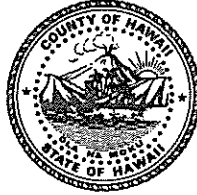


Stephen K. Yamashiro
Mayor



County of Hawaii

PLANNING COMMISSION

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

CERTIFIED MAIL
P 101 317 924

DEC 09 1999

Ms. Pearl G. Harvie
13-3432 Kuponono Street
Pahoa, HI 96778

Dear Ms. Harvie:

Amendment to Special Permit No. 751
Applicant: Pearl G. Harvie
Request: Amendment to Condition No. 2 (Final Plan Approval) and
Condition No. 4 (2-Bedroom Limitation)
Tax Map Key: 1-3-36:31

The Planning Commission at its duly held public hearing on November 16, 1999, voted to approve the above-referenced request. Special Permit No. 751 allowed the establishment of a bed and breakfast operation within an existing dwelling situated in the State Land Use Agricultural District. The amendment includes the request for the deletion of a paved driveway and to utilize an existing third bedroom for guests. The property is located in the Leilani Estates Subdivision, along the east side of Kuponono Street approximately 1,200 feet north of its intersection with Leilani Avenue, Keahialaka, Puna.

Approval of this request is based on the following:

The granting of this request would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended. 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 State Land Use Law and Regulations are intended to preserve, protect and encourage the development of lands for those uses to which they are best suited in the interest of the public welfare of the people of the State of Hawaii. In the case of the Agricultural District, the intent is to preserve or keep lands of high agricultural potential in agricultural use. Since 1990, the subject property has been the site of the applicant's existing bed and breakfast operation, and is not actively used for agricultural purposes.

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DEC 09 1999

The property is located in an area with soils classified as rLV, or lava with very little soil covering. The property has a soil rating of "E" or "Very Poor" and the ALISH maps identify the property as Unclassified. The applicant is requesting an amendment to Condition No. 2 (Final Plan Approval) to delete the requirement for a paved driveway, and Condition No. 4 (2-bedroom limitation) to expand the bed and breakfast establishment to three (3) bedrooms within the existing 4-bedroom dwelling. The applicant has stated that the driveway was not paved due to financial constraints and requests that Condition No. 2 be deleted because "in 1996, the code was amended to read graveled driveway." Although Condition No. 2 required a paved driveway, neither the Hawaii County Code adopted by Ordinance 92 104 on September 28, 1992 ("old Code") nor the Hawaii County Code adopted by Ordinance 96 160 on December 7, 1996 ("new Code") requires a paved driveway for bed and breakfast establishments. In both Codes, no reference is made to specific types of driveways. The "new/current" Code makes a reference to parking stalls for bed and breakfast establishments, and under Section 25-4-7(8), paved parking stalls are not required in the RS, RA, FA and A districts as long as the material used for the parking stalls eliminates erosion, mud and standing water within the parking stall area. Therefore, as the subject property is designated Agricultural-1 acre (A-1a), paved parking stalls are not required for the existing and proposed use. As no active agricultural activity is being conducted on the property, and the bed and breakfast establishment is confined to the existing dwelling, the establishment will not displace any existing agricultural activity nor diminish the agricultural potential of the project site or surrounding area.

The desired use will not adversely affect the surrounding properties. Surrounding uses include mostly vacant parcels and scattered single family dwellings. As immediate surrounding properties are mostly vacant, it is not expected that the expansion of the bed and breakfast operation from a 2-bedroom to a 3-bedroom establishment would create significant adverse impacts to surrounding properties. The property is sufficient in size so as not to impact surrounding properties. The grounds have been landscaped and consist of various trees and plants including fern, hapuu, palm, and hibiscus. In the approximately nine (9) years since the commencement of operations, no complaints have been filed with the Planning Department.

The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements and police and fire protection. The project site is located within an area adequately served with essential services and facilities. The subject property is located in Leilani Estates Subdivision, a 2,400-acre 2,231-lot subdivision which received Final Subdivision Approval on February 15, 1960. All lots within the subdivision are approximately one acre in size. Access to the site is from the Paho-Kalapana Highway, to Leilani Avenue and Kupono Street. Leilani Avenue has a 20-foot wide pavement within a 60-foot right-of-way. Kupono Street is a private roadway with a 16-foot pavement within a 40-foot right-of-way. The property is located approximately 2 miles from the Paho-Kalapana intersection. A 12-foot wide

gravel/grass driveway leads to the dwelling. There is adequate parking on site to accommodate the guests. No objections were received from the agencies, communities, or the Leilani Estates Community Association.

Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established. In areas where limited commercial lands are available, the Special Permit application has been the appropriate vehicle for establishing the use. Bed and breakfast accommodations have increasingly become a part of a worldwide trend towards providing alternative lodging sites in rural and agricultural areas such as this particular location. They are becoming popular for visitors who seek a more localized and authentic experience in a home-type setting. The County has recognized this trend, and the Zoning Code, Section 25-4-7, provides guidelines for establishing bed and breakfast operations. In this particular situation, the applicant has been in operation since 1990 and is requesting an amendment to delete the requirement for a paved driveway and expand the use to a 3-bedroom bed and breakfast establishment. The applicant resides on the subject parcel and in review of the request, the existing bed and breakfast operation meets with the requirements of the Zoning Code Section 25-4-7(b) regarding bed and breakfast establishments.

The use will not substantially alter or change the essential character of the land and the present use. The subject property is developed with an existing structure and is fully landscaped. The bed and breakfast operation will be secondary to the residential use. The proposed use will be confined to the existing dwelling and will be in keeping with the existing character of the surrounding neighborhood. The requested use will neither conflict with nor intensify existing land uses.

The lands upon which the proposed use is sought is suitable for the uses permitted in the district, however, the proposed use will not interfere with permitted uses. The subject site is primarily used as a residence, and the bed and breakfast operation is subordinate to the principal use as a residence. Therefore, the land is not suitable for agricultural use, and no agricultural activity will be diminished. The zoning for the property is Agricultural-1 acre (A-1a).

The proposed use is consistent with the following goals, policies and standards of the General Plan. The subject parcel falls within an area designated as Orchards on the General Plan LUPAG Map. The zoning for the property is Agricultural-1 acre (A-1a) and the State Land Use designation is Agricultural. As such, a Special Permit was secured in 1990 to establish the bed and breakfast operation. The request would complement and be consistent with the following goals, policies and standards of the General Plan:

Economic Element

- * Provide residents with opportunities to improve their quality of life.
- * The County shall provide an economic environment which allows new, expanded, or improved economic opportunities that are compatible with the County's natural and social environment.
- * The County of Hawaii shall strive for an economic climate which provides its residents an opportunity for choice of occupation.

Electricity, water, wastewater disposal facilities and other essential services are or will be made available for the proposed use.

Based on the above considerations, the request to amend Condition No. 2 to delete the requirement for a paved driveway, and Condition No. 4 to expand the use to a 3-bedroom bed and breakfast establishment, would be an unusual and reasonable use of land within the State Land Use Agricultural District, and would not be contrary to the objectives sought to be accomplished by the State Land Use Law Rules and Regulations.

Condition Nos. 2 and 4 are amended as follows (material to be deleted is bracketed and new material is underscored). Should any of these conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke the permit.

2. Final Plan Approval shall be secured from the Planning [Department] Director in accordance with the Zoning Code, Sections 25-2-72, 25-2-73 and 25-4-7 within [one year] six months from the effective date of [this permit] this amendment. [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, signage consistent with Residential districts as set forth in Section 3-26 of the Hawaii County Code, and paved driveway and parking stalls associated with the bed and breakfast operation. Parking shall comply with the requirements of Chapter 25 (Zoning Code). No parking variance from the Code shall be applied for or granted.] Plans shall identify existing and proposed structures, landscaping, fire protection measures, driveway, three parking stalls and exterior signs associated with the business. Parking for all functions shall be maintained on the subject property.
4. The bed and breakfast [facility] establishment shall be limited to the use of [two (2)] three (3) bedrooms and common areas, and shall be conducted

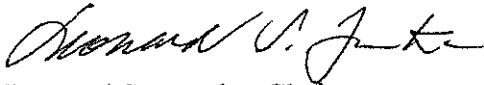
Ms. Pearl G. Harvie
Page 5

on a reservation-only basis. This is not to preclude advertising of the facility in newspapers, books, brochures, etc.

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

Should you have any questions, please contact Phyllis Fujimoto or Alice Kawaha of the Planning Department at 961-8288.

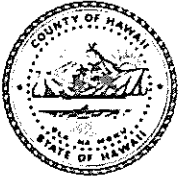
Sincerely,



Leonard S. Tanaka, Chairman
Planning Commission

Lharvie01PC

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
Kazu Hayashida, Director/DOT-Highways, Honolulu



Planning Commission

25 Aupuni Street, Rm. 109 • Hilo, Hawaii 96720 • (808) 961-8288

Larry S. Tanimoto
Mayor

CERTIFIED MAIL

September 24, 1990

Mr. and Mrs. Richard Whittaker
P.O. Box 1324
Pahoa, HI 96778

Dear Mr. and Mrs. Whittaker:

Special Permit Application
TMK: 1-3-36:31

The Planning Commission at its duly held public hearing on September 6, 1990, voted to approve your application, Special Permit No. 751, to allow the establishment of a bed and breakfast establishment within an existing single family dwelling situated on one acre of land within the State Land Use Agricultural District along the east side of Kupono Street, approximately 1,200 feet north of the Leilani Avenue-Kupono Street intersection, Leilani Estates Subdivision, Keahialaka, Puna, Hawaii.

