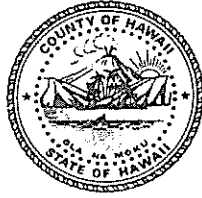


Harry Kim
Mayor



County of Hawai'i
PLANNING COMMISSION

101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720-3043
(808) 961-8288 • Fax (808) 961-8742

January 6, 2005

Mr. Jerry Gardner
Ms. Marklyn Wilson
HCI Box 4629
Keaau, HI 96749

Dear Mr. Gardner & Ms. Wilson:

Special Permit Application (SPP 04-015)
Applicant: Jerry Gardner and Marklyn Wilson
Request: Allow the Establishment of a 3-Bedroom Bed & Breakfast
Operation With an Existing Single Family Dwelling
Tax Map Key: 1-6-12:121

The Planning Commission at its duly held public hearing on December 17, 2004, voted to approve the above-referenced application. Special Permit No. 1251 is hereby issued to allow the establishment of a 3-bedroom bed and breakfast operation within an existing single family dwelling situated on 3 acres of land within the State Land Use Agricultural District. The property is located along the southwest side of 39th Avenue, approximately 0.85 mile from the 39th Avenue-Orchidland Drive intersection, Orchidland Estates Subdivision, Keaau, 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. This property is situated on land characterized as Pahoehoe lava. The use will be located within the existing single family dwelling which is situated within an area where soils are classified as "E" or Very Poor by the Land Study Bureau's Overall Master Productivity Rating and designated as "Unclassified" by the Department of Agriculture's ALISH Map.

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The proposed bed and breakfast use will be subordinate and incidental to the principal use of the residence by the applicants. The three-bedroom bed and breakfast operation will be confined to the existing single-family dwelling and the remainder of the property will continue in agricultural uses. The proposed use will not displace existing agricultural activity or diminish the agricultural potential of the subject property. Therefore, the proposed use will not adversely affect the preservation and agricultural use of the County's prime agricultural lands and is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

The proposed 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 approximately 3 acres in size and situated within the County's Agricultural (A-3a) zoned district. The applicants currently reside in the existing dwelling as their primary residence. As previously stated, the three - bedroom bed and breakfast operation will be confined to the existing dwelling. Even though the soil type and classification for the property are poor, the applicants will be using the remainder of the property for agricultural purposes. Further, this bed and breakfast operation will support eco-tourism with the orchards and orchids, which are being grown as an attraction for visitors of the bed and breakfast operation. 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 2-story single family dwelling and carport are situated on a portion of a 3.0-acre parcel. Surrounding properties are similarly zoned A-3a and are also 3.0-acre parcels. Currently, the nearest residence is located on the adjacent property to the south. There is also a residence to the north at the corner of 39th Avenue and Laniuma Street. The applicants will typically receive guests by reservation mainly through the internet. There will be no employees other than the applicants associated with the bed and breakfast operation. Clientele will be limited to ten people at any given time. Due to the minimal size of the operation, it is not anticipated that the proposed 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 traffic to be generated by the proposed three - bedroom bed and breakfast facility would be minimal. The property is located on 39th Avenue, a privately maintained subdivision roadway with a 40' right-of-way. The surface on 39th Avenue is

cinder and gravel. The distance guests will need to travel on 39th Avenue from the intersection with Orchidland Drive to the subject property is approximately 0.85 mile. Orchidland Drive has a paved surface from its intersection with the Keaau-Pahoa Highway to 39th Ave. The Department of Public Works did not express any concerns regarding the proposed use. There is no municipal sewer system in the subdivision. The applicants currently utilize an existing cesspool. County water is not available to the subject site. The applicants rely on water catchment in conjunction with the residence and the Fire Department has expressed no concerns over this application. According to the applicant, bottled drinking water will be provided to the guests. The property is situated within an area designated as Flood Zone X, an area determined to be outside the 500-year flood plain. Conditions of approval will include that the applicants meet all applicable County, State and Federal laws, rules, regulations and requirements.

The request will not be contrary to the General Plan. The subject request is not contrary to the General Plan objectives and policies or the Land Use Pattern Allocation Guide (LUPAG) Map, which designates the property as Orchard. 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.
- 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 applicants intend to call the operation "Art and Orchids." They intend to display local artist's work in their home for display. They also have over 100 orchids placed in trees to attract orchid enthusiasts. The applicants have 60 coffee trees, 50 macadamia nut trees and over 50 other types of fruit trees including bananas, grapefruit, mango, lime, lemon, avocado, star fruit and others. They intend to show guests how they harvest and process the crops located on site. The proposed request will allow the applicants an opportunity to improve their quality of life, provide an economic environment which allows this new, economic opportunity and increase the development of the visitor industry for Hawaii. Thus, the proposed request is consistent with the Land Use and Economic goals and policies of the General Plan.

The proposed 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 fact that the property has been developed with an existing residence and agricultural uses, it is unlikely that any archaeological features and threatened species of plant or animal are present on the property. The Department of Land and Natural Resources-State Historic Preservation Division has issued a "no-effect" letter stating that they believe that there are no historic properties present because residential development/urbanization has altered the land. Thus, they believe that "no historic properties will be affected" by this undertaking. There is no designated public access to the mountain areas over the property. The subject property is located approximately six miles from the nearest coastline. It is adjacent to existing mixed agricultural, residences, pasture uses, and vacant lands. Therefore, the proposed use 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 will not be affected by any coastal hazards or beach erosion.

Based on the above considerations, the proposed bed and breakfast establishment 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:

1. The applicants, successor or assigns shall be responsible for complying with all stated conditions of approval.

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2. The applicants 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 three (3) bedrooms and limited to no more than ten (10) guests at any given time.
4. The applicants shall provide bottled water for guests of the bed and breakfast operation.
5. Prior to the establishment of the bed and breakfast operation, the applicants shall finalize all open building, electrical and plumbing permits with the Department of Public Works.
6. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
7. A written final status report shall be submitted to the Planning Director upon compliance with all conditions of approval.

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.

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 Norman Hayashi of the Planning Department at 961-8288.

Sincerely,



Fred Galdones, Chairman
Planning Commission

Lgardner01pc

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
Rodney Haraga, Director/DOT-Highways, Honolulu
Department of Health