



County of Hawai'i

LEEWARD PLANNING COMMISSION

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APR 07 2011

Mr. Sidney Fuke
100 Pauahi Street, Suite 212
Hilo, HI 96720

Dear Mr. Fuke:

Special Permit Application (SPP 11-000113)
Applicant: William C. and Patricia C. Bergin
Request: To Allow the Establishment of a Kennel and Small
Animal Veterinary Facility
Tax Map Key: 6-6-005:013

The Leeward Planning Commission at its duly held public hearing on March 17, 2011, voted to approve the above-referenced Special Permit to allow the establishment of a kennel and small animal veterinary facility on approximately one acre of land situated within a larger 11-acre parcel located within the State Land Use Agricultural District. The property is located within Lālāmilo Farm Lots Subdivision along the northwest (makai) side of Pu'u Huluhulu Road, approximately 2,200 feet southwest from its intersection with Lālāmilo Farm Road, Lālāmilo Farm Lots, Lālāmilo, South Kohala, Hawai'i.

Approval of the request is based on the following:

The applicants are requesting a Special Permit to allow the establishment of a kennel and small animal veterinary facility. The applicants and their son operate a 4,896-square foot animal (equine and cattle) veterinary facility on the site and have received requests to provide veterinary services for small animals. As such, they propose to convert an approximately 1,500+ square foot building for veterinary care for small animals, including dogs and cats. This facility is located adjacent to a residence being occupied by one of the applicant's employees, near the center of the property. Because some animals may require overnight stays, the applicants propose to construct an approximately 2,000-square foot kennel adjacent to the existing equine veterinary facility.

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The kennel would be set back a minimum of 40 feet from Pu'u Huluhulu Road and 125+ feet from the side property lines. Until this building is constructed, the applicants will utilize one of the bays of the existing equine veterinary facility to kennel small animals.

The applicants also cultivate nearly two acres of mangoes and lychee and will continue their fruit crop activities. They propose to expand the fruit crops by an additional three (3) acres to include longan.

The criteria for approval of a Special Permit are based on Rule 6-6 in the Planning Commission Rules, which state 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, Hawai'i 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 project site is a one-acre portion of an approximately 11-acre property situated within the State Land Use Agricultural District and the County's Agricultural (A-5a) zoned district. The property is improved with the applicants' dwelling, a second farm dwelling, an approximately 4,896-square foot large animal veterinary facility and related improvements, agriculturally related structures and fruit crops. The soil type and classification for the property are identified as good for agricultural uses; however, the property has been used for an animal veterinary facility and related improvements, agriculturally related structures and the cultivation of fruit crops. While an equine veterinary facility is a permitted use within the State Land Use Agricultural District, the veterinary facility for small animals requires a Special Permit. Horses and cattle are considered ancillary to agricultural uses; however, domestic animals including most dogs, cats and other small animals are not agriculturally related. Thus, the applicants are requesting the Special Permit to provide veterinary care for small animals, and the proposed use is considered an unusual and reasonable use of Agricultural land.

The granting of this request would promote the effectiveness and objectives of Chapter 205, Hawai'i 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 Hawai'i. 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 soil classified as KfA (Kikoni very fine sandy loam, 0 to 3 percent slopes), used for truck crops, classified as "B" or "Good" by the Land Study Bureau's Overall Master Productivity Rating, and designated as "Prime Agricultural Land" on the Department of Agriculture's ALISH Map. The proposed use will be confined to an one-acre portion of a 11-acre parcel, and the existing fruit crops on the property will continue to be cultivated and expanded in the future. Thus, the requested use is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

The desired use will not adversely affect surrounding properties. The project site is an one-acre portion of an approximately 11-acre parcel. The property is improved with the applicants' dwelling, a second farm dwelling, an approximately 4,896-square foot large animal veterinary facility and related improvements, agriculturally related structures and various fruit crops. There are farm dwellings on properties adjacent to the subject site. Surrounding parcels are zoned A-5a and include scattered residences and agricultural uses. The Waimea Community Association has recommended approval of this request, and no comments from the public were received as of this writing.

As an average of eight to twelve inbound vehicular movements to the property are anticipated, the applicants believe that the approval of the request will not result in a significant increase in traffic. Additionally, the property is large enough to provide on-site parking to accommodate the proposed request.

Such use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. The proposed request will not unreasonably burden public agencies to provide additional services. Access to the project site is from the Māmalahoa Highway, to Lālāmilo Farm Road and Pu'u Huluhulu Road. The roads within the subdivision have a 40-foot right-of-way with an average pavement width of twenty feet. The rights-of-way are not paved but are generally level with the pavement. All essential utilities are available to the site.

Unusual conditions, trends, and needs have arisen since district boundaries and regulations were established. The project site and surrounding areas are designated for agricultural uses by both State and County land use laws. However, through the issuance of a Special Permit, various "non-agricultural" services and uses may be established. The property is currently being used as a residential site, as well as to provide veterinary services. The remaining area of the property will continue to be cultivated in fruit crops, with plans for expansion of the crops in the future.

