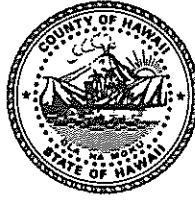


Stephen K. Yamashiro
Mayor



County of Hawaii

PLANNING COMMISSION

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

CERTIFIED MAIL
Z 179 517 333

NOV 25 1997

John and Toralyn Mospens
HC 3 Box 10064
Keaau, HI 96749

Dear Mr. and Mrs. Mospens:

Special Permit Application (SPP 97-18)
Applicant: John and Toralyn Mospens
Request: Allow the Establishment of an Existing Five Bedroom
Bed and Breakfast Within Two Existing Dwellings
Tax Map Key: 1-5-32:59

The Planning Commission at its duly held public hearing on November 12, 1997, voted to reaffirm their September 26, 1997, decision to approve the above-referenced application. Special Permit No. 985 is hereby issued to allow the establishment of an existing three-bedroom bed and breakfast operation situated on approximately .55 acres of land within the State Land Use Agricultural District. The property is located within Hawaiian Paradise Park on the makai side of Ala Hele O Puna Road, approximately 1/2 mile (Keaau side) from Maku'u Drive at Keaau, Puna, Hawaii.

Upon review of the request against the guidelines for granting a Special Permit, the Planning Commission at its duly held public hearing on November 12, 1997, voted to approve the request to allow the continued use of a three-bedroom bed and breakfast establishment in the existing dwelling that the landowner resides in. Based on discussions during the public hearing that a bed and breakfast cannot be established in an ohana dwelling, the applicant amended the request to exclude the operation of a two-bedroom bed and breakfast establishment in the existing ohana dwelling. The applicant's intent is to, at a future date, request a special permit for an inn or transient vacation rental to allow the use of the two bedrooms in the ohana unit.

The approval to allow the continued use of a three-bedroom bed and breakfast establishment in the existing dwelling that the landowner resides in is based on the following findings:

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

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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 agricultural use. 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 Agricultural (A-1a) zoned district and is not in agricultural use. It is located within an area whose soils are classified as "E" of "Very Poor" by the Land Study Bureau's Overall Master Productivity Rating and classified as Existing Urban Development by the Department of Agriculture's ALISH Map. The continued use of a three bedroom bed and breakfast establishment in an existing dwelling will not take significant lands out of the agricultural inventory for this area and will not significantly affect the agricultural resource of the area. The use will be confined within the existing dwelling and its immediate vicinity. The subject property is presently being used as a residence and no active agricultural lands will be taken out of production to provide the area necessary to establish this use. No new structures are anticipated to be constructed. Three outstanding building permits are pending with the Building Division of the Department of Public Works. The applicants will be required to secure Final Inspection of permits affecting the bed and breakfast operation as a condition of approval.

The approval of the subject request would not be contrary to the objectives of the State Land Use Law Rules and Regulations based on the above. The use of an existing dwelling for a bed and breakfast operation would not displace agricultural activity nor diminish the agricultural potential of the area since this parcel has not been in agricultural use. As such, the land upon which the use is sought is not best suited for the uses permitted within the district.

The request is not contrary to the General Plan and official Community Development Plans and other documents such as Design Plans. The subject parcel is located within the Hawaiian Paradise Park Subdivision and there is no official community development plan for this area. The subject request is designated as Orchards and zoned Agricultural (A-1a), however, the land is not actively used for agricultural purposes. Bed and Breakfast operations may be established in the State Land Use Agricultural district through the issuance of a Special Permit. The bed and breakfast operation is consistent with the following goals and policies of the General Plan:

Economic Element

- * Provide residents with opportunities to improve their quality of life.
- * Economic development and improvements shall be in balance with the physical and social environments of the island of Hawaii.
- * 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.
- * 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.

