

January 13, 1978

Mr. Wavel Seslar
P. O. Box 728
Honokaa, HI 96727

Dear Mr. Seslar:

Special Permit Application
Ahualoa Homesteads, Hamakua, Hawaii
Tax Map Key 4-6-07:25

The Planning Commission at a duly advertised public hearing on December 6, 1977, and in regular session of January 12, 1978, discussed your request for a special permit in accordance with Chapter 205-6, Hawaii Revised Statutes, as amended, to allow the construction of a guest cottage on 2.0 acres of land situated within the State Land Use Agricultural District. The property involved is located on the makai side of the old Mamalahoa Highway, approximately 2 miles from the old Mamalahoa Highway - Hawaii Belt Road intersection, Ahualoa Homesteads, Hamakua, 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. Housing which is occupied by persons engaged in agricultural activities is permitted. The purpose of the subject request is to allow the petitioner to establish a guest cottage on two (2) acres of land. The proposed guest cottage would have an area of 912 square feet and consist of a kitchen, living room, one bedroom and a bathroom. The occupants of the proposed guest cottage would be persons visiting

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the petitioner as well as the petitioner himself. Based on the petitioner's reasons for requesting a Special Permit, it is evident that he is not and does not plan to be engaged in a full-time agricultural activity. In addition, analysis of the petitioner's request shows that the proposed guest cottage would essentially be utilized as a part-time second dwelling which would not be related to agricultural use of the subject property. The construction of an additional living structure would intensify residential use of the property and would, in essence, sanction large lot residential use. Approval of the proposed use 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. As a result, approval of the proposed use would be contrary to the Land Use Law objective of protecting agricultural lands, especially inasmuch as the proposed use would constitute large lot residential use. The establishment of a guest cottage which would be essentially used as a second dwelling would intensify the residential use of the subject property. Approval of the petitioner's request would set a precedent by sanctioning additional dwellings which are not agriculturally related in the Agricultural District. The potential for surrounding and/or similar areas to have one basic home and additional dwellings or guest cottages would be undeniable if this request were approved. Such a 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, 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

petition would constitute a grant of personal or special privilege inconsistent with the limitations placed 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.

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
Chief Engineer, Public Works
State Land Use Commission
Land Use Division, DPED