

## 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

September 4, 2008

Trina and Shai Yerlick  
P.O. Box 261  
Holualoa, HI 96725

Dear Mr. and Mrs. Yerlick:

Special Permit Application (SPP 08-000060)

Applicant: Trina and Shai Yerlick

Request: 4-Bedroom Bed and Breakfast Within SLU Agricultural District

Tax Map Key: 7-5-001:038

The Planning Commission at its duly held public hearing on August 22, 2008, voted to approve the above-referenced application to allow the establishment of a 4-bedroom bed and breakfast operation within an existing dwelling situated on 2.686 acres of land in the State Land Use Agricultural District. The property is located east (mauka) of Mamalahoa Highway between mile markers 6 and 7 near Komo Store, Holualoa, North Kona, Hawaii.

Approval of this request is based on the following:

The applicants, who reside on the property, are requesting a Special Permit to allow a 4-bedroom bed and breakfast operation on the subject property. The bed and breakfast operation will be conducted within an existing 2-story, 5-bedroom single-family dwelling that was constructed in 1997. The applicants are proposing to use four bedrooms within the existing 5-bedroom single-family dwelling for the bed and breakfast operation. The applicants will only serve breakfast to the guests. The applicants will reside in one bedroom in the 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 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 2.686 acres in size and situated within the County's Agricultural (A-1a) zoned district. The applicants will reside in one bedroom in the existing dwelling. The 4-bedroom bed and breakfast operation will be confined to the existing dwelling and will not diminish any agricultural activity occurring on the property. The soil type for the property is Fair and the applicants have stated that the coffee trees and fruit trees agriculture operation already exist on the property. Therefore, the subject request is considered an unusual and reasonable use of agricultural land.

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 for those uses to which they are best suited in the interest of the public 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 situated on soil characterized as Honouauulu extremely stony silty clay loam, 12 to 20 percent slopes. The use will be located within the existing dwelling, which is situated within an area where soils are classified as "C" or "Fair" by the Land Study Bureau's Overall Master Productivity Rating and is unclassified by the Department of Agriculture's ALISH Map. The proposed bed and breakfast use will be subordinate and incidental to the principal use of the residence by the applicants. The proposed use will not displace any 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.

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 the following:

(A) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. This criterion has been met based on the previous discussion listed above, mainly because the subject request is considered an unusual and reasonable use of agricultural land and the proposed use will not adversely affect the preservation and agricultural use of the County's prime agricultural lands. Therefore, the use is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

(B) The desired use would not adversely affect surrounding properties. The property, which is 2.686 acres in size, is located in the Keopu section of Holualoa, off the Mamalahoa Highway near Komo Store and the Keopu Mauka Road. There is an existing dwelling on the property that the applicants have improved since their purchase of the property. The 4-bedroom bed and breakfast operation will be conducted within the existing dwelling. The remainder of the property will consist of agricultural activity consisting mainly of coffee trees and fruit trees. The surrounding area is zoned A-1a and A-5a and consists of agricultural and residential uses. The nearest dwellings are located on adjoining parcels. These consist of agricultural properties that are approximately 1.5 acres in size. It is not anticipated that the requested use will have an adverse affect on the surrounding properties.

(C) Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. The requested use will not burden public agencies to provide additional services. Access to the property is from a private road. The one lane private road has a steep slope to access Mamalahoa Highway. Mamalahoa Highway is a County road and has an 18-20 ft. wide pavement within a variable right-of-way width. As a condition of approval, the applicant shall reconstruct the existing private road approach to Mamalahoa Highway to a width accommodating two-way traffic and to moderate the slope. Electricity and telephone are available to the property. There is no municipal sewer system in the subdivision. The applicants currently utilize a septic system. The property is serviced by one 5/8" County water meter, which currently connects to the dwelling. The Police Department has no comments or objections regarding this application. The property is situated within an area designated as Flood Zone "X", an area determined to be outside the 500-year flood plain. As a condition of approval, bottled drinking water will be made available to the guests. Additionally, a condition of approval will include that the applicants meet all applicable County, State and Federal laws, rules, regulations and requirements.

(D) Unusual conditions, trends, and needs have arisen since district boundaries and regulations were established. In the 1960's and 1970's, the State's agricultural district boundaries and regulations were established and subsequently amended pursuant to HRS Chapter 205. The State Land Use Commission was created in 1961, and interim regulations and temporary district boundaries became effective in 1962. Subsequently, the regulations and Land Use District Boundaries became effective in August of 1964. The property and surrounding areas 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. The request to allow a 4-bedroom bed and breakfast operation in this area is in line with the intent for allowing the issuance of a Special Permit.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. The property is situated on soils identified as Honuaulu extremely stony silty clay loam, classified as "C" or "Fair" by the Land Study Bureau's Overall Master Productivity Rating and is unclassified by the Department of Agriculture's ALISH Map. The applicants have been conducting income producing agricultural activities on-site with coffee trees and fruit trees. Additionally, the proposed request will be conducted entirely within the existing dwelling, and will not adversely affect the preservation and agricultural use being conducted on-site.