The land upon which the proposed use is sought is unsuited for the uses permitted within the district. The land on which the proposed use will be located is

classified as Prime Agricultural Land by the Agricultural Lands of Importance to the State of Hawai‘i (ALISH) Map and “B” or “Good” according to the Land Study Bureau Soil Rating Classification system. It is possible that the land upon which the proposed use is sought may support more intensive agricultural pursuits. However, only a small portion of the eleven-acre property will be used, and there are a number of existing uses on the property. In recognizing the importance of retaining as much agricultural lands as possible, the applicants also propose to expand their existing fruit crop on the site. As such, the proposed uses should not diminish any agricultural potential of the property.

The proposed use will not substantially alter or change the essential character of the land and present use. The proposed use will not substantially alter or change the character of the land and its present use as a portion of the property is currently used for veterinary purposes. The proposed small animal facility will be contained in an existing structure currently used as a large animal veterinary facility. No changes are proposed for the two existing dwellings, existing equine facilities, or fruit crops.

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 identified as Important Agricultural Lands, i.e., lands with better potential for sustained high agricultural yields because of soil type, climate, topography, or other factors. The applicants' proposal is to use a small portion of the site for the small animal veterinary facility in conjunction with currently existing uses and retain and expand the fruit crops on the property. The request will not be contrary to the Land Use Pattern Allocation Guide (LUPAG) Map designation for this area and would support the goals and policies of the Land Use and Economic elements of General Plan.

The South Kohala Community Development Plan (SKCDP), adopted by Ordinance No. 08 159 identifies the project area as “Lalamilo Farm Lots” (Figure 4.4 - Waimea Town Conceptual Plan). The principal land use policy for Waimea and a key element of the Waimea Town Plan is a “responsible growth” policy for the preservation of Waimea’s sense of place. Through careful planning for responsible growth, preservation and protection of important lands, resources, and open space in Waimea, the policy aims to preserve Waimea and retain its unique sense of place. According to the 2010 Census, Waimea has seen a significant population increase of approximately 30% between 2000 and 2010, placing greater demands for services and businesses to meet the needs of the community. Although agriculture continues as the main economic force of the district, a good balance must be maintained to preserve or retain that which is in

existence, yet recognizing and identifying the types of services necessary to support the growing community in the future. Thus, this request is a reasonable request, as it will provide a much needed service in this area of South Kohala.

One strategy with some relevance to this request is the Strategy 1.5 (Expand the Lālāmilo Farm Lots). Although the request would not expand the Lālāmilo Farm Lots, neither would it compromise this strategy. The proposed request would not impact any expansion of the Lālāmilo Farm Lots as the use will be confined to a small portion of the site, and agricultural uses will continue in concert with the proposed kennel and small animal veterinary facility. In fact, the uses will be complementary to the agricultural uses currently established on the site. As the property is currently being used as a residential site as well as a veterinary facility with portions of the property cultivated for various types of fruit crops, the request supports the strategies of, and is consistent with, the SKCDP.

The granting of this request would promote the effectiveness and objectives of Chapter 205A, Hawai'i Revised Statutes, relating to the Coastal Zone Management Program. The property is located outside of the Special Management Area at approximately the 2,000 ft. elevation, ten miles from the nearest coastline. There is no record of a designated public access to the shoreline or mountain areas traversing the property. Due to the property's distance from the shoreline, the request will not impact recreational resources, scenic and open space or visual resources, coastal ecosystems and marine coastal resources. According to the DNLR-HPD, as the property is improved, the likelihood of the presence of any historic sites is remote. There is no evidence of valued cultural, historical or native resources, nor evidence of any traditional and customary Native Hawaiian rights being practiced on the site.

The use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. The request is considered an unusual and reasonable use of agricultural land and will not adversely affect the preservation and agricultural use of prime agricultural land. Thus, the request is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

Based on the above, the Leeward Planning Commission approves this request to allow the establishment of a kennel and small animal veterinary facility subject to the following conditions:

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

2. Within six (6) months from the effective date of this permit, the applicant shall submit estimated maximum daily water usage calculations prepared by a licensed engineer to the Department of Water Supply. As directed by the Department of Water Supply, the applicant shall either install an additional or larger water meter.
3. Final Plan Approval shall be secured from the Planning Department within one year from the effective date of this permit in accordance with Section 25-2-70, Chapter 25 (Zoning Code), Hawai'i County Code. Plans shall identify all existing and/or proposed structures, paved driveway access and parking area associated with the proposed development. The pavement of parking area is not required, and any material may be used for the parking spaces that will eliminate erosion, mud and standing water.
4. The applicants shall establish the proposed small animal veterinary facility and kennel within five (5) years from the effective date of this permit.
5. The hours of operation for the small animal veterinary clinic shall be limited to Mondays through Fridays, 7 a.m. to 5 p.m., with the exception of emergencies.
6. Comply with all applicable County, State and Federal laws, rules, regulations and requirements.
7. 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 applicant, 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).

Should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke the permit.

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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,

A handwritten signature in cursive script that reads "Geraldine Giffin".

Geraldine Giffin, Chairman
Leeward Planning Commission

lberginspp10-113lpc

cc: Dr. and Mrs. William Bergin
Department of Public Works
Department of Water Supply
County Real Property Tax Division
Planning Department - Kona
State Land Use Commission
Mr. Gilbert Bailado ✓