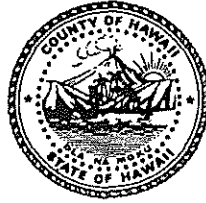


Harry Kim
Mayor



County of Hawaii

PLANNING COMMISSION

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-8742

CERTIFIED MAIL

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MAY 22 2001

Mr. Klaus D. Conventz
dba Baumeister Consulting
P.O. Box 2308
Kailua-Kona, HI 96745-2308

Dear Mr. Conventz:

Special Permit Application (SPP 01-05)
Applicant: Thomas R. Tripler
Request: Establishment of an Existing 4-Bedroom Bed and Breakfast
Operation Within a Single Family Dwelling
Tax Map Key: 7-2-8:32

The Planning Commission at its duly held public hearing on May 4, 2001, voted to approve the above-referenced application. Special Permit No. 1109 is hereby issued to establish an existing 4-bedroom Bed and Breakfast operation within the existing single family dwelling situated in the State Land Use Agricultural District. The property is located in the Kona Ocean View Subdivision approximately 120 feet on the west (makai) side of the Hawaii Belt Road, Pu'ukala, North Kona, Hawaii.

Approval of this request is based on the following:

The Planning Department staff conducted a site inspection of the subject property in response to a complaint alleging the existence of an illegal bed and breakfast operation called Pu'ukala Lodge. According to the applicant, he was unaware of the legal requirements under the Zoning Code and that he has been conducting a bed and breakfast operation under a General Excise Tax License issued on September 10, 1997. Further, since the violation has been brought to his attention, the applicant is taking corrective action to comply with the required regulations. The applicant filed this subject

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application for a Special Permit to establish the existing bed and breakfast operation on the property. The four-bedroom bed and breakfast operation would meet the guidelines for approval of a Special Permit for the reasons outlined below.

The granting of this bed and breakfast operation 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. This particular property is situated within the State Land Use Agricultural District. The Kona Ocean View Properties Subdivision was created in July 1959 as residential lots, ranging in size from 8,432 to 22,403 square feet. The State Land Use Commission was created in 1961; the interim regulations and temporary district boundaries became effect in 1962; and subsequently the Regulations and Land Use District Boundaries became effective in August 1964. The North Kona District Zone Map was adopted on May 24, 1967 that classified the Kona Ocean View Properties Subdivision as Unplanned. The property was reclassified to Agricultural-5 acres (A-5a) after the adoption of the 1996 Zoning Code. Therefore, said subdivision consists of non-conforming lots as they are less than the minimum five acres in size, and was created prior to the adoption of the Zoning Code in 1967. The property is located within an area whose soils are classified as "D" or Poor by the Land Study Bureau's Overall Master Productivity Rating. The Agricultural Lands of Importance to the State of Hawaii (ALISH) Map considers the area as "Existing Urban Development," lands which have been developed for urban type uses. The use has not displaced any agricultural activity nor diminish the agricultural potential of the property. Therefore, the approval of the bed and breakfast operation request shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.

The bed and breakfast use is an unusual and reasonable use of land situated within the State Land Use Agricultural District. 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. Two thirds of the Kona Ocean View Properties Subdivision has been developed with single family dwellings over the past 30 years. The single family dwelling existed on the property since August 1979. The bed and breakfast use has been subordinate and incidental to the principal use of the residence by the applicant. The four-bedroom bed and breakfast operation is confined to the existing five-bedroom dwelling. As previously stated, the subdivision was created in July 1959 with residential lot sizes. Therefore, the subject request is considered an unusual and reasonable use of the agricultural land.

The desired use shall not adversely affect the surrounding properties. The existing single family dwelling is situated on an 11,093 square feet of land that is a portion of a 78-lot Kona Ocean View Properties Subdivision created in 1959 and with lot sizes ranging in size from 8,432 to 22,403 square feet. The subdivision is zoned A-5a and about 2/3 of the subdivision is developed with single family residences. A duplex ohana dwelling is situated on the abutting parcel to the east, two single family dwellings lie on the parcel to the west, and the parcel to the south is presently vacant of any uses. Further north are parcels similarly zoned A-5a, 2-3 acres in size and consist of dwellings. The Makalei Golf Course lies to the east (mauka) of Mamalahoa Highway on a parcel consisting of approximately 989 acres zoned A-900a and A-1a. The Makalei Plantations Subdivision, located adjacent to and south of the subject Kona Ocean View Properties Subdivision, was approved in January 2001. It is zoned A-3a and consists of about 81 vacant lots. A 25-foot Homestead Road abuts the property along its northern boundary, and is presently overgrown with vegetation. This natural vegetation buffer should assist in mitigating any adverse impact upon adjacent properties to the north. According to the applicant, the bed and breakfast use was in operation since July 1997. However, the Planning Department had not received any complaints from the surrounding community until recently. Therefore, it is not anticipated that the bed and breakfast use will adversely affect the surrounding properties.

Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. It is anticipated that there would not be any traffic impacts generated by the four-bedroom bed and breakfast operation. The property is located at the end of Road B, a private paved and maintained roadway, which has a 30-foot right-of-way. The condition and width of this roadway is deemed adequate to accommodate the anticipated traffic to be generated. The Department of Public Works initially expressed its opposition to the bed and breakfast use. There is no municipal sewer system in the subject Kona Ocean View Properties Subdivision area. The applicant currently utilizes an existing cesspool. County water is available to the parcel via an existing 5/8-inch meter service. The property is situated within an area designated as Flood Zone X, an area determined to be outside the 500-year flood plain. The Kealakehe School Complex is the closest school facilities.

Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established. The purpose of the special permit request is to allow the existing bed and breakfast accommodations which have become part of a worldwide trend towards providing alternative lodging sites in rural and residential areas such as this particular location. They are becoming increasingly popular for visitors who seek a more localized and authentic experience in a home-type setting. Such small-scale use is consistent with the social and physical character of the residential area and contributes to the economic structure of the County. Bed and breakfast businesses provide an economic

opportunity for County residents, who can supplement their incomes by sharing their homes with visitors. Recognizing this benefit, Ordinance No. 92-104 and No. 00-152 were passed by the County Council to ensure that bed and breakfast businesses remain subordinate and incidental to the principal use of the residence as a single family dwelling.

The land upon which the use is sought is unsuited for agricultural uses permitted within the district. As mentioned, the subject subdivision consists of residential lot sizes. The bed and breakfast use has been confined to an existing single family dwelling and has not substantially alter or change the essential character of the land and the present use on the parcel as well as in the subject subdivision as a whole. The bed and breakfast use will remain subordinate and incidental to the existing use of the dwelling as the applicant's primary residence. No additional improvements are required, and as such, 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 request is not contrary to the General Plan. The bed and breakfast operation request is not contrary to the General Plan objectives and policies nor the Land Use Pattern Allocation Guide (LUPAG) Map, which designates the subject area as Urban Expansion. The proposed use is consistent with the following goals and policies of the General Plan:

Land Use Element

- * Designate and allocate land areas 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.

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.

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- * 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.

The bed and breakfast operation use is not contrary to the objectives sought to be accomplished by Chapter 205A, Hawaii Revised Statutes, relating to coastal zone management program. Given the extensive clearing activities that have taken place and the existing residential uses, it is unlikely that any archaeological features and threatened species of plant or animal are present on the property. There are no designated public access to the mountain areas over the property. The subject property is located more than 10 miles from the nearest coastline. It is adjacent to existing residences, and vacant lands. Therefore, the bed and breakfast use has not and will not adversely impact any recreational resources, including access to and along the shoreline, scenic and open space nor visual resources, coastal ecosystems, and marine and coastal resources. Further, the property is not affected by any coastal hazards nor beach erosion.

Based on the above considerations, the establishment of the bed and breakfast operation within the existing single family dwelling 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.

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 Special Permit.

1. The applicant, successor or assigns shall be responsible for complying with all stated conditions of approval.
2. The applicant shall comply with all applicable requirements of Section 25-4-7 of the Zoning Code, as amended by Ordinance No. 00 152, relating to Bed and Breakfast Establishments.

3. The bed and breakfast business shall be limited to the use of four (4) bedrooms.
4. Comply with all other applicable laws, rules, regulations and requirements of the affected government agencies, including the Department of Health.
5. A written final status report shall be submitted to the Planning Director upon compliance with all conditions of approval and prior to opening of the bed and breakfast operation.
6. 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).

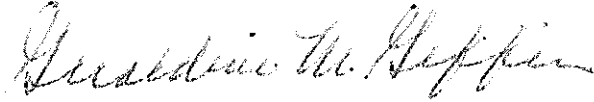
This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

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Should you have any questions, please contact Daryn Arai of the Planning Department West Hawaii Office at 327-3510 or Alice Kawaha of the Planning Department Hilo Office at 961-8288.

Sincerely,



Geraldine M. Giffin, Chairman
Planning Commission

LtriplersppPC

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
West Hawaii Office
State Land Use Commission
Department of Land & Natural Resources
Brian Minaai, Director/DOT-Highways, Honolulu
Mr. Thomas Tripler
Mr. Jeffrey Darrow, Zoning Inspector
Department of Health *5/22 copy*