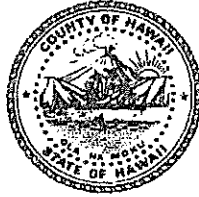


Harry Kim
Mayor



County of Hawaii

PLANNING COMMISSION

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
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DEC 02 2002

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

Dear Mr. Conventz:

Special Permit Application (SPP 02-029)
Applicant: Eric & Anita Broennimann
Request: Allow an Existing Home Office/Art Studio
and Related Improvements
Tax Map Key: 9-2-86:19

The Planning Commission at its duly held public hearing on November 1, 2002, voted to approve the above-referenced application. Special Permit No. 1181 is hereby issued to legitimize a home office/art studio establishment within an existing 480 square foot detached structure in the State Land Use Agricultural District. The property is located in Hawaiian Ocean View Estates Subdivision, at the southwest corner of King Kamehameha Boulevard-Donola Drive intersection and east (mauka) of Māmalahoa Highway, Kahuku, Ka'ū, Hawaii.

Approval of this request is based on the following:

The applicants are requesting that they be allowed to continue the operation of the home office/art studio establishment within an existing 480 square foot detached structure.

The home office/art studio 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 a little over an acre in size. The existing home office/art studio operation is confined to the detached family room and craft room. The home

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DEC 04 2002

office/art studio operation is subordinate to the residential use of the property and will not require that additional land be committed to accommodate the proposed project.

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 Lava Flows A`a (rLV) and Rock (rRO). A`a Lava Flow has been mapped as miscellaneous land type. This has practically no soil covering and is bare of vegetation, except mosses, lichens, ferns, and a few small ohia trees. This lava is rough and broken. It is a mass of clinkery, hard, glassy, sharp pieces piled in a tumbled heaps. Rock is a miscellaneous land type that consists of pahoehoe lava bedrock covered in places by a thin layer of soil material. The vegetation is confined mainly to the soil covered areas and the crack in the lava. Rock land is used for pasture, wildlife habitat, and watershed. This parcel is undesignated on the Agricultural Lands of Importance to the State of Hawaii (ALISH) Map. The property has 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- one acre (A-1a) zoned district. Non-agricultural activities such as the home office/art studio may be permitted within the Agricultural district provided a Special Permit is secured. As previously mentioned, the home office/art studio operation is confined to the existing detached family room and craft room. It is subordinate to the primary residential use. No additional land area will be required to accommodate the proposed use.

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. It is not expected that the home office/art studio use would create significant adverse impacts to surrounding properties. The applicants have stated that no employees will be hired to assist in the operation of the home office/art studio and that its current operation does not generate any more traffic other than what normally occurs in the area. The applicants have represented that they receive between 0 to 3 visits a month. The applicants have also represented that they would like to permanently place directional signs along the Māmalahoa Highway and their property frontage. The Planning Department recommends against the placement of directional signs along Māmalahoa Highway but can support an identifying sign situated along the subject property's roadway frontages, provided that such signage is consistent with the residential sign standards for the County. The property, consisting of approximately one acre, is of sufficient size to accommodate the use while masking any noise or visual impacts that may be generated. The applicants state that the activities do not produce noticeable noise, smells, or other nuisance emissions. The electric kiln resides in the home office/art studio and the wood-fired kiln is outside. The electric kiln is said to make a humming sound akin to a regular refrigerator. The wood-fired kiln does generate smoke during its operation, but its operation averages only twice per year. The infrequent firing of the wood kiln, while maybe a nuisance to nearby properties, is short-lived and very infrequent. Surrounding lands in the immediate vicinity are zoned Agricultural (A-1a) and they include a mixture of residences, agricultural uses, and vacant lands on parcels at least one acre in size, which will provide a reasonable buffer from adjoining homes to mitigate some of the smoke that is associated with the operation of the wood-fired kiln. The applicants have represented that they do not have set hours of operation because they create the art as they are inspired. However, the potential impact to neighboring parcels should be very minimal due to the generally quiet nature of their art work and the equipment used. The size of the subject property and adjoining parcels should provide adequate noise and visual buffers between the home office/art studio and adjoining residences, both existing and future. Finally, no written objections were received from the surrounding property owners or the community. To ensure impacts to the surrounding community is minimized, this approval recommendation includes a condition that will provide the Planning Director and Planning Commission with the opportunity to re-evaluate the terms of this Special Permit should any complaints regarding the proposed home office and studio not be resolved by the applicants.

