

County of Hawai'i

PLANNING COMMISSION

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

August 18, 2005

Ms. Didier Flament
12-118 Kipuka Street
Pahoa, HI 96778

Dear Ms. Flament:

Special Permit Application (SPP 05-013)
Applicant: Didier Flament
Request: Bed and Breakfast Operation (4 Rooms)
Tax Map Key: 1-2-33:4

The Planning Commission at its duly held public hearing on August 5, 2005, voted to approve the above-referenced application to allow a 4-unit bed and breakfast establishment on 0.5 acre of land situated within the State Land Use Agricultural District. The property is located along the northeast side of Kipuka Street (12-118 Kipuka Street), across from the Kipuka Street-Punakai Street intersection, Puna Beach Estates Subdivision, Kehena, Puna, Hawaii.

Approval of this request is based on the following:

The applicant is requesting a special permit to allow a 4-unit bed and breakfast establishment on 0.5 acre of land on Kipuka Street in the Puna Beach Estates Subdivision. Three (3) rooms will be located within the 2-story main dwelling and one (1) room will be located within the auxiliary building. The applicant resides on the second floor of the main dwelling.

The grounds for approving a special permit are based on Rule 6-6 in the Planning Commission Rules. It states that the Planning Commission shall not approve a Special Permit unless it is found that the proposed use (a) is an unusual and reasonable use of land situated within the Agricultural or Rural District, whichever the case may be; and (b) the proposed use would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes, as amended.

The proposed use is an unusual and reasonable use of land situated within the State Land Use Agricultural District and would promote the effectiveness and objectives of Chapter 205, Hawaii Revised Statutes (HRS), as amended. In recognizing that lands within the 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. In addition, 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 land on which the proposed use will be located is classified as "E" or "Very Poor" for agricultural productivity by the Land Study Bureau and unclassified by the Agricultural Lands of Importance to the State of Hawaii (ALISH) Map. The project site is 0.5 acre in size. The property has been developed with a single-family dwelling, an auxiliary building, rock walls and landscaping. Therefore, approval of the bed and breakfast operation within the existing developed structures on the subject property will not have a significant adverse effect on the County's agricultural land inventory. It is determined that the proposed use is an unusual and reasonable use of land situated within the Agricultural District and will not be contrary to the objectives of Chapter 205, HRS, as amended.

In addition to the above listed criteria, the Planning Commission shall also consider the criteria listed under Section 6-3(b)(5) (A) through (G). In considering the criteria, the Planning Director recommends as follows:

(A) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. The applicant has met this criterion based on the previous discussion listed above, mainly that 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. The property is relatively small and is very poor for agricultural activities. The land has already been developed with structures that are proposed for the of a bed and breakfast operation.

(B) The desired use would not adversely affect surrounding properties. The subject property is located at 12-118 Kipuka Street in the Puna Beach Estates Subdivision. The surrounding properties, including the Puna Beach Estates and the Kalapana Seaview Estates, are zoned A-3a. Both subdivisions consist of scattered residential uses or vacant lands. There are several dwellings on Kipuka Street near the

subject property. The nearest dwellings are located two lots makai from the subject property and directly across Kipuka Street.

The applicant has met all setback and height requirements for the existing structures on the property to minimize impacts to the surrounding properties. There is a perimeter rock wall that adds to minimizing impacts as well. The use of a bed and breakfast operation is accessory and similar to the residential use of a dwelling permitted on the property. The Planning Department has not received any letters of opposition from the public or neighbors as of this writing. Based on the above discussion, the applicant has met this criterion.

(C) Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. Access to the property is from Kipuka Street, which is a County owned and maintained road that has an 18-20 foot pavement within a 40-foot right-of-way.

Although County water is not available to the site, the applicant will utilize an existing water catchment system to provide non-potable water. A condition of approval will be added requiring the applicant to provide bottled water for guests. Wastewater will be disposed of into engineered septic tank systems as approved by the Department of Health. All other essential utilities and services are available to the site. Based on the above discussion, the applicant has met this criterion.

