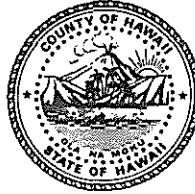


Stephen K. Yamashiro
Mayor



County of Hawaii

PLANNING COMMISSION

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 Fax (808) 961-9615

CERTIFIED MAIL

January 10, 1994

Mr. Sidney M. Fuke
Sidney Fuke and Associates
100 Pauahi Street, Suite 212
Hilo, HI 96720

Dear Mr. Fuke:

Amendment to Special Permit No. 649
Applicant: Desmond Twigg-Smith
Request: Amendment from 5-Room Bed & Breakfast Establishment
to a 10-Room Inn
Tax Map Key: 7-6-08:Portion of 8 and Portion of 10

The Planning Commission at its duly held public hearing on December 16, 1993, voted to approve the above-referenced amendment to Special Permit No. 649 by increasing the number guest rooms from 5 to 10. Special Permit No. 649 allowed the establishment of a bed and breakfast lodging facility in an existing single family dwelling in the Agricultural District. The property is located on the makai side of the North Kona Belt Road in Holualoa Village, approximately 200 feet makai of Paul's General Store in Holualoa 1st & 2nd North Kona, Hawaii.

Approval of the amendment is based on the following:

1. Such use is not contrary to the objectives sought to be accomplished by the land use law and regulations.

The granting of this request would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended. The State Land Use Law and Regulations are intended to preserve, protect and encourage the development of lands in the State for those uses to which they are best suited in the interest of the public health and welfare of the people of the State of Hawaii. In the case of the Agricultural

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District, the intent is to preserve or keep lands of high agricultural potential in agricultural use. The proposed project will be located within an area whose soils are identified as Honualu (HvD) soil series by the Soil Conservation Service and is generally utilized for pasture. The soil is classified as "C" of "Fair" by the Land Study Bureau's Overall Master Productivity Rating and unclassified by the Department of Agriculture's ALISH map.

In recognizing that lands within agricultural districts might not be best suited for agricultural activities and yet classified as such, and in recognition that certain types of uses might not be strictly agricultural in nature, yet reasonable in such districts, the legislature has provided for the Special Permit process to allow certain unusual and reasonable uses within the Agricultural district.

The subject property is situated within the County's Agriculture 1-acre zone district. Private lodging facilities are a permitted use within the County's Agriculture zone district. The proposed Inn will be conducted within a substantially large existing single family dwelling of approximately 5,000 square feet enclosure. An existing garage (540 square feet) will be converted into a bedroom and a 2 story addition (594 square feet each floor) will be constructed to increase the existing bedrooms to a total of 10 rooms. The total square footage of the Inn would be approximately 6,728 square feet. The proposed 2 acres and approximately 2,700 square feet for the 10-car parking area that will be taken out of the agricultural inventory for this area will not significantly affect the agricultural resource of the area, as the proposed use will be confined within the existing and addition of the single family dwelling and surrounding developed grounds. No active agricultural lands will be taken out of production to provide the area necessary to establish this use. Therefore, based on the above circumstances, approval of the subject request would not be contrary to the objectives of the State Land Use Law Rules and Regulations given the subject conditions. The parcel is 37 plus acres with a 2 acre portion being used for the Bed & Breakfast facility. The proposed use would not displace agricultural activity nor diminish the agricultural potential of the area since this parcel has not been in agricultural use in years. Therefore, the proposed use would not be contrary to the objectives of the State Land Use Law for the Agricultural district.

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2. The desired use will not adversely affect the surrounding properties.

The existing two story single family dwelling consists of approximately 5,000 square feet and will be expanded by 1,728 square feet for a total of 6,728 square feet. The existing access to the Inn is proposed to be improved to be 10 feet wide with 2-foot shoulders on each side, from the driveway to the restaurant which will be a two-lane driveway, 20 feet in width. The addition to the existing residence will be approximately 65 feet from the south side property line. The existing paved parking area within the two lane driveway in the porte cochere area and the new 10-car parking area will be available for visitor and guest parking. The property is heavily landscaped with vegetation on the north, east and south of the property. The area to the west is open pasture. The property is of sufficient size to allow for adequate setbacks and buffers in minimizing any physical, social, or other impacts that this lodging facility use may have on the neighborhood. In addition, as the proposed Inn is situated within an area of pastoral character, has magnificent views with a quiet and rural atmosphere; the proposed 10-Room Inn will become a popular visitor attraction.