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 subject property from the Māmalahoa Highway is provided by two private roads known as King Kamehameha Boulevard and Donola Drive. Access to the property is deemed adequate to accommodate traffic anticipated to be generated by the home office/art studio operation. It is anticipated that the use will not result in a significant increase in regional traffic. Water is provided by a catchment system. Police, fire and emergency services are available to the project area from the nearby Pohue Plaza Substation and main station in Naalehu, about 11 miles away. According to the

Department of Public Works, the existing structure has an occupancy of R-3 (single family residence). This is the wrong occupancy group for a home office/art studio. The applicants need to secure and finalize a building permit to change the occupancy group. This requirement from the Department of Public Works shall be stated as a condition of approval for this permit. The applicants shall also meet all applicable agency requirements of the Department of Public Works, Department of Health and Fire Department for the home office/art studio use.

Unusual conditions, trends, and needs have arisen since the district boundaries and regulations were established. Between 1990 and 2000 the population of the district of Ka'ū has grown by approximately 31% (Census data). As the communities of Ocean View and other towns in Ka'ū have grown, so has the need for employment opportunities within the district. The residents of Hawaiian Ocean View Estates and nearby Hawaiian Ocean View Ranchos Subdivision do not have the luxury of an expansive urban core that can provide district residents with numerous and varied employment opportunities. The Special Permit process affords an individual with an opportunity to live within these remote communities and still be able to establish some means of livelihood for themselves.

The applicants, being artists, are inspired by their surroundings, something that may be difficult to accomplish when one is located within a commercial building along a highway. Approval of this Special Permit will allow the applicants to be situated within the very surroundings that provide the inspiration for their artwork.

The land upon which the home office/art studio 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 home site with a detached accessory structure. The rest of the property remains unimproved and no new structures are proposed with this application. Furthermore, the property is unclassified by the Agricultural Lands of Importance to the State of Hawaii map and classified as "E" or "Very Poor" for agricultural productivity by the Land Study Bureau. 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 and detached accessory structure. There are no proposed additional improvements to the property. This permit shall condition that one sign along each right-of-way that the parcel faces may have one sign but no signs shall be allowed along Māmalahoa Highway. This condition to minimize the commercial effect of that the granting of this signage will have and still allow the applicants to clearly identify the location of their home office/art studio. Thus, 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 Extensive Agricultural 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 existing home office/art studio 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. The applicants are unaware of any traditional and customary Native Hawaiian rights that are practiced on the property. Therefore, no action is necessary to protect these rights.

According to the Planning Department's file, there is no designated public access to the mountain areas or to the shoreline traversing the subject property. The property is located approximately 5.7 miles from the coastline. It is anticipated that the home office/art studio use will not adversely impact any archaeological resources, gathering rights, recreational resources, scenic resources, open space, coastal ecosystems, and marine and coastal resources. Further, 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 home office/art studio 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.

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, successors or assigns shall be responsible for complying with all of the stated conditions of approval.
2. The applicants shall coordinate with the Department of Public Works-Building Division to secure any building permit(s) that may be required to change the occupancy group of the home office/art studio within six (6) months from the effective date of this permit.
3. No signage advertising the home office/art studio shall be erected along any private roadway or State road right-of-way, with the exception of the subject property. No more than two (2) signs may be erected on the subject property which shall meet with the residential sign standards of the Sign Code (Chapter 3, Hawaii County Code).
4. The applicants 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.
5. If the applicants fail to comply with the conditions of this 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 applicants have failed to comply with the conditions of approval or has caused an unreasonable adverse impact on surrounding properties, this permit may be suspended or revoked.
6. The applicants shall conduct the operation of the home office/art studio in a manner that is substantially compliant with representations made within the applicants' Special Permit Application and subsequent submittals identified as Exhibit A and Exhibit B of the accompanying Planning Department's Background Report dated October 22, 2002.
7. A written final status report shall be submitted to the Planning Director upon compliance with all conditions of approval.

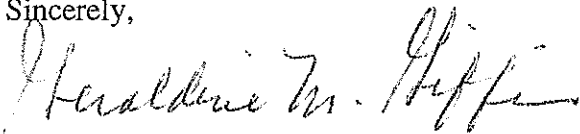
Mr. Klaus D. Conventz
Page 7

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 applicants, 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,



Geraldine M. Giffin, Chairman
Planning Commission

Lbroennimann0IPC

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
Eric & Anita Broennimann