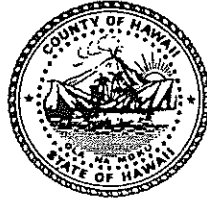


Harry Kim
Mayor



County of Hawaii

PLANNING COMMISSION
101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720
(808) 961-8288 • Fax (808) 961-8742

CERTIFIED MAIL

7000 0600 0024 2904 9526

JUN 03 2002

Mr. Johann Timmermann
84-4780 Mamalahoa Highway
Captain Cook, HI 96704-8402

Dear Mr. Timmermann:

Special Permit Application (SPP 02-011)

Applicant: Johann Timmerman

Request: To Establish a Five (5) Bedroom Bed and Breakfast Operation
in an Existing Farm Dwelling

Tax Map Key: 8-4-15:2

The Planning Commission at its duly held public hearing on May 3, 2002, voted to approve the above-referenced application. Special Permit No. 1155 is hereby issued to allow a five-bedroom bed and breakfast operation within an existing farm dwelling situated in the State Land Use Agricultural District. The property is located in the Keokea Subdivision approximately ½ mile east (mauka) of Mamalahoa Highway and southeast of the intersection of Mamalahoa Highway and City of Refuge Road, Keokea, South Kona, Hawaii.

Approval of this request is based on the following:

The applicant is requesting that he be allowed to continue the operation of the five-bedroom bed and breakfast operation within the existing five-bedroom dwelling. The 2-story dwelling consists of approximately 1,700 square feet of living area with 5 bedrooms, 3 baths, kitchen, living room, family room, laundry room, and lanais. The applicant currently occupies one of the guest units within the ground floor of the two-story dwelling, but will utilize whatever guest room is available. Should all guest units be occupied, the applicant will sleep in the family room. The applicant also wish to provide a detached exercise/media room for guest use within an addition to the water tank shed.

019501 *MD*

JUN 04 2002

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. The subject property is 5.04 acres in size. The existing bed and breakfast operation is confined to the existing dwelling with the detached exercise/media room to be utilized for incidental and accessory guest activities, such as exercise, meetings, workshops, etc. The bed and breakfast operation is subordinate to the residential use of the property. The Planning Director notes that while he has no objections to the use of the exercise/media room for various guest use, the existing wetbar and counterspace will not be permitted since it provides for a secondary food preparation area that normally would not be permitted within an accessory structure. Bear in mind that the exercise/media room was constructed without the proper building permits. This approval recommendation is conditioned upon the applicant securing a building permit to legitimize its construction, sans the wetbar and counters.

The granting of this request would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended. The State Land Use Commission was created in 1961; the interim regulations and temporary district boundaries became effective on April 21, 1962; and subsequently the Regulations and Land Use District Boundaries became effective on August 23, 1964. 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 property is located within an area with soils classified as Honuauolu Soils, which are silty or stony clay loams 8 to 25 inches thick. The Agricultural Lands of Importance to the State of Hawaii (ALISH) Maps identify the subject property as located in the area designated "Other Important Agricultural Lands, with a soil rating of "E" or Very Poor by the Land Study Bureau's Overall Master Productivity Rating.

The subject property is situated within the State's Land Use Agricultural District and County's Agricultural-5 acre (A-5a) zoned district. Bed and breakfast establishments may be permitted within the Agricultural district provided a Special Permit is secured. As previously mentioned, the bed and breakfast operation is confined to the existing main dwelling, detached exercise/media room and its immediate vicinity. It is subordinate to the primary residential use.

Therefore, the approval of the subject request shall 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. It is not expected that the bed and breakfast use would create significant adverse impacts to surrounding properties. The property is sufficient in size to accommodate the use, which will be low key with minimal impact. Surrounding lands in the immediate vicinity are zoned Agricultural (A-5a) and they include a mixture of residences, agricultural uses, and vacant lands on parcels at least 4 acres in size. Overall, it is not anticipated that the immediate surrounding parcels would be impacted by the operation of the 5-bedroom bed and breakfast. The subject property is five acres in size and the home is centrally located within the property. Adjacent properties are at least 4.5 acres in size and should provide adequate noise and visual buffers between the bed and breakfast operation and adjoining residences, both existing and future. Finally, no written objections were received from the surrounding property owners or the community.

The desired use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, and police and fire protection. Access to the property is via a one lane, gravel roadway (Tobacco Road) from the Mamalahoa Highway. Turn-outs are available along the length of Tobacco Road to allow cars to pass. Access to the property is deemed adequate to accommodate traffic anticipated to be generated by the bed and breakfast operation. Traffic would be about the same as if the bedrooms were rented on a long-term basis. Therefore, it is anticipated that the use will not result in a significant increase in regional traffic. Guest parking for five vehicles, as required for five rental units, are available on-site. Water is provided by a catchment system, with potable water being filtered through a reverse-osmosis filtration system. Bottled water will be provided to guests should the filter system be unacceptable to the Department of Health. Police, fire and emergency services are available to the project area from the nearby Kealahou stations. The applicant shall also meet all applicable agency requirements of the Department of Health and Fire Department for the bed and breakfast use.

Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established. The use will encourage and promote the visitor industry, largely by catering to a different group of travelers. Accommodations such as bed and breakfasts and inns have become a part of a worldwide trend towards providing alternative lodging sites in rural and agricultural areas such as this particular location. They are popular for visitors who seek a more localized and authentic experience in a home-type setting. 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 "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 request is consistent with the State's strategic directions for Hawaii's visitor industry.

The land upon which the bed and breakfast use is sought is suitable for the uses permitted within the district however, the use will not interfere with permitted uses. The property has been previously graded and improved as a homesite with orchards of macadamia nuts and citrus fruits. Sections of the property remain in a natural, wooded state. The bed and breakfast use will occur within existing buildings and immediate area and no existing agricultural plantings will be removed. Thus, the proposed project will not seriously impair the agricultural productivity or potential of the subject property, nor will it seriously or significantly deplete the County of Hawaii's agricultural land resource.

The use will not substantially alter or change the essential character of the land and the present use. As previously mentioned, the property has previously been graded and improved with the existing main dwelling, a detached water tank shed, and driveway improvements that will be used for the bed and breakfast operation. The existing macadamia nut and citrus orchards and natural wooded areas will not be removed to accommodate the bed and breakfast operations. Therefore, from a physical standpoint, there will be no major alteration to the landscape which would give this area an appearance other than what is presently there.

The request will not be contrary to the General Plan. The subject request is within an area designated for Orchard uses on the General Plan Land Use Pattern Allocation Guide (LUPAG) Map. 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

- 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.

The Kona Regional Plan, adopted by the Planning Commission in 1984, is a guide for future infrastructure and land development of the area. The Land Use Plan in the document reflects the area as Agricultural-5 acres.

The existing bed and breakfast operation use is consistent with the objectives, policies, and guidelines of the Special Management Area as provided by Chapter 205A, HRS, and Rule No. 9 of the Planning Commission Rules of Practice and Procedure. Given the previous grading activities, various agricultural plantings that have taken place and the existing residential use, it is unlikely that any archaeological features and threatened species of plant or animal are present on the property. There is no evidence of traditional and customary Native Hawaiian rights being practiced on the property. Therefore, no feasible action is necessary to protect these rights.

According to the applicant, there is no designated public access to the mountain areas or to the shoreline traversing the subject property. The property is situated several miles from the coastline. It is anticipated that the bed and breakfast use will not adversely impact any archaeological resources, gathering rights, recreational resources, scenic resources, open space, coastal ecosystems, and marine and coastal resources. Due to its distant location from coastal areas, the property is not affected by any coastal hazards or beach erosion.

Based on the above considerations, the request to continue the operation of the 5-bedroom bed and breakfast would constitute 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.

The floor plan for the existing dwelling provided by the applicant reflects slight discrepancies with the floor plan associated with a building permit issued in 1989 for a three bedroom and second-floor addition. The applicant has also converted the water tank shed and garage structure into a water tank shed and exercise/media room without the proper building permits. A condition of this approval will require the applicant to secure all necessary building permits within six (6) months of the approval of this Special Permit request.

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 of the 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 operation shall be limited to the use of five (5) bedrooms.
4. The applicant shall secure and finalize all necessary building permits for improvements within the existing single family dwelling and the exercise/media room attached to the water shed, as required by the Planning Department and the Department of Public Works-Building Division within six (6) months from the effective date of this permit. The existing wetbar and counters within the exercise/media room will not be permitted.
5. The applicant shall provide potable water to its guests in a manner meeting with the approval of the State Department of Health. The applicant shall provide written confirmation of such compliance to the Planning Director within three (3) months from the date of approval of this permit.
6. Signage posted on the subject property shall meet with residential signage requirements.

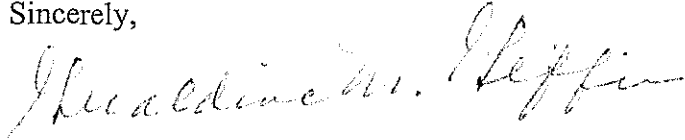
7. The applicant shall comply with all other applicable laws, rules, regulations and requirements of the affected government agencies, including the Department of Health and the Fire Department.
8. A written final status report shall be submitted to the Planning Director upon compliance with all conditions of approval.
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.

Mr. Johann Timmermann
Page 8

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

Sincerely,



Geraldine M. Giffin, Chairman
Planning Commission

Ltimmerman01PC

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
Department of Health