(F) The use will not substantially alter or change the essential character of the land and the present use. The proposed request will be conducted entirely within an existing dwelling located on the 2.686-acre parcel. The proposed request will not substantially alter or change the essential character of the land or its present use.

(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 property is located in area identified as Important Agricultural Land in the General Plan. Important Agricultural Land is defined as those lands with better potential for sustained high agricultural yields because of soil type, climate, topography, or other factors. As the use will be conducted entirely within the dwelling, the request will not be contrary to the Land Use Pattern Allocation Guide (LUPAG) Map designation for this area. Additionally, the approval of the subject request would support the goals and policies of the Land Use and Economic elements of 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.
- 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 through economic development that enhances the County's natural and social environments.

- Economic development and improvements shall be in balance with the physical, social and cultural environments of the island of Hawaii.
- Provide an economic environment which allows new, expanded, or improved economic opportunities that are compatible with the County's cultural, natural and social environment.
- Strive for an economic climate which provides its residents an opportunity for choice of occupation.
- Encourage the development of a visitor industry that is consistent with the social, physical and economic goals of the residents of the County.

The proposed request will allow the applicants an opportunity to improve their quality of life, provide an economic environment that allows this new, economic opportunity and increase the development of the visitor industry for Hawaii.

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 a residential dwelling, it is unlikely that any archaeological features and threatened species of plant or animal are present on the property. There is no designated public access to the mountain areas over the property. It is adjacent to existing residences and vacant lands. The property is not located within the Special Management Area. 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.

In view of the Hawaii State Supreme Court's "PASH" and "*Ka Pa'akai O Ka'Aina*" decisions, the issue relative to native Hawaiian gathering and fishing rights must be addressed. These rights must be addressed in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site.

Investigation of valued resources: No formal archaeological reconnaissance survey, oral history of kamaaina accounts of the area, historical survey of documentary records or botanical and/or fauna study was submitted along with the application. However the applicants have not observed the property being used by native Hawaiians. The applicants have also consulted with long time residents next door on the history of the subject parcel.

The valuable cultural, historical, and natural resources found in the permit area: As the property has been cultivating coffee and improved with a single-family dwelling, an archaeological inventory survey of the site was not conducted. The Department of Land and Natural Resources- State Historic Preservation Division issued a “no effect” letter stating DLNR-SHPD has determined that no historic properties will be affected by this undertaking because residential development would not be considered an historic property.

Possible adverse effect or impairment of valued resources: The property does not abut the shoreline, therefore Hawaiian gathering and fishing rights is not an issue. Additionally, the property is being utilized for agricultural purposes and has been developed with a single-family dwelling.

Feasible actions to protect native Hawaiian rights. To the extent to which traditional and customary native Hawaiian rights are exercised, the proposed action will not affect traditional Hawaiian rights and no action is necessary to protect these rights. A condition of approval will be included to require the applicant to notify the DLNR-SHPD should any unidentified sites or remains be encountered, and proceed only upon an archaeological clearance form the DLNR-SHPD.

Based on the above considerations, the proposed 4-bedroom bed and breakfast operation 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.
2. The applicant, successors or assigns shall secure Final Plan Approval for the proposed use from the Planning Director in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawaii County Code. Plans shall identify all existing and/or proposed structures, paved driveway access and parking stalls associated with the proposed development.
3. The applicants shall comply with all applicable requirements of Section 25-4-7 of Chapter 25, Hawaii County Code, (Zoning Code), relating to Bed and Breakfast Establishments, including the provision of off-street parking stalls.

4. The bed and breakfast operation shall be limited to the use of four (4) bedrooms.
5. The applicants shall be limited to providing breakfast only to the guests.
6. The applicants shall provide bottled water for guests of the bed and breakfast operation.
7. The applicants shall submit a Solid Waste Management Plan to the Department of Environmental Management for review and approval prior to the establishment of the bed and breakfast operation.
8. The applicants shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
9. An extension of time for the performance of conditions of 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 the Zoning Code.
  - C. Granting of the 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).

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.

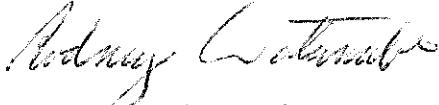
This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies.

Trina and Shai Yerlick

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

Sincerely,



Rodney Watanabe, Chairman  
Planning Commission

Lyerlick01pc

cc: Department of Public Works  
Department of Water Supply  
County Real Property Tax Division  
Planning Department - Kona  
State Land Use Commission  
DOT-Highways, Honolulu  
Department of Health