(D) Unusual conditions, trends, and needs have arisen since district boundaries and regulations were established. The property and surrounding area are designated for agricultural uses by both State and County land use laws. Through the issuance of a Special Permit, a community may establish various "non-agricultural" services that may not be available or allowed by zoning for its residents, as well as travelers. The request to allow a bed and breakfast operation in this area, which is located miles from any urban transient accommodations, is in line with the intent for allowing the issuance of a Special Permit.

Additionally, bed and breakfast accommodations have increasingly become a part of a worldwide trend towards providing alternative lodging sites in rural and agricultural areas such as this particular location. They are becoming popular for visitors who seek a more localized and authentic experience in a home-type setting. The County has recognized this trend, and the Zoning Code, Section 25-4-7, provides guidelines for establishing bed and breakfast operations as an accessory use to the property as a residence. Zoning Code Section 25-4-7(b) stipulates that the bed and breakfast operator shall reside on the same building site as the bed and breakfast establishment. As the use is accessory to the use of the site as a residence and for conducting agricultural activity, the use is consistent with the social and physical character of a rural-agricultural area and

will contribute to the economic development of the County. Based on the above discussion, the applicant has met this criterion.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. The soil within the subject property is classified as "E" or Very Poor for agricultural productivity and unclassified by the Agricultural Lands of Importance to the State of Hawaii (ALISH) Map. The property primarily consists of Aa lava, which is poorly suited for cultivation. Therefore, this criterion has been met.

(F) The use will not substantially alter or change the essential character of the land and the present use. The subject property is developed and landscaped. The dwelling and auxiliary building in which the bed and breakfast operation will be conducted has already been constructed. The use will be confined to the existing structures and will be in keeping with the existing character of the surrounding neighborhood. The requested uses will neither conflict with nor intensify existing land uses. Based on the above discussion, the applicant has met this criterion.

(G) The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans. The Land Use Pattern Allocation Guide (LUPAG) Map component of the General Plan is a representation of the document's goals and policies to guide the coordinated growth and development of the County. It reflects a graphic depiction of the physical relationship among the various land uses. The LUPAG Map establishes the basic urban and non-urban form for areas within the County. The area where the proposed request would be located is designated as Rural, which includes existing subdivisions in the State Land Use Agricultural and Rural districts that have a significant residential component. Typical lot sizes vary from 9,000-square feet to two acres. These subdivisions may contain small farms, wooded areas, and open fields as well as residences. Allowable uses within these areas, with appropriate zoning, may include commercial facilities that serve the residential and agricultural uses in the area, and community and public facilities. Therefore, the request of a bed and breakfast establishment is consistent with the General Plan designation for this area.

The proposed bed and breakfast operation would complement the following goals, policies and standards of the Economic and Land Use elements of the General Plan:

Economic Element:

- Provide residents with opportunities to improve their quality of life through economic development that enhances the County's natural and social environments.

- Economic development and improvement shall be in balance with the physical, social and cultural environments of the island of Hawaii.
- Provide an economic environment that allows new, expanded, or improved economic opportunities that are compatible with the County's cultural, natural and social environment.
- The County of Hawaii shall encourage the development of a visitor industry that is consistent with the social, physical and economic goals of the residents of the County.

Land Use Element:

- Zone urban- types of uses in areas with ease of access to community services and employment centers and with adequate public utilities and facilities.
- Promote and encourage the rehabilitation and use of urban areas that are serviced by basic community facilities and utilities.
- Encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

The proposed request will allow the applicant an opportunity to improve their quality of life, provide an economic environment that allows for 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. There are no other community development or design plans that apply to this area. Based on the above discussion, the applicant has met this criterion.

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, accessory structures and landscaping, 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 1,000 feet from the nearest coastline. It is adjacent to existing residences 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 request to establish a 4-unit bedroom bed and breakfast establishment on the subject property would be 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:

1. The applicant, successors or assigns shall be responsible for complying with all 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 four (4) bedrooms and shall be limited to eight (8) guests at any given time.
4. The applicant shall provide bottled water for guests of the bed and breakfast operation.
5. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.

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.

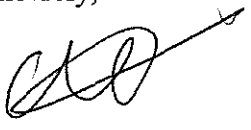
This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

Ms. Didier Flament

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Should you have any questions, please contact Norman Hayashi of the Planning Department at 961-8288.

Sincerely,

for 

Fred Galdones, Chairman
Planning Commission

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cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
Department of Health