The level of use of the 10-room Inn is surely expected to increase as supported by restaurant facilities and art center. Therefore, the proposed complex must be able to handle the additional traffic and provide the necessary and required accesses to the Inn so that it can handle the increased traffic. Therefore, the proposed amendment to Condition No. 2 is recommended for DENIAL and a condition of approval is included to ensure that the access to the Inn is upgraded to a level commensurate with the proposed Inn, restaurant and art center activities.

3. The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, water drainage, police and fire protection.

All essential utilities such as electricity, water and telephone are available to the subject property. All requirements of the Department of Health, Department of Public Works, and Fire Department shall be complied with prior to establishment of the proposed use, including that of a two-lane roadway to the Inn which shall meet the requirements of the Fire Department and the Department of Public Works. Although, consulted agencies had no objection to the request, the Fire Department raised concerns about fire protection measures as

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well as the need to provide effective fire access lanes to the proposed Inn. These concerns will have to be addressed and an approved plan shall be submitted with plans for Final Plan Approval. In addition, the applicant has submitted a roadway improvement agreement and Letter of credit in the amount of \$90,000 for the improvements along Mamalahoa Highway which the Department of Public Works has determined to be adequate to comply with the condition No. J of Ordinance No. 91-91.

4. The land upon which the proposed use is sought is not unsuitable for the uses permitted within the district.

As indicated previously, the proposed 10-Room Inn facility will be contained within the existing single family residence and proposed addition on the property. Therefore, no existing or proposed areas for agricultural activities will be curtailed or diminished as a result of the establishment of this activity on this property. As such, other undeveloped areas are still available for agricultural development and the removal of 2 acres of land from the agricultural inventory will not have a detrimental impact on the agricultural resources of the area or the County of Hawaii. In addition, this type of rural Inn is suitable at this particular location and may become an integral part of the international visitor industry.

5. The use will not substantially alter or change the essential character of the land and the present use.

The essential character of the land is primarily agricultural in nature, with the existing coffee orchards and cattle ranch pasture fields. The proposed Inn sits within this agricultural environment and as indicated previously, the proposed Inn will be confined to the area of the existing single family dwelling and its surrounding grounds. Although the applicant is proposing a 1,728 square foot addition for 5 more rooms and a 10-car parking area (2,700 square feet) for their guests, it is not considered a substantial alteration of the land or the character of the area. The building addition will be constructed in an area that is already developed. Therefore, from a physical standpoint, there will be no major alteration to the landscape which would give this area an appearance other than what is presently there.

6. Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established.

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The proposed lodging facilities are part of a worldwide trend towards providing alternative lodging sites in rural and agricultural areas such as this particular location. A localized and unique lodging facility provides the visitor an opportunity to experience Hawaii in a home-type setting as well as contribute to the economic structure of the County. Within the County of Hawaii, there are unique areas and structures that can provide this type of service to the visitor.

7. The request is not contrary to the General Plan.

The County General Plan Land Use Pattern Allocation Guide Map (LUPAG) map designates this area for Medium Density Urban Development. The Kona Regional Plan land use concept map designates this area for Agriculture 1-acre uses. The property is situated within the County's Agricultural 1-acre (A-1a) zone district. Private lodging facilities are a permitted use within this zone district. Therefore, the proposal would also be in keeping with the Economic Element policies of the General Plan which states that "The County of Hawaii shall encourage the development of a visitor industry which is consistent with the social, physical, and economic goals of the residents of the County" and "The County shall strive for diversification of its economy by strengthening existing industries and attracting new endeavors." Additionally, one of the basis purposes of the County General Plan is "To improve the physical environment of the County as a setting for human activities - to make more functional, beautiful, healthful, interesting and efficient." The proposed Inn at this particular location will fulfill this purpose.

Approval of this request is subject to the following conditions:

1. The applicant, its successor or assigns shall be responsible for complying with all stated conditions of approval.
2. A metes and bounds description of the 2 acre area for the Inn and for the area containing the 10-car parking area in written and map form shall be submitted to the Planning Department within one year from the effective date of this amendment request to the Special Permit.
3. Should parcels TMK: 7-6-8:5 & 27 be conveyed or sold to any other parties in the future, and the 10-room Inn is utilizing the driveway access over these parcels, an easement document showing proof of access over parcels 5 and 27 shall be submitted to the Planning Director, or another legal access to these facilities shall be provided in order to continue the

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operations. A copy of the easement documents shall be filed with the Planning Department within one year from the effective date of approval of this amendment request to the Special Permit.

