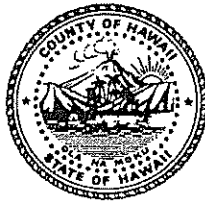


Harry Kim
Mayor



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 2903 9404

JUN 17 2002

Mr. Ira Ono Kaufman
19-3834 Old Volcano Road
Volcano, HI 96785

Dear Mr. Kaufman:

Special Permit Application (SPP 02-013)

Applicant: Ira Ono Kaufman

Request: Establishment of an Art Gallery, Studio and Related
Improvements

Tax Map Key: 1-9-3:4

The Planning Commission at its duly held public hearing on May 17, 2002, voted to approve the above-referenced application. Special Permit No. 1157 is hereby issued to establish an art gallery, studio and related improvements on approximately 2.71 acres of land within the State Land Use Agricultural District. The property is located in the Oloo Summer Lots Subdivision, along the Old Volcano Road and adjacent to the Volcano Inn Bed and Breakfast establishment, Oloo, Puna, Hawaii.

Approval of this request is based on the following:

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 proposed project will be located within an area whose soils are classified as "E" or "Very Poor" by the Land Study Bureau's Overall Master Productivity Rating and "Existing Urban Development" by the Department of Agriculture's Agricultural Lands of Importance of the State of Hawaii (ALISH) Map.

019931

JUN 18 2002

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) zone district. The proposed Art Gallery and Studio will utilize the existing facilities with some activities held outdoors. There is some agricultural activity on the project site; however, no additional land will be taken out of the existing agricultural inventory nor will the agricultural resources of the area be negatively impacted. In addition, the proposed parking areas would be established on the existing lawn area. Thus, no potential agricultural lands will be used to provide the area necessary to establish the required parking. A portion of the property has been landscaped with gardens, trails and sculptures with the undeveloped section to be retained as a native forest.

Based on the above circumstances, approval of the subject request would not be contrary to the objectives of the State Land Use Law Rules and Regulations given the subject conditions. The proposed use would not displace existing agricultural activity since this parcel has not been in major agricultural use for years.

The granting of this request would promote the effectiveness and objectives of Chapter 205A, Hawaii Revised Statutes, relating to the Coastal Zone Management Program. According to the applicant, there are no known archaeological features or threatened flora or fauna on the subject parcel. There is no designated public access to the mountain or coastal areas over this parcel. The project site is located over twenty miles from the nearest shoreline and in an agricultural/residential area. The proposed project will not impact any recreational, including access to and along the shoreline, mountain access, scenic and open space nor visual resources, coastal ecosystems, and marine coastal resources. Further, the property will not be affected by any coastal hazards nor beach erosion. Finally, the main dwelling and cottage have been on site since the 1940's with only an additional studio and two greenhouses proposed which would not significantly obstruct any makai views or significantly affect view planes.

The desired use will not adversely affect the surrounding properties. The subject property contains a main dwelling, cottage, carport, play house, two greenhouses and two water parcel. This parcel is located within Block E of the Olaa Summer Lots Subdivision which is zoned Agricultural (A-1a) by the County. Uses in the area consist of farm dwellings and vacant land. The property is of sufficient size to allow for adequate setbacks and buffers in minimizing any physical, social or other impacts that this proposed use may have on the area. There are existing tall trees and landscaping was

introduced along the east property line of the subject parcel. In addition, Condition No. 6 of Special Permit No. 990 required that the applicant of the Volcano Inn Bed and Breakfast establishment install a 20-foot wide fast growth landscaping buffer between his property and the subject property that met with the approval of the Planning Director. Although this would mitigate any potential noise and visual impacts to the adjacent east property, a landscaping buffer from all property lines will be required in accordance with the Planning Department's Rule 17 and Plan Approval requirements.

The desired use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, and police and fire protection. The site is currently served by telephone and electrical utilities. Water is provided by catchment tanks or bottled water will be available for purchase. The traffic generated by the project will be within the capability of the existing road. Access from the Old Volcano Road will be via an existing 16-foot wide paved driveway. The applicant will provide adequate turnaround areas for emergency vehicles as required by the Fire Department. In addition, the proposed use will not generate concerns for additional services as reflected by the agencies' responses. The applicant has stated that all agency requirements will be complied with prior to establishment of the use.

Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established. The applicant has been residing in Volcano for 22 years and has worked within its community as an artist, teacher and gardener. The applicant would like to continue his role as an artist and teacher in an environment where gardeners, artists and writers can be inspired by the beauty of Volcano. The proposed location will assist in serving the Volcano area by providing additional educational, cultural and recreational benefits for the immediate community and the island as a whole. This type of public benefit with minimal impact to the surrounding community is consistent with the social and physical character of a rural-agricultural area, contributes to the economy of the County, and complements existing agricultural activities.