Land Use Element

- * Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the County.
- * The County shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

The desired use will not adversely affect the surrounding properties. The subject property is located within the Hawaiian Paradise Park Subdivision which is zoned Agricultural (A-1a). The dwelling is situated on a .55 acre parcel. Along the Ala Hele O Puna Road (Beach Road) are various residences as well as vacant land. The driveway to the property is gravel and there are gravel parking areas to accommodate three parking spaces which will eliminate erosion, mud and standing water within the parking area. No complaints have been filed in regard to this request. There is one other approved bed and breakfast operation in Hawaiian Paradise Park that was approved for Laura Richman and Stephen Peyton as a two-bedroom bed and breakfast operation. Special Permit No. 730 was approved in May 1990 and is located on the southeast corner of Paradise Drive and Awapuhi Street (Fourth Street), which is located southwest of the subject request. It is not anticipated that the subject request will significantly impact surrounding properties.

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 site is currently served by telephone and electrical utilities. Police and fire services are available in Keaau. Water is provided by rain catchment and the applicants have stated they will serve bottled water to guests. The subject property is on the Ala Hele O Puna Road which is a 13-foot wide private gravel road. Due to the nature of the request as accessory to the use of the property as a residence, it is not anticipated that the operations would substantially increase traffic nor have a major impact on existing roads. There is adequate guest parking on site. The applicants have been in existence since September 1996 with no complaints. The applicants would be required to comply with applicable agency requirements, including the Department of Health. Finally, agencies reviewing the request had no objections to the establishment of the bed and breakfast operation at this location.

Unusual conditions, trends and needs have arisen since the district boundaries and regulations were established. 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. This section also provides for a process in which an existing bed and breakfast operation can operate as a non-conforming use until September 1997. The operator can apply for applicable permits by June 30, 1997 and upon issuance of applicable permits, be considered a permitted use. In this particular situation, the applicants have been in operation since 1996 and are applying for a Special Permit to conform to the Zoning Code requirements. The applicants live on subject parcel and in review of the request, the existing bed and breakfast operation does meet with the requirements of the Zoning Code, Section 25-4-7(b), regarding bed and breakfast establishments. Such a small-scale and residential-related use is consistent with the social and physical character of a rural-agricultural area and will contribute to the economic development of the County.

The use will not substantially alter or change the essential character of the land and the present use. The subject property is located along the coastline and has been developed and landscaped. There is an existing two-story dwelling and an ohana dwelling/garage on the property. No additional structures are anticipated to be built on the property. Although there are outstanding building permits, the applicants would be required to secure Final Building Inspection on permits affecting the bed and breakfast operation.

Based on the above considerations, the bed and breakfast operation is an unusual and reasonable use of land, which would not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. Therefore, a three-bedroom bed and breakfast establishment within the existing dwelling that the landowner resides in is hereby approved.

Approval of this request is subject to the following conditions. Should any of these conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke this permit.

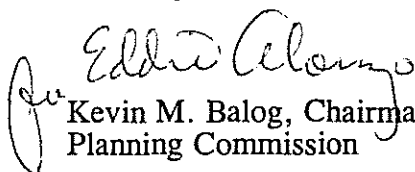
1. The applicants, its successor or assigns shall be responsible for complying with all stated conditions of approval.
2. Final Plan Approval shall be secured from the Planning Director in accordance with the Zoning Code, Sections 25-2-72, 25-2-73 and 25-4-7, within six months of the effective date of this permit. Plans shall identify existing and proposed structures, landscaping, fire protection measures and evacuation plan, driveway and three gravel parking stalls and exterior signs associated with the business. In conjunction with Final Plan Approval, the applicant shall submit documentation that Final Building Inspection has been secured from the Department of Public Works for permits affecting the bed and breakfast operation.
3. The applicant shall submit a Tsunami Evacuation Plan, for review and approval by the Planning Director in consultation with Civil Defense, concurrently with plans submitted for Final Plan Approval.
4. The bed and breakfast business shall be limited to the use of three (3) bedrooms.

5. Drinking water shall meet Department of Health standards and only breakfast meals may be served to guests.
6. Comply with all applicable requirements as stated in the Zoning Code regulating bed and breakfast establishments.
7. A written final status report shall be submitted to the Planning Director upon compliance with all conditions of approval.
8. Comply with all applicable laws, rules, regulations and requirements of other affected agencies, for approval of the bed and breakfast use.
9. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:
 - A. 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.
 - 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).

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 feel free to contact Alice Kawaha or Susan Gagorik of the Planning Department at 961-8288.

Sincerely,


Kevin M. Balog, Chairman
Planning Commission

LMospe01.PC

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