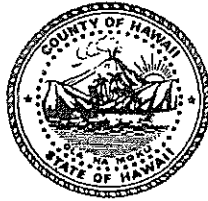


Harry Kim
Mayor



County of Hawaii

PLANNING COMMISSION

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CERTIFIED MAIL

7000 0600 0024 2904 9540

MAY 06 2002

Mr. Daniel F. Ibbetson
88-1633 Papio Street
Captain Cook, HI 96704

Dear Mr. Ibbetson:

Special Permit Application (SPP 01-034)

Applicant: Daniel F. Ibbetson

Request: Establishment of a Two-Bedroom Bed and Breakfast Operation

Tax Map Key: 8-8-18:12

The Planning Commission at its duly held public hearing on April 5, 2002, voted to approve the above-referenced application. Special Permit No. 1146 is hereby issued to allow an existing 2-bedroom bed and breakfast operation (Diver Dan's) within the existing dwelling situated in the State Land Use Agricultural District. The property is located in the Papa Bay Estates Subdivision, approximately 180 feet south of Papa Drive-Papio Drive intersection, and approximately 2,700 feet west (makai) of Mamalahoa Highway, Papa 1st, South Kona, Hawaii.

Approval of this request is based on the following:

To allow the continuance of the existing Bed and Breakfast operation within the existing dwelling is an unusual and reasonable use of land situated within the State Land Use Agricultural District. In recognizing that land 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 approximately 3 acres in size. The bed and breakfast operation will be confined to the existing three-bedroom dwelling with the remainder of the property to be retained in its natural state or available for potential cultivation. The proprietor of the bed and breakfast

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operation resides in the existing dwelling. The continuation of the bed and breakfast operation will not displace any existing agricultural activity nor diminish the agricultural potential of the subject property since the bed and breakfast operation will continue to be conducted within the existing dwelling.

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. The existing bed and breakfast use is located within an area whose soils are classified as "Poor" and "Very Poor" by the Land Study Bureau's Overall Master Productivity Rating and "Unclassified" land by the Department of Agriculture's Agricultural Lands of Importance to the State of Hawaii (ALISH) Map. The applicant has also noted the lack of a water system as another reason why agricultural opportunities on the subject property is limited. Therefore, to allow the continuation of the bed and breakfast operation will not adversely affect the preservation and agricultural use of the County's important agricultural lands.

The subject property is situated within the State and County's Agricultural districts. Bed and breakfast establishments would be a permitted use within the State Land Use Agricultural District provided a Special Permit is secured. The bed and breakfast operation is confined to the existing three-bedroom dwelling. Therefore, the approval of the subject request will not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations.

The desired use shall not adversely affect the surrounding properties. The existing dwelling containing the bed and breakfast establishment is situated on an approximately 3-acre parcel of land within a subdivision consisting of approximately 45 lots of similar size. None of the surrounding properties are expected to be adversely affected by the bed and breakfast operation to any significant extent. The existing dwelling is situated a minimum distance of 75 feet from its nearest boundary. The relatively large size of lots within Papa Bay Estates Subdivision should ensure that noise and visual impacts upon these neighboring lots are minimized. The applicant will typically receive and discharge guests of the bed and breakfast operation during daylight hours. The applicant has represented that he will be the only employee of this bed and breakfast operation. This should limit traffic to the property by eliminating employee-related traffic to and from the property.

The Planning Commission has received a letter and petition from residents of the subdivision who are concerned that to allow the continued operation of the bed and

breakfast establishment would be in conflict with the subdivision covenants as well as decrease property values, introduce strangers to the neighborhood, and set a precedent for other similar types of uses. The Planning Commission and the Planning Department will not enforce private covenants nor will it let those private covenants supercede the rights, privileges and restrictions imposed by the State Land Use Law and County Zoning Code. While concerns have been expressed regarding strangers, decreased property values, and unwanted precedent for similar types of approvals, no evidence is offered that would warrant an unfavorable recommendation of this request. The guidelines for approval of a Special Permit are clearly spelled out within Planning Commission Rule No. 6. While adverse impact to surrounding properties is one such guideline for approval, no evidence has been offered that would clearly link this particular bed and breakfast operation to any potential adverse effects upon surrounding properties.

