

County of Hawai'i

WINDWARD PLANNING COMMISSION

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MAR 30 2011

Mr. William T. Elston
Ms. Dawn Tilman
HCR1 Box 5758
Kea'au, HI 96749

Dear Mr. Elston and Ms. Tilman:

Special Permit Application (SPP 10-000112)
Applicant: William T. Elston & Dawn Tilman
Request: To Establish a Five-Bedroom Bed and Breakfast Operation
Tax Map Key: 1-6-008:306 and 307

The Windward Planning Commission at its duly held public hearing on February 17, 2011, voted to approve the above-referenced Special Permit to allow the establishment of a five-bedroom bed and breakfast operation within an existing dwelling situated on 4 acres of land within the State Land Use Agricultural District. The property is located on the west (mauka) side of 36th Avenue, between 'Ilima Street and 'Auli'i Street, approximately 1,000 feet north of the intersection of 'Ilima Street and 36th Avenue, Orchidland Estates Subdivision, Kea'au, Puna, Hawai'i.

Approval of the request is based on the following:

The applicants are requesting a Special Permit to allow the establishment of a five-bedroom bed and breakfast operation within an existing single-family dwelling. The applicants currently reside in a four-bedroom single-family dwelling situated on the property. Initially, the applicants will rent three of the four bedrooms. If the bed and breakfast operation is successful, they will enlarge the dwelling to six bedrooms and rent out five bedrooms. The applicants will be the only employees and will reside on the property. The bed and breakfast establishment will operate seven days a week. Parking will be provided on-site.

Mr. William T. Elston
Ms. Dawn Tilman
Page 2

The criteria for approving a Special Permit are based on Rule 6-6 in the Planning Commission Rules. Rule 6-6 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 District, and (b) the proposed use would promote the effectiveness and objectives of Chapter 205, Hawai'i 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 the State Land Use Law and Regulations and Chapter 205, HRS, as amended. In recognizing that lands within agricultural district 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 project site consists of two properties totaling 4 acres in size that is situated within the County's Agricultural (A-1a) zoned district, although it is not currently being used for agricultural purposes. The proposed bed and breakfast operation will be subordinate and incidental to the principal use of the residence and will not diminish the potential for any future agricultural activity on the property. Therefore, the subject request is considered an unusual and reasonable use of agricultural land.

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 Hawai'i. 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 not classified by the State or County as important or prime agricultural land. In fact, soils on the property are classified by the Land Study Bureau's Land Classification System as "E" or "Very Poor" for agricultural productivity.

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. The subject request is considered an unusual and reasonable use of the agricultural land and the proposed use will not adversely affect the preservation and agricultural use of the County's prime agricultural lands.

(B) The desired use would not adversely affect surrounding properties.

Surrounding properties are similarly zoned A-1a and are approximately 2 acres in size. The nearest residence is located about 150 feet away with dense forest between it and the subject property. All other adjacent properties are either vacant or developed with residences. As the proposed use will occur within an existing dwelling, it is not anticipated to 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 36th Avenue and 'Auli'i Street, which are private roads maintained by the Orchidland Community Association. Traffic in the area would increase by about five vehicles per day as a result of the proposed use. Water is available from an existing water catchment system and filtration system. However, since the Department of Health does not support the use of private rain catchment systems for drinking purposes, a condition will require that the applicants provide bottled drinking water to guests. According to the Department of Health, the existing cesspool system can continue to be utilized for the proposed use so long as it serves up to five bedrooms only. Upon enlarging the dwelling to six bedrooms, the applicants will need to install an additional individual wastewater system to accommodate wastewater flows for the proposed use. The property is situated within an area designated as Flood Zone X, an area determined to be outside the 500-year flood plain. Electricity and telephone are available to the property and police and fire services are available nearby in Pāhoa. A condition of approval will be included to require 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. Many of the subdivisions in Puna that were created during this time on agricultural-zoned land have been transitioning to residential uses. Although 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, various "non-agricultural" services may be allowed.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. The property is situated on soil that is unclassified by the Department of Agriculture's ALISH Map, and is classified as "E" or "Very Poor"

Mr. William T. Elston
Ms. Dawn Tilman
Page 4

by the Land Study Bureau's Overall Master Productivity Rating. The properties soil type is pāhoehoe lava which has no soil covering and is typically bare of vegetation except for mosses and lichens. The proposed request will be conducted entirely within an existing dwelling and therefore will not diminish or foreclose future agricultural opportunities.

(F) The use will not substantially alter or change the essential character of the land and the present use. The proposed use will be conducted entirely within an existing dwelling and is residential in nature. A slight increase in traffic of about five vehicles per day will occur but is not expected to change the character of the land. Thus, the proposed use 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, Puna Community Development Plan (CDP) 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 an area identified as Rural in the General Plan. This category includes existing subdivisions in the State Land Use Agricultural and Rural districts that have a significant residential component. 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. As the use will be conducted entirely within the existing dwelling, the request will not be contrary to the 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

- 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.

Mr. William T. Elston

Ms. Dawn Tilman

Page 5

- 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 primary land use goal of the Puna CDP is to direct urban uses towards “village centers.” The subject property is located outside of the Orchidland neighborhood village center; however, as the bed and breakfast establishment will occur within an existing dwelling it is considered a home occupation and will provide the applicants an additional source of income. Thus, the request is consistent with the goals and objectives of the Puna CDP.

The dwelling is situated about 11 feet from the property line between the two parcels. This is not compliant with the 20-foot minimum yard requirements of the zoning code. Therefore, a condition of the permit will require the consolidation and re-subdivision of these parcels so that the minimum yard requirements will be met.

The proposed use is not contrary to the objectives sought to be accomplished by Chapter 205A, Hawai‘i Revised Statutes, relating to coastal zone management program. The subject property is located over four miles from the closest shoreline and is not located within the Special Management Area. Given the fact that the property has been partially cleared and developed with a dwelling in which the proposed use will occur, it is unlikely that any archaeological features and threatened plant, animal or avian species will be adversely affected. There is no designated public access to the mountain areas over the property. Therefore, the proposed use will not adversely impact any recreational resources, including access to and along the shoreline, scenic and open space 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 five-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, successors or assigns shall be responsible for complying with all stated conditions of approval.
2. To resolve the existing minimum side yard setback violation on Parcel 307, the applicants shall secure Final Subdivision Approval to consolidate and re-subdivide TMK 1-6-008:306 and TMK 1-6-008:307 within two (2) years from the effective date of this permit.

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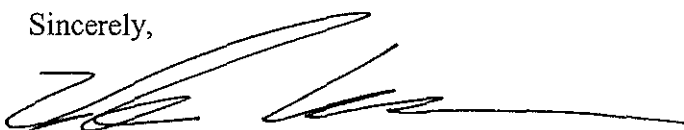
Page 6

3. The applicants shall comply with all applicable requirements of Section 25-4-7 of Chapter 25, Hawai'i County Code, (Zoning Code), relating to Bed and Breakfast Establishments.
4. The applicants shall provide bottled water for the guests of the bed and breakfast operation.
5. The applicants shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
6. 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.

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

Sincerely,



Zendo Kern, Chairman
Windward 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
Mr. Gilbert Bailado ✓