4. Final Plan Approval for the conversion of the garage and construction of the two story addition to the existing dwelling shall be secured from the Planning Department within three (3) years from the effective date of this permit. To assure adequate time for plan approval review and in accordance with Chapter 25-244 (Zoning Code), plans shall be submitted a minimum of forty-five days prior to the date by which plan approval must be secured. Plans shall identify structures, landscaping, fire protection measures, paved parking stalls and paved two lane driveway to the proposed Inn and drop-off area associated with the proposed use. In addition, a pedestrian access via a sidewalk system of improved pathway shall be provided from the proposed Inn to the proposed restaurant and art center. Parking shall comply with the requirements of Chapter 25 (Zoning Code). No parking variance from the Code shall be applied for or granted. Parking for all functions shall be maintained on the subject property. Plans shall also indicate additional landscaping along the adjacent south property boundary and around the 10-car parking area to mitigate any visual or noise impacts generated by the proposed Inn and parking lot.
5. Construction of the proposed 10-Room Inn shall commence within three (3) years from the date of receipt of Final Plan Approval and be completed within three (3) years from the date of commencement of construction. *and 9/16 2100m*
6. The two lane driveway to the Inn and the 10-car parking area shall be paved (asphalt or asphalt concrete). The 10-car parking area shall be paved and striped prior to the issuance of any certificate of occupancy permit for the Inn.
7. The plans for a two-lane driveway access to the proposed Inn shall meet with the approval of the Department of Public Works and the Fire Department. This approved plan shall be submitted simultaneously with the plans for Final Plan Approval.
8. The applicant shall also comply with the State Department of Health requirements prior to submitting plans for Final Plan Approval. This approval must be submitted simultaneously with plans for Final Plan Approval.

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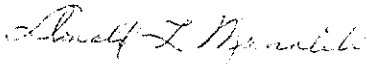
9. The applicant shall comply with the Department of Public Works, Building Division, Traffic and Engineering Divisions requirements relative to the proposed structural additions, driveways, sight distance, slope, drainage and any other necessary requirements for this proposed use.
10. The applicant shall provide at the time of subdivision and/or development of parcel 8, road widening along the property frontage of parcel 8 adjacent to Hualalai Road in compliance with the requirements of the Planning Department and the Department of Public Works.
11. The applicant shall comply with all other laws, rules, regulations and requirements.
12. An annual progress report shall be submitted to the Planning Director prior to the anniversary date of the approval of the permit. The report shall include, but not be limited to, the status of the development and to what extent the conditions of approval are being complied with. This condition shall remain in effect until all of the conditions of approval have been complied with and the Planning Director acknowledges that further reports are not required.
13. An extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances: a) the non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicant, successors or assigns, and that are not the result of their fault or negligence; b) granting of the time extension would not be contrary to the General Plan or Zoning Code; c) granting of the time extension would not be contrary to the original reasons for the granting of the permit; and d) the time extension granted shall be for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year). Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director shall initiate procedures to revoke the permit.

This approval does not, however, sanction the specific plans submitted with the request as they may be subject to change given specific code and regulatory requirements of the affected agencies.

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Should you have any questions, please feel free to contact Rodney Nakano of the Planning Department at 961-8288 or Royden Yamasato of the West Hawaii Office at 329-4878.

Sincerely,



Donald L. Manalili, Chairman
Planning Commission

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xc: Honorable Stephen K. Yamashiro, Mayor
Mr. Desmond Twigg-Smith
Planning Director
Department of Public Works
Department of Water Supply
County Real Property Tax Division
Fire Department
Department of Health
West Hawaii Office
State Land Use Commission
Plan Approval Section

CERTIFIED MAIL

October 28, 1987

Mr. Desmond Twigg-Smith
P. O. Box 222
Holualoa, HI 96725

Dear Mr. Twigg-Smith:

Special Permit Application
TMK: 7-6-8:Portion of 10

The Planning Commission at its duly held public hearing on October 20, 1987, voted to approve your application, Special Permit No. 649, to allow the establishment of a Bed and Breakfast lodging facility in an existing single family dwelling on approximately 3 acres of a 37.835 acre parcel at North Kona, Hawaii.

Approval of this request is based on the following:

1. Such use is not contrary to the objectives sought to be accomplished by the land use law and regulations.

The classification of lands and uses to which such lands may be put is established through Chapter 205, Hawaii Revised Statutes. The intent of the provisions of Chapter 205 in providing for the establishment of rural, urban, agricultural and conservation districts is to preserve, protect, and encourage the development of lands in the State for those uses to which they are best suited in the interest of the public health and welfare of the people of Hawaii. In the case of agricultural districts, the intent is to preserve or keep lands of high agricultural potential in agricultural use.