The desired use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. The subject property is not serviced by a County water system. The applicant will provide bottled water for guest consumption. An existing water catchment system will provide for other water-related needs of the guests. Access to the property from the Mamalahoa Highway is provided by Papa Drive and Papio Drive, both County-maintained roadways with a pavement width of approximately 20 feet within rights-of-way of at least 50 feet. The condition and width of this roadway is deemed adequate to accommodate the anticipated traffic to be generated. The Department of Public Works did not express any concerns regarding the bed and breakfast use. The property is situated within an area designated as Flood Zone X, an area determined to be outside the 500-year flood plain. The applicant shall meet all applicable agency requirements of the Department of Health, Department of Water Supply, Department of Public Works and the Fire Department prior to the continued operation of the bed and breakfast establishment.

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 for the continued operation of bed and breakfast accommodations that have become part of a worldwide trend towards providing alternative lodging sites in rural and agricultural 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 a rural-agricultural area and contributes to the economic structure of the County. The "Strategic Directions for Hawaii's Visitor Industry" or Tourism Strategic Plan (TSP) prepared by the Hawaii Tourism Authority (June 1999), forms the basis or foundation upon which Hawaii's future as a visitor destination will be built. This document is a fulfillment of one of the primary responsibilities of the Hawaii Tourism Authority (HTA) established by Act 156 SLH 1998. The TSP contains strategic directions in seven areas, one of which is Product

Development. Under Agri Tourism, a subset of Product Development, strategic directions to promote Agri Tourism include:

- Create menus of experiences to make it easier for visitors to purchase agri tourism experiences and products.
- Advocate “Bed & Breakfasts (B&B’s) and “Country Inns” on agriculture lands, farms, and ranches.
- “Bundle” agricultural experiences with health, adventure, culture, eco, and edu tourism.

Thus, the above request is consistent with the State’s strategic directions for Hawaii’s visitor industry.

The land upon which the proposed use is sought is suited for some type of agricultural uses permitted within the district. The bed and breakfast operation is confined to an existing dwelling that will not substantially alter or change the essential character of the land and the present use. The applicant states that the remainder of the subject property will be retained in its natural state. Therefore, only a small portion of the subject property will be dedicated for bed and breakfast uses with the remainder of the property not to be changed from its current state.

The request will not be contrary to the General Plan. The subject request is not contrary to the General Plan objectives and policies nor the Land Use Pattern Allocation Guide (LUPAG) Map, which designates the property for Extensive Agricultural uses. The 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

- 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.

Based on the above considerations, approval of the Special Permit to allow for the continued operation of the bed and breakfast establishment 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 permit.

1. The applicant, successors or assigns shall be responsible for complying with all stated conditions of approval.
2. The bed and breakfast operation shall be limited to the use of two (2) bedrooms.
3. Operation of the bed and breakfast establishment shall be limited to those persons residing on the subject property.
4. Parking stalls shall be constructed in accordance with the requirements of Section 25-4-7 of the Hawaii County Zoning Code, relating to bed and breakfast establishment within six (6) months from the date of issuance of this Special Permit.
5. A written final status report shall be submitted to the Planning Director upon compliance with all conditions of approval.
6. Comply with all applicable laws, rules, regulations and requirements of other affected agencies including the Department of Health and the Fire Department.
7. 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.

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- 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 contact Alice Kawaha of the Planning Department Hilo office at 961-8288 or Daryn Arai of the Kona office at 327-3510.

Sincerely,



Geraldine M. Giffin, Chairman
Planning Commission

Libbetson01pc

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
Planning Department – Kona
State Land Use Commission
Brian Minaai, Director/DOT-Highways, Honolulu
Mark Van Pernis, Esq.