The land upon which the proposed use is sought is not suitable for the uses permitted within the district. The soils within the project area are not suitable for many types of agricultural uses. The United States Department of Agriculture's Soil Survey Report classifies soils within the project site as Keei extremely rocky muck, 6 to 20 percent slopes (rKGD). The Land Study Bureau's Detailed Land Classification System indicates the soils within the subject property are classified as "E" or Very Poor. The nature of the request is to allow for the establishment of an Art Gallery and Studio initially utilizing the existing structures. Parking would be located on already developed areas. In the developed areas, vegetation consists of bananas, bamboo, taro, ginger and various trees, flowers and shrubs. The undeveloped area consists primarily of the native rain forest with Koas and Ohias. The existing facilities and future structures will not remove any significant agricultural land from the existing inventory.

The use will not substantially alter or change the essential character of the land and the present use. The existing facilities are located entirely within the developed areas of the subject parcel. The art gallery and studio activity will occur within the existing building. In addition to the existing parking area next to the greenhouse, parking will be established on the lawn area along the west property line. No existing area for agricultural activities will be curtailed or diminished as a result of the establishment of this activity on the subject property. The undeveloped area will be used for several gardens and trails; thus the proposed use will not have a detrimental impact on the agricultural resources of the area or the County of Hawaii.

The request is not contrary to the General Plan. The subject request is not contrary to the General Plan Land Use Pattern Allocation Guide (LUPAG) Map, which designates the property for Intensive Agricultural uses. The soil classification rating for the subject area is "E" or "Very Poor" by the Soil Conservation Service Soil Survey Report. The request would support the General Plan's goals and policies of the Economic and Land Use Elements of the General Plan which are to: *"Designate and allocate lands in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the County"* and to *"...encourage the development and maintenance of the communities meeting the needs of its residents in balance with the physical and social environment."*

Based on the above considerations, the proposed Art Gallery, studio and related improvements 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 the conditions not be met or substantially complied with in a timely fashion, the Director may initiate the revocation of the Special Permit.

1. The applicant, its successors or assigns shall be responsible for complying with all of the stated conditions of approval.
2. The applicant shall finalize all necessary permits as required by the Department of Public Works, Building Division within six (6) months from the effective date of this permit.
3. The Art Gallery, studio and related improvements shall be established within six (6) months from the effective date of this permit. Prior to the establishment of this use, Final Plan Approval shall be secured from the Planning Director in accordance with the Zoning Code pertaining to Plan Approval and the Planning Department's Rule 17 (Landscaping Requirements). Plans shall identify all

existing structures, proposed parking areas and driveway(s), adequate turnaround areas for emergency vehicles, lighting, and landscaping to mitigate any visual or noise impacts. Plans shall include landscaping along property boundaries for the purpose of mitigating any potential adverse noise and visual impacts to surrounding properties. Native species from the area shall be used when possible.

4. The hours of operation for the proposed use shall be limited from 9:30 a.m to 4:00 p.m., Tuesday to Sunday. Weekday evening workshops shall be limited from 6:30 p.m. to 8:30 p.m.
5. All parking shall be maintained on the subject property.
6. No buses will be permitted to the subject property for any of the project activities.
7. The applicant shall comply with all applicable laws, rules regulations and requirements of other affected agencies, including the Department of Health and Fire Department, for the proposed use.
8. Should any unidentified sites or remains such as lava tubes, artifacts, shell, bone, or charcoal deposits, human burials, rock or coral alignments, pavings or walls be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources–Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the (DLNR-HPD) when it finds that sufficient mitigative measures have been taken.
9. The applicant, its successors or assigns shall notify the Planning Department in writing of the completion of required improvements prior to the establishment of the proposed use.
10. If the applicant fails to comply with the conditions of approval or is unable to resolve any public complaint(s), the Planning Director shall investigate and, if necessary, enforce the appropriate conditions. The Planning Director may, as part of any enforcement action, refer the matter to the Planning Commission for review. Upon appropriate findings by the Planning Commission that the applicant has failed to comply with the conditions of approval or has caused an unreasonable adverse impact on surrounding properties, the permit may be suspended or revoked.
11. An initial extension of time for the performance of conditions within the permit may be granted by the Planning Director upon the following circumstances:


Mr. Ira Ono Kaufman
Page 6

- A. The 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 contact Alice Kawaha of the Planning Department at 961-8288.

Sincerely,

 (Vice Chairman)

~~For~~ Geraldine M. Giffin, Chairman
Planning Commission

Lkaufman01pc

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
Department of Land & Natural Resources
Brian Minaai, Director/DOT-Highways, Honolulu