

January 13, 1978

Mr. Sune H. Hoglund  
P. O. Box 494  
Kamuela, HI 96743

Dear Mr. Hoglund:

Special Permit Application  
Kea'au, Puna, Hawaii  
Tax Map Key 1-5-33:45

The Planning Commission at a duly advertised public hearing on December 6, 1977, and in regular session of January 12, 1978, <sup>78</sup> discussed your request for a special permit in accordance with Chapter 205-6, Hawaii Revised Statutes, as amended, to allow the construction of a second dwelling on one (1) acre of land situated within the State Land Use Agricultural District. The property involved is located along the mauka side of 27th Street, approximately 550 feet from the Paradise Drive - 27th Street intersection, Hawaiian Paradise Park Subdivision, Kea'au, Puna, Hawaii.

The Commission voted to deny the special permit based on the following findings:

That the petitioner has not shown that the proposed use is an unusual and reasonable one within the Agricultural District. Under the State Land Use Law, the uses and activities permitted within the Agricultural District are basically related to agriculture. The purpose of the subject request is to allow the petitioner to construct a second dwelling on one acre of land. The petitioner's intent is to occupy this dwelling on a weekend basis and continue to rent out an existing

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dwelling located on the same parcel. The petitioner has stated that he would be raising anthuriums on approximately one-half acre of the subject property.

Within the Agricultural District, housing which is occupied by persons engaged in agricultural activities on the same property is permitted. Based on the petitioner's reasons for requesting a Special Permit, it is evident that he will not be 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 which would support two households. This is further reinforced by the petitioner's representations. Approval of the subject request would, in essence, sanction residential uses with large lot zoning. The construction of an additional dwelling on the subject parcel would intensify residential use of the property and this would be contrary to the spirit and intent of the State Land Use Law and Regulations.

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, 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. The subject property is located in the Hawaiian Paradise Park subdivision. This subdivision consists of 8,677 parcels, the majority of which are one acre in size. According to the Planning Department's December, 1976, land use inventory, there were 212 single family dwellings constructed in the subject subdivision, which is approximately 2% of the total number of lots. Approval of the petitioner's request would set a precedent for this as well as other similar subdivisions in the Agricultural District.

This precedent would be the endorsement of the establishment of two dwellings on a single parcel, which would essentially sanction the doubling of the presently allowed density. If this request were granted, the potential for surrounding and/or similar areas to make identical requests would be undeniable. Such proliferation would be directly

contrary to the Land Use Law and Regulations. In addition, it would have the long-range effect of unreasonably burdening public agencies to provide services, improvements and facilities, such as roads, water, schools and fire and police protection, by creating an unanticipated need for such services. Further, 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 subject request would constitute a grant of personal or special privilege inconsistent with the limitations upon other properties under identical district classification.

Based on the above, it is determined that approval of the request would be a circumvention of existing land use controls and would be contrary to the spirit and intent of the Land Use Law and Regulations.

A denial by the Commission of the desired use shall be appealable to the Circuit Court in which the land is situated and shall be made pursuant to the Hawaii Rules of Civil Procedure.

Should there be further questions on this matter, please do not hesitate to call or write us.

Sincerely,



William F. Mielcke  
Chairman, Hawaii Planning Commission

smn

cc: Corporation Counsel  
State Land Use Commission  
Land Use Division, DPED