applies to those soils with very severe limitations that reduce the choice of plants, require very careful management, or both. Average annual rainfall is approximately 90 inches.

7. Besides the single family dwelling, according to the petitioner, there are twenty (20) young fruit trees growing on the property.

8. Surrounding land uses include scattered single family dwellings, pasture, and vacant lands. Within the immediate area, there are thirty-nine (39) other lots of similar size.

9. The road serving the property has a 40-foot right-of-way with a 16-foot wide pavement. All essential utilities are available to the area.

10. All cooperating agencies had no comments on or objections to the Special Permit request.

11. The Special Permit request was brought before the Planning Commission for a public hearing on March 4, 1976. After hearing the testimony by the staff and from the petitioner's wife, Wendy Monet, the Planning Commission voted to close the public hearing.

12. At its regular meeting on April 2, 1976, the staff recommended denial of the Special Permit request based on the following findings:

That the petitioner has not shown that the proposed use is an unusual and reasonable one within the State Land Use Agricultural District. Under the State Land Use Law, the uses and activities permitted within its Agricultural District are basically related directly to agriculture. Housing which is occupied by persons engaged in agricultural activities on the same property is permitted. The purpose of the subject request is to allow the petitioner to establish caretaker's quarters in a structure which would be separate from the main dwelling. The occupants of the proposed quarters would maintain the house and yard of the subject property. Based on the applicant's reasons for requesting this Special Permit, it is evident that the caretaker is engaged in a full-time agricultural activity. Although one-acre lots can support intensive full-time agricultural activities, in this particular case, it is determined that the subject property is not large enough for full-scale agriculture to support two households. This is further reinforced by the agricultural products being grown on the subject property. The basic use of the property can thus be characterized as residential with large lot zoning.

As such, persons conducting "backyard farming" activities should have no need for assistance, particularly full-time, live-in employees.

In addition, the intent of Special Permits is to provide flexibility to accommodate those uses which are deemed to be both unusual and reasonable and which would not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. It has been found that there are no unusual and reasonable attributes related to the proposed use which would warrant its approval. Further, the proposed use would be contrary to the Land Use Law objective of protecting agricultural lands. The basic large-lot residential use of the land is incongruous to the objectives of the Land Use Law. The caretakers' quarters will effectively intensify the residential use of the subject property. Although the petitioner has stated that the caretakers will not have children, the subject property would be supporting two residences with two instead of one family. The potential for surrounding and/or similar areas to have one basic home and one cottage would be undeniable if this request were approved. Such a proliferation would be directly contrary to the Land Use Law.

Further, there are no special or unusual circumstances applying to the subject property which do not generally apply to surrounding properties or improvements in the same district. It has been found that the area under consideration has no special or unusual topographic or similar features which would deprive the petitioner of substantial property rights

or which would interfere with the best use or manner of development of the subject property. The petitioner is in fact enjoying his property rights in that there is an existing residence on the property. Because no unusual conditions exist, the approval of the petition would constitute a grant of personal or special privilege inconsistent with the limitations upon other properties under identical district classification.

It should also be pointed out that there may be reasonable alternatives available to the petitioner by which he could fulfill his desires, such as adding living area to the existing dwelling.

13. At that meeting, a motion was made to defer action since the petitioner was not in attendance to present any rebuttal to the staff's findings for denial. The motion, however, died from lack of a second. A subsequent motion was made to deny the request for the reasons as outlined by the staff. The vote to deny was recorded as four (4) ayes and one (1) no. Since five (5) affirmative votes were required to carry the motion, the voting was automatically continued to a subsequent meeting.

14. At the Planning Commission meeting on April 22, 1976, the staff again recommended denial of the Special Permit request. Although the petitioner was not present to refute the staff's reasons for denial, since ample notification was afforded to the petitioner, the Commission proceeded with the voting. The Commission voted to deny the Special Permit request. The vote was recorded as six (6) ayes and zero (0) no.

CONCLUSIONS OF LAW

1. Pursuant to Part IX of the State of Hawaii Land Use Commission Rules of Practice and Procedure, the County Planning Commission has jurisdiction to hear and determine appeals regarding special permits from the State Land Use Agricultural and Rural Districts regulations.

2. Under Chapter 8, Article 7, Section 3, of the Hawaii County Code, as amended, certain uses are permitted within the County's Agricultural zoned district.

3. All procedural requirements as prescribed by law have been complied with.

4. Pursuant to Part V, Sub-Part 5.2 of the State Land Use District Regulations, certain "unusual and reasonable" uses within Agricultural and Rural Districts other than those for which the District is classified may be permitted. The following guidelines are established in determining an "unusual and reasonable use":

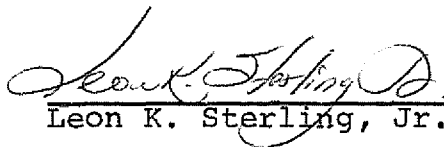
- a. Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations;
- b. The desired use shall not adversely affect surrounding properties;
- c. Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection;
- d. Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established; and
- e. The land upon which the proposed use is sought is unsuited for the uses permitted within the district.

5. It has been found that the special permit request does not meet the guidelines listed under Conclusions of Law, Item No. 4, for the reasons which have been documented under Findings of Fact, Item No. 12.

DECISION AND ORDER

Based upon testimony and exhibits introduced at the hearing and the foregoing Findings of Fact and Conclusions of Law, it is the decision of the Planning Commission and it is hereby ordered that the special permit request to allow the construction of a caretaker's quarters within the State Land Use Agricultural District, of Tax Map Key 6-4-29:15 located at Puukapu, South Kohala, Hawaii, be and is hereby denied.

Dated at Hilo, Hawaii, this 10th day of May, 1976.



Leon K. Sterling, Jr., Chairman