Pursuant to Hawaii Revised Statutes 205-2 and 4.5 and Subchapter 3, Section 15-15-25 of the rules of the Land Use Commission, permissible uses in Agricultural districts include activities or uses characterized by the cultivation of crops, orchards, forage, and forestry; farming activities or uses

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related to animal husbandry, game and fish propagation; as well as services and uses considered accessory to the permitted activities; including but not limited to living quarters or dwellings, mills, storage facilities, processing facilities, and roadside stands. The provisions of Chapter 205, specifically HRS 205-2, also recognizes that agricultural districts "may include areas which are not used for, or which are not suited to, agricultural and ancillary activities by reason of topography, soils, and other related characteristics."

In recognizing that lands within agricultural districts might not be best suited for agricultural activities and yet classified as such, and in recognition that certain types of uses might not be strictly agricultural in nature, yet reasonable in such districts, the legislature has provided for the Special Permit process to allow certain unusual and reasonable uses within the Agricultural district.

Here the U.S.D.A. Soil Conservation Service Soil Survey Report classifies the soils of the property to be of the Honuaulu soil series. The Land Study Bureau Overall Master Productivity Rating for agricultural use is Class "C" or Fair. The subject land is not classified by the Agricultural Lands of Importance to the State of Hawaii (ALISH) map. The State Department of Agriculture did not endorse or object to the subject application.

The subject property is situated within the County's Agricultural 1-acre zone district. Private lodging facilities are a permitted use within the County's Agricultural zoned district. The proposed lodging use will be conducted within a substantially large existing single family dwelling of approximately 5,000 square feet. The proposed 3 acres to be taken out of the agricultural inventory for this area will not significantly affect the agricultural resource of the area as the proposed use will be confined within the existing single family dwelling and surrounding developed grounds. No active agricultural lands will be taken out of production to provide the area necessary to establish this use. Therefore, based on the above circumstances, approval of the subject request would not be contrary to the objectives of the State Land Use Law Rules and Regulations given the subject conditions.

2. The desired use will not adversely affect the surrounding properties.

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The existing two story single family dwelling consists of approximately 5,000 square feet. Access to the dwelling is via a single unpaved driveway of approximately 170 feet which connects to a single lane paved driveway and widens to a two lane roadway to the porte cochere of the dwelling. The dwelling is approximately 90 feet from the south side; approximately 70 feet from the north side property line; and approximately 200 feet from the North Kona Belt Road from property line. A paved parking area within the two lane driveway in the porte cochere area and in the area of the existing garage will be available for visitor parking. The property heavily landscaped on the north, east and south sides of the property. The area to the west is open pasture. The property is of sufficient size to allow for adequate setbacks and buffers in minimizing any physical, social or other impacts that this lodging facility use may have on the neighborhood. In addition, with the existing orchards and pastures, the location of the existing dwelling, and the low level of the lodging activity, it would not be substantially different from the level of the lodging activity that would be generated by a normal single family. A condition of approval is being recommended to ensure that the access to the dwelling is upgraded with the level of lodging activities. The initial operation for this lodging facility will be the use of 3 bedrooms or a maximum of 6 people utilizing this facility. Although, the lodging facility will be a seven day a week operation, check in times will be confined to the afternoons. A condition of approval is also being included to require that the petitioner provide this service on a reservation only basis. In addition, being a small private lodging facility, no signage will be permitted to be placed at the intersection of the North Kona Belt Road/driveway intersection. All directions to the property shall be made via other means, such as maps, brochures, etc. This condition is being imposed to minimize the vehicular traffic to the area, until the access can be upgraded to allow a paved two lane access to the facility. In the meantime, the existing access is reasonable for the initial operation with the above conditions.

3. The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, police and fire protection.

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The Department of Water Supply had no objections to the subject request and indicated the availability of water for the proposed bed and breakfast lodging facility. The Department of Public Works, Police Department, Kona Soil and Water Conservation District, Real Property Tax Division, and Hawaii Electric Light Company had no objections or comments to the proposed request.

4. The land upon which the proposed use is sought is unsuited for the uses permitted within the district.

As indicated previously, the bed and breakfast lodging facility will be contained and confined with the existing single family dwelling on the property. Therefore, no existing or proposed areas for agricultural activities will be curtailed or diminished as a result of the establishment of this activity on this property. As such, other undeveloped areas are still available for agricultural development and the removal of this 3 acres of land from the agricultural inventory will not have a detrimental impact on the agricultural resources of the area or the County of Hawaii.

