



County of Hawai'i

LEEWARD PLANNING COMMISSION

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OCT 04 2011

Mr. Peter Daniel Gross
Mr. Robert Edel
73-4671 Kahualani Road
Kailua-Kona, HI 96740

Dear Mr. Gross and Mr. Edel:

Special Permit Application (SPP 11-000121)
Applicant: Peter Daniel Gross and Robert Edel
Request: To Operate a 4-Bedroom Bed and Breakfast Within
An Existing Dwelling
Tax Map Key: 7-3-024:041

The Leeward Planning Commission, at its duly held public hearing on September 15, 2011, voted to approve the above-referenced Special Permit to allow the establishment of a four-bedroom bed and breakfast operation within an existing dwelling situated on three acres of land within the State Land Use Agricultural District. The property is located on the south side of Kaloko Drive, just east of the Kahualani Road/Kukuki Street/Kaloko Drive intersection, Kaloko Mauka Subdivision, Increment 1, Kaloko, North Hawai'i, Hawai'i.

Approval of the request is based on the following:

The applicants are requesting a Special Permit to allow the establishment of a four-bedroom bed and breakfast operation within an existing dwelling. The applicants are in the process of converting a 2-bedroom single-family dwelling and attached 5-bedroom 'ohana dwelling into a 6-bedroom single-family dwelling by removing the kitchen and reducing the number of bedrooms in the 'ohana dwelling. The applicants will reside in two of the bedrooms and rent the four 1-bedroom, 1-bath suites to guests for minimum stays of at least five days. Breakfast meals will be provided to guests. Fruit

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and flowers will be grown on the property for the guests to enjoy. The bed and breakfast establishment will operate seven days a week. Parking will be provided on-site.

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 3-acre property is situated within the County's Agricultural (A-3a) 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. Although the State does not classify the property as Important Agricultural Land, the County General Plan does. However, no new structures are proposed and the proposed use will occur within an existing dwelling. 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-3a and are approximately 3 acres in size. The nearest residence is located about 500 feet away to the west. All other adjacent properties are vacant, planted in coffee 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 from Kaloko Drive is via Kahualani Road, which is a paved private road easement. There is a gate at the driveway onto Kahualani Road that is opened by access code, which the applicants will provide to registered guests. Traffic in the area would increase slightly as a result of the proposed use. County water is available to the property. Wastewater from the existing dwelling and 'ohana dwelling is currently disposed of into two cesspools that have been approved by the State Department of Health. The property is situated outside of the 500-year flood plain. Electricity and telephone services are available to the property and police and fire services are available nearby in Kailua-Kona.

(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. Since then updates to the State Land Use district boundaries have not kept pace with development on the island. 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. In fact, due to the Kaloko Mauka subdivisions close proximity to Kailua-Kona, some of the farm dwellings within the subdivision have been permitted as bed and breakfast establishments through 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 in an area that is classified as Other Important Agricultural land by the Department of Agriculture's ALISH Map, and is classified as "C" and "D" or "Fair" and "Poor" by the Land Study Bureau's Overall

Master Productivity Rating. The property's soil type is in the Puna series which is typically used for woodland, pasture and orchards, thus the property is suited for agriculture. However, the proposed use 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 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 Important Agricultural Land in the General Plan. Important Agricultural Lands are those 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 existing dwelling, the request will not be contrary to the LUPAG Map designation for this area