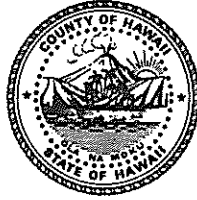


Stephen K. Yamashiro
Mayor



County of Hawaii

PLANNING COMMISSION

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

CERTIFIED MAIL
Z 095 323 349

NOV 25 1997

Charlene and Cortney Cowan
P.O. Box 756
Naalehu, HI 96772

Dear Mr. and Mrs. Cowan:

Special Permit Application (SPP 97-19)

Applicant: Charlene and Cortney Cowan

Request: Allow for the Establishment of an Existing Five Bedroom Bed and
Breakfast Operation Within an Existing Dwelling

Tax Map Key: 9-4-2:42

The Planning Commission at its duly held public hearing on November 12, 1997, voted to reaffirm their decision of September 26, 1997, to approve the above-referenced application. Special Permit No. 984 is hereby issued to allow the establishment of an existing five-bedroom bed and breakfast operation within an existing dwelling situated on approximately 8.19 acres of land within the State Land Use Agricultural District. The property is located on the makai side of Kamaoa Road, approximately 3/4 miles (Kona side) from Waiohinu Village at Kiolakaa, Kau, Hawaii.

Approval of this request is based on the following:

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 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 State Land Use Agricultural District and County's Agricultural (A-20a) zoned district. It is located within an area whose soils are classified as "D" or "Poor" by the Land Study Bureau's Overall Master

11596
NOV 25 1997

Productivity Rating and unclassified by the Department of Agriculture's ALISH Map. However, approximately 5 acres of the subject property is presently in active producing macadamia nut orchards. The applicants will maintain these agricultural lands in agricultural activity and will not be taken out of production to provide the area necessary to establish this bed and breakfast use. The applicants wish to continue a 5-bedroom bed and breakfast operation on the subject site within the existing dwelling situated on a portion of the 8.19-acre site. The dwelling and attached wing, tennis court, swimming pool, landscaping, driveway and parking area are already in place. Therefore, the continued bed and breakfast use 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 is confined within the existing dwelling and its immediate vicinity. No new structures are anticipated to be constructed. As a condition of approval, the applicants will be required to secure Final Building Inspection of permits affecting the bed and breakfast operation.

Based on the above, the approval of the subject request would not be contrary to the objectives of the State Land Use Law, Rules and Regulations. The use of the existing dwelling and attached wing and immediate vicinity for a bed and breakfast operation would not displace the existing agricultural activity nor diminish the agricultural potential of the area. The parcel has been in producing macadamia nut agricultural use in years and the applicants intend to continue farming the land. 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 property is located near Waiohinu and there is no official community development plan for the area. The property is not contrary to the General Plan LUPAG Map as it is designated as Extensive Agricultural. A major portion of the property is in active use 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 improvement 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 bed and breakfast use will also complement the course of action of the Land Use Resort subelement of the General Plan for the Kau District which states, "The County shall encourage the development of small family or 'bed and breakfast' type visitor accommodations."

The desired use will not adversely affect the surrounding properties. The existing dwelling is situated on a portion of the 8.19-acre parcel. Surrounding properties are similarly nonconforming lots and zoned A-20a. The adjacent parcel to the east is vacant and owned by the State of Hawaii. In the immediate vicinity, lands are in agricultural use with residences and interspersed with vacant lands. No complaints have been filed in regard to this request. It is anticipated that the subject request will not 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. Access to the subject property is directly from the Kamaoa Road, a County-owned and maintained road. This section of Kamaoa Road has an approximate 20-foot pavement with 3 to 5-foot paved shoulders. Kamaoa Road also leads to South Point, which is approximately 11 miles away. The driveway to the dwelling area has a 12-foot pavement and there are parking areas to accommodate more than six (6) vehicles which will eliminate erosion, mud and standing water within the parking area. Therefore, access is deemed to be adequate for guests. County water is available to the property from an existing 8-inch waterline along Kamaoa Road. The site is currently served by telephone and electrical utilities. Police and fire services are available in Naalehu, approximately 2 1/2 miles from the subject property. 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 and emergency vehicle turnaround area on site. The applicants have been in existence since November 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 use would be 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. A portion of the subject property presently has the existing two-story dwelling and attached wing, tennis court, swimming pool and landscaping. The remaining area is in active producing macadamia nut orchard. No additional structures are anticipated to be built on the property. Since the property has already been cleared and developed, it is unlikely that any rare or endangered species or habitat of flora or fauna are present on the property. In January 1995, a site inspection of the property was conducted by staff of the State Historic Preservation Division and according to the findings, no significant historic structures or features were observed on the parcel.

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, it is recommended that this request be 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 Director may initiate procedures to revoke this permit.

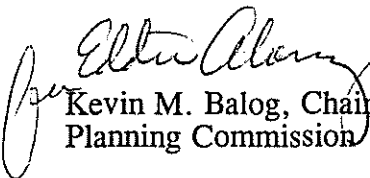
1. The applicants, its successor or assigns shall be responsible for complying with all stated conditions of approval.
2. Final Plan Approval shall be secured from the Planning Director in accordance with the Zoning Code, Section 25-2-72, 25-2-73 and 25-4-7, within six months of the effective date of this permit. Plans shall identify existing and proposed structures, landscaping, fire protection measures, driveway and five gravel parking stalls and exterior signs associated with the business. Final Building Inspection shall be secured from the Department of Public Works for the permits affecting areas to be used for the bed and breakfast operation.
3. The bed and breakfast business shall be limited to the use of five (5) bedrooms.
4. Only breakfast meals may be served to guests.

5. Comply with all applicable requirements as stated in the Zoning Code regulating bed and breakfast establishments.
6. A written final status report shall be submitted to the Planning Director upon compliance with all conditions of approval.
7. Comply with all applicable laws, rules, regulations and requirements of other affected agencies, for approval of the bed and breakfast use.
8. 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

LCowa02.PC

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