5. The proposed use will not substantially alter or change the essential character of the land and the present use.

The essential character of the land is that it is primarily agricultural in nature, with the existing coffee orchards and cattle ranch pasture fields. The existing single family dwelling sits within this agricultural environment and as indicated previously, since the proposed use will be confined to the single family dwelling and its surrounding grounds, no substantial alteration of the land or the character is being done. Therefore, from a physical standpoint, there will be no alteration to the landscape which would give this area an appearance other than what is presently there.

6. Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established.

The bed and breakfast lodging facilities are part of a worldwide trend towards providing alternative lodging sites in rural areas such as this particular location. This more localized and unique lodging facility provides the visitor an

opportunity to experience Hawaii in a home type setting as well as contribute to the economic structure of the County. Within the County of Hawaii, there are unique areas and structures that can provide this type of service to the visitor and would be in keeping with the Economic Element policies of the General Plan which states that "The County of Hawaii shall encourage the development of a visitor industry which is consistent with the social, physical, and economic goals of the residents of the County," and "The County shall strive for diversification of its economy by strengthening existing industries and attracting new endeavors."

7. The request is not contrary to the General Plan.

The County General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates this area for Medium Density Urban Development. The Kona Regional Plan land use concept map designates this area for Agriculture 1-acre uses. The property is situated within the County's Agricultural 1-acre (A-1a) zone district. Private lodging facilities are a permitted use within this zone district. Additionally, one of the basic purposes of the County General Plan is "To improve the physical environment of the County as a setting for human activities - to make more functional, beautiful, healthful, interesting and efficient." The proposed bed and breakfast lodging facility at this particular location will fulfill this particular purpose.

In view of the foregoing, it is determined that the proposed bed and breakfast lodging facility and related improvements is an unusual and reasonable use, which would not be contrary to the objectives sought to be accomplished by the land use law rules and regulations.

Approval of this request is subject to the following conditions:

1. The petitioner, its successors, or assigns, shall be responsible for complying with all stated conditions of approval.
2. The establishment of the bed and breakfast lodging facility shall be limited to the initial 3 bedrooms and shall be established within 1 year from the effective date of approval of the Special Permit. The operation of the bed

and breakfast lodging facility shall be conducted on a reservation only basis, with no signage at the highway intersection until the access to the facility is improved with a two lane paved driveway. However, this is not to preclude advertising of the facility in newspapers, guide books, brochures, etc. Prior to establishing any additional lodging rooms, Final Plan Approval will have to be secured from the Planning Department. If the petitioner chooses to improve the driveway access to a two lane driveway prior to the opening of the lodging facility, then the operation and signage conditions will not be applicable.

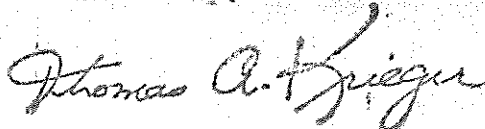
3. A metes and bounds description of the 3 acre area in written and map form shall be submitted within one year from effective date of approval of this Special Permit.
4. Should parcels 5 and 27 be conveyed or sold to any other parties in the future, and the bed and breakfast lodging facility is still using the existing service road, an easement document showing proof of access over parcels 5 and 27 will be required to be submitted to continue the operation or if available, another legal access to the facility is provided.
5. The parking area next to the garage shall be striped in accordance with the submitted plans prior to establishment of the bed and breakfast lodging facility.
6. The proposed building shall conform to all requirements of the Department of Public Works.
7. All other applicable rules, regulations and requirements, including those of the Department of Water Supply and State Department of Health shall be complied with.
8. An extension of time for the performance of conditions within the Special Permit may be granted by the Planning Director upon the following circumstances: a) the non-performance is the result of conditions that could not have been foreseen or are beyond the control of the applicants, and that are not the result of their fault or negligence; b) granting of the time extension would not be contrary to the general plan or zoning code; c) granting of

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the time extension would not be contrary to the original reasons for the granting of the Special Permit; and d) the time extension granted for a period not to exceed the period originally granted for performance (i.e., a condition to be performed within one year may be extended for up to one additional year). Further, should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to nullify the Special Permit.

Please feel free to contact the Planning Department if there are any questions on this matter.

Sincerely,



Thomas A. Krieger
Chairman, Planning Commission

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
Planning Office - Kona
State Land Use Commission

bcc: Plan Approval Section