

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the)
Petition for Special Permit)
of EUNICE AND JANE KAMANU)
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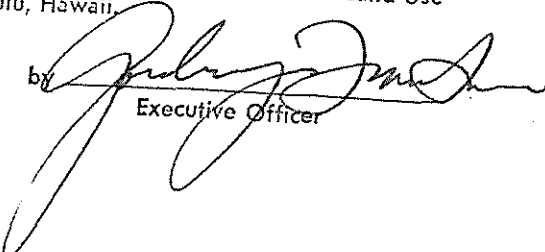
SP78-321
EUNICE AND JANE KAMANU

This is to certify that this is a true and correct copy of the
Decision and Order on file in the office of the State Land Use
Commission, Honolulu, Hawaii.

APR 20 1979

Date

by


Executive Officer

DECISION AND ORDER

BEFORE THE LAND USE COMMISSION
OF THE STATE OF HAWAII

In the Matter of the) SP78-321
Petition for Special Permit)
of EUNICE AND JANE KAMANU) FINDINGS OF FACT,
) CONCLUSIONS OF LAW AND
) DECISION AND ORDER

The Land Use Commission of the State of Hawaii,
having duly considered the entire record in the above entitled
matter, makes the following findings of fact and conclusions
of law.

FINDINGS OF FACT

1. The Petition for Special Permit was filed by
EUNICE AND JANE KAMANU, to allow the establishment of a family
care home on approximately 9,750 square feet of land situated
within the State Land Use Agricultural District at Pu'ukapu,
South Kohala, Hawaii, Tax Map Key 6-4-09: 30.

2. The subject property is situated within the
Kamuela Meadows Subdivision, approximately 3,500 feet west of
the Mud Lane and Old Mamalahoa Highway junction at Pu'ukapu,
South Kohala.

3. The request concerns the use of an existing
single family dwelling as a care home for a maximum of four
(4) residents, in addition to the Petitioners.

4. The County of Hawaii's General Plan Land Use
Pattern Allocation Guide Map designates the subject property
as Intensive Agriculture. Present County Zoning for the
subject site, as well as the Kamuela Meadows Subdivision is
Agricultural-1 acre (A-1a).

5. The Land Study Bureau's overall master productivity soil rating for agricultural use is Class "C" or "Fair" for the subject site. The site is not classified as Agricultural Lands of Importance to the State of Hawaii by the State Department of Agriculture.

6. The subject site is situated within the Kamuela Meadows Subdivision which contains 164 lots ranging in size from 8,300 square feet to 10,600 square feet. According to the County's Land Use Inventory dated December, 1977, there were twelve (12) single family dwellings within the subdivision.

7. Access to the subject property is off of the Mamalahoa Highway. Roads within the Kamuela Meadows Subdivision have a 40-foot right-of-way with a 16-foot pavement.

8. The Petitioners have cited the great need for family care homes throughout the State as reason for the Special Permit.

9. The County Department of Water Supply, Department of Public Works, Police Department, Fire Department, Department of Research and Development, Hawaii Electric Light Company, Inc., State Department of Health and Department of Agriculture had no objections to the application for Special Permit.

10. The Hawaii County Planning Department recommended approval of the Special Permit request.

11. The Hawaii County Planning Commission conducted a public hearing on the Special Permit application on August 31, 1978. At that time, two (2) persons testified in support of the permit request, while one (1) person questioned the suitability of a care home within a residential subdivision.

12. Three (3) letters supporting the permit application were received by the Hawaii Planning Department. A

letter requesting specific information concerning the proposed use was also filed with the Planning Department.

CONCLUSIONS OF LAW

1. "Unusual and reasonable" uses other than those which are permitted in an Agricultural District may be permitted by Special Permit pursuant to HRS Chapter 205-6, and the State Land Use Commission District Regulation, Part V.

2. The proposed use will not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. The objectives of the Land Use Law are to preserve, protect and encourage the development of lands in the State for those uses to which these lands are best suited in the interest of public health and welfare of the people of the State of Hawaii. Although the subject property is situated within the State Land Use Agricultural District, it is not well-suited for the conduct of agricultural activities due to the limited land area involved. Further, the proposed use will not unreasonably burden public services and facilities, nor adversely affect surrounding properties.

3. The proposed use will not adversely affect surrounding properties. The Petitioners propose to care for no more than four (4) ambulatory residents at a time. The facility proposed is an existing single residential structure to be completely surrounded by a five (5) foot high fence. Due to the limited number of residents to be cared for, the "residential" appearance of the structure, and the provision of fencing to prevent the residents from entering adjoining properties and the roadway, it is concluded that the impact to surrounding properties would not be substantially different from that which is generally associated with residential uses.

4. The proposed use will not unreasonably burden public agencies to provide roads, sewers, water, drainage and police and fire protection. The subject property fronts on a county road which has a 16-foot pavement width, and a 6" water-line which runs within the road right-of-way. Sewage is to be handled via the existing cesspool. The Petitioners propose to operate a family care home licensed by the State Department of Health.

5. Unusual needs have arisen since the district boundaries and regulations were established since the proposed use is considered to be an increasingly necessary community facility. The provision of such a facility in an integrated fashion with the rest of the community is thus considered to be a necessary service beneficial to the public health and welfare.

6. The land upon which the proposed use is sought is not well-suited for the uses permitted within the District. The subject property is situated within the State Land Use Agricultural District. Soils of the subject property are of the Maile Series which is a suitable soil for many agricultural endeavors. The Land Study Bureau's overall agricultural productivity rating for the soils of the subject property is Class "C" or "Fair". However, in spite of the soil qualities, the size of the subject property poses severe constraints upon using the parcel for agricultural or open recreational activities. Department of Agriculture has not designated this subdivision as Important, Other Important or Unique Agricultural Lands to the State of Hawaii, but rather has considered the subdivision to be an urbanized area. Based on these considerations, it is concluded that the land upon which the proposed use is sought is not well-suited to uses permitted within the State Land Use Agricultural District.

7. The use described in the Petition is an unusual and reasonable use pursuant to HRS Chapter 205-6 and State Land Use Commission District Regulation, Part V.

DECISION AND ORDER

IT IS HEREBY ORDERED that Special Permit Number 78-321 for the establishment of a family care home on approximately 9,750 square feet of land situated within the State Land Use Agricultural District at Pu'ukapu, South Kohala, Hawaii, Tax Map Key 6-4-09: 30, be approved subject to the following conditions:

1. That the Petitioners shall substantially comply with the representations made before the Planning Commission.

2. That the care facility shall be completely fenced prior to the establishment of such use. Such use shall be established within one (1) year from the effective date of the Special Permit.

3. That the care facility shall provide service to no more than four (4) patients at any given time.

4. That all applicable rules, regulations, and requirements shall be complied with.

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

DATED: Honolulu, Hawaii, April 18, 1979.

LAND USE COMMISSION

By C. W. Duke
C. W. DUKE
Chairman and Commissioner

By Shinichi Nakagawa
SHINICHI NAKAGAWA
Vice Chairman and Commissioner

By James R. Carras
JAMES R. CARRAS
Commissioner

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CAROL B. WHITESELL
Commissioner