Approval of this request is based on the following:

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 District, the intent is to preserve or keep lands of high agricultural potential in agriculture use. The Agricultural District includes 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. The land is identified by the Soil Conservation Service as Aa lava flow. The soil is classified as Very Poor by the Land Study Bureau's Overall Master Productivity Rating and is unclassified by the

SEP 24 1990

Mr. and Mrs. Richard Whittaker
September 24, 1990
Page 2

Department of Agriculture's ALISH Map. The conversion of an existing dwelling into a bed and breakfast establishment is not expected to affect the agricultural potential of the property or the region.

The desired use will not adversely affect the surrounding properties. The dwelling is situated on a heavily landscaped 1-acre lot. Surrounding properties are 1 acre in size. The nearest dwelling is located over 100 feet to the north. Private roads accessing the property are paved. Continuing the pavement to the driveway and parking area is recommended in order to mitigate any potential noise and dust associated with increased traffic over residential levels. In order to further minimize impacts of increased traffic, it is recommended that occupancy be limited to two rooms.

The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, police, and fire protection. There is no County water system in the area. Therefore, the applicants must comply with Department of Health regulations in order to establish an approved water source for the bed and breakfast use. Although the private roads leading to the property are not constructed to commercial standards, access to the property is deemed to be adequate to accommodate traffic generated by the project. The Leilani Community Association had no objection to the request. No objections to the granting of this permit were received from agencies providing services in the region.

Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established. Bed and breakfast accommodations are becoming an increasingly popular type of lodging facility for visitors seeking a more personal experience of Hawaii. A bed and breakfast facility could provide an appropriate scale of service in rural areas which do not offer full hotel services. Provision of such services could satisfy the new trend of visitor demands for an encounter with the less populated areas of the island. It should be pointed out, however, that the approval of this particular request should not be construed as an automatic endorsement of future bed and breakfast establishments in this particular area. The need for such use would have to be justified.

The use will not substantially alter or change the essential character of the land and the present use. The bed and breakfast use will remain secondary to the residential use.

Mr. and Mrs. Richard Whittaker
September 24, 1990
Page 3

No significant improvements other than parking and landscaping are anticipated. Since no restaurant or commercial kitchen facilities are proposed, the bed and breakfast facility is not expected to cause impacts which would significantly alter the character of the land and the present use.

The proposed use would be in keeping with the Economic Element Policies of the General Plan which state:

- * 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.
- * The County shall strive for diversification of its economy by strengthening existing industries and attracting new endeavors.

A Course of Action for the Puna district states:

- * There is a potential for limited visitor facilities in the form of small accommodations and support facilities, such as natural areas, botanical gardens, and limited commercial facilities. Resort growth should enhance and be in keeping with this area's rural character.

Based on the above considerations, it is determined that the proposed bed and breakfast facility is an unusual and reasonable use of land, which would not be contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

Approval of this request is subject to the following conditions:

1. The applicant, its successors, or assigns shall be responsible for complying with all stated conditions of approval.
2. Final Plan Approval shall be secured from the Planning Department within one year 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, signage consistent with Residential districts as set forth in Section 3-26 of the Hawaii County Code, and paved driveway and parking stalls associated with the bed and breakfast operation.

- 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.
3. The bed and breakfast operation shall be established within one year of the date of receipt of Final Plan Approval. The applicant shall notify the Planning Department in writing of completion of required improvements prior to establishment of the bed and breakfast operation.
 4. The bed and breakfast facility shall be limited to the use of two (2) bedrooms and common areas, and shall be conducted on a reservation-only basis. This is not to preclude advertising of the facility in newspapers, books, brochures, etc.
 5. The bed and breakfast facility shall be operated by the resident(s) of the affected single family dwelling.
 6. The applicant shall comply with all other applicable laws, rules, regulations, and requirements of State and County agencies.
 7. 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.
 8. 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

Mr. and Mrs. Richard Whittaker
September 24, 1990
Page 5

(i.e., 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 application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

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

Sincerely,



Fred Y. Fujimoto
Chairman, Planning Commission

xc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission

Ecc: Plan Approval Section