

PLANNING COMMISSION OF THE PLANNING DEPARTMENT

COUNTY OF HAWAII

In the Matter of the Appeal)
 of)
 ROY GOMES)
 Tax Map Key 7-5-01:24)
_____)

Special Permit Application
No. 388

FINDINGS OF FACT

CONCLUSIONS OF LAW

AND

DECISION AND ORDER

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The above-entitled application was brought on for a public hearing on the 9th day of March, 1978, before the Planning Commission of the Planning Department, County of Hawaii, at the Kealakehe School Cafetorium, Kealakehe, North Kona, Hawaii.

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

FINDINGS OF FACT

1. A Special Permit request to allow the construction of a second dwelling within the State Land Use Agricultural District was received on January 10, 1978.

2. The property, comprised of 1.123 acres of land, is situated along the mauka side of the old Mamalahoa Highway, approximately 100 feet north of the Keopu Cemetery, Honuaula, North Kona, Hawaii, Tax Map Key: 7-5-01:24.

3. There is a single family dwelling, constructed in 1940, situated on the subject parcel.

4. The petitioner intends to construct a 1,024 square foot building with three (3) bedrooms, a kitchen, and living room to be used as a dwelling.

5. In support of the request, the petitioner stated, in part, the following:

"There is an existing home on this site and we wish to build another home on the same site.

"Our reason for building this home is to take care of my parents, who are in their middle 70's. Eventually the old home will be torn down."

6. The soil on the subject property is in the Honuaula Series which consists of extremely stony silty clay loam. In a representative profile the soil has a surface layer of very dark brown silty clay loam about nine (9) inches thick. The subsoil is dark brown cobbly and stony silty clay loam about twenty-eight (28) inches thick. The substratum is 'A'a lava. The surface layer is strongly acid. The subsoil is medium acid stones cover from three (3) to fifteen (15) percent of the surface. Permeability is rapid, runoff is slow and the erosion hazard is slight. Roots can penetrate to a depth of three (3) feet or more.

7. The soil is classified as Class "C" or fair by the Land Study Bureau. The State of Hawaii Department of Agriculture has not classified the land as Important, Other Important or Unique lands.

8. The subject property fronts on the old Mamalahoa Highway which has a fifty (50)-foot right-of-way and a sixteen (16)-foot pavement in this area. There is an eight (8)-inch waterline along the Mamalahoa Highway fronting the subject property.

9. Surrounding land uses include scattered single-family dwellings, diversified agricultural activities and vacant lands.

10. The subject property is in the Agricultural one (1)-acre zoned district (A-1a).

11. The General Plan Land Use Pattern Allocation Map designates the area as Orchard and Alternate Urban Expansion.

12. The Fire Department stated that:

"We have no objections to having two homes on 1.1 acres. Fire protection is provided by Kailua Fire Station located approximately eight miles away."

13. The Department of Water Supply stated that:

"We have no objections to the subject request. The applicant shall be advised the water service shall be limited to an existing 5/8-inch meter located off the 8-inch waterline along Mamalahoa Highway.

"It was indicated by the applicant that the existing home will be demolished; thus, no significant increase in water usage is anticipated."

14. The Department of Health stated that:

"Please identify location of the existing and the proposed new private sewage disposal system."

15. All other cooperating agencies, including the Department of Agriculture, had no comments on or objections to the subject request.

16. The Special Permit request was brought before the Planning Commission for a public hearing on March 9, 1978. Testimony was heard from both the staff and the petitioner on the matter. No other testimony was offered. The Commission then voted to close the public hearing.

17. At the Planning Commission meeting of April 13, 1978, 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 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 construct a second dwelling on 1.129 acres of land. The proposed three (3) bedroom dwelling would have an area of 1,024 square feet. In requesting the Special Permit, the petitioner has not indicated that the proposed dwelling would be occupied by persons engaged in agricultural activities conducted on 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,

It should be pointed out that there may be reasonable alternatives available to the petitioner by which he could fulfill his desires, such as by adding living area to the existing dwelling, or by constructing a new dwelling contingent upon the removal of the existing dwelling upon completion of the new house.

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.

18. At the same meeting, the Commission voted to deny the Special Permit based on the findings outlined by the staff. The motion was unanimously carried with six (6) aye votes.

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. 17.

DECISION AND ORDER

Based on the 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 second single family dwelling within the State Land Use Agricultural District, of Tax Map Key 7-5-01:24 located at Honuaula, North Kona, Hawaii, be and is hereby denied.

Dated at Hilo, Hawaii this 1st day of June, 1978.

William F. Mielcke

 William F. Mielcke, Chairman

APPROVED as to
 FORM and LEGALITY

Reginald P. N.

DEPUTY CORPORATION COUNSEL
 COUNTY OF HAWAII

MAY 31 1978

Date _____

April 14, 1978

CERTIFIED MAIL

Mr. Roy Gomes
P. O. Box 1701
Kailua-Kona, HI 96740

Dear Mr. Gomes:

Special Permit Application
Honuauula, North Kona, Hawaii
Tax Map Key 7-5-01:24

The Planning Commission at a duly advertised public hearing on March 9, 1978 and in regular session of April 13, 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 second dwelling on 1.129 acres of land situated within the State Land Use Agricultural District. The area involved is located along the mauka side of the old Mamalahoa Highway, approximately 100 feet north of the Keopu Cemetery, Honuauula, North Kona, 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 construct a second dwelling on 1.129 acres of land. The proposed three (3) bedroom dwelling would have an area of 1,024 square feet. In requesting the Special Permit, the petitioner has not indicated that the proposed dwelling would be occupied by persons engaged in agricultural activities conducted

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on 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. 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 on basic home and additional dwellings would be undeniable if this request were to be approved. Such a proliferation would be 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 road, water and fire protection, by creating an unanticipated need for such services.

Further, it has been found that the area under consideration has no special features which would deprive the petitioner of substantial property rights or which would interfere with the best 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.

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It should be pointed out that there may be reasonable alternatives available to the petitioner by which he could fulfill his desires, such as by adding living area to the existing dwelling, or by constructing a new dwelling contingent upon the removal of the existing dwelling upon completion of the new house.

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 contact us.

Sincerely,



William F. Mielcke
Chairman, Planning Commission

lgv

cc Corporation Counsel
Chief Engineer, Public Works
State Land Use Commission
Land Use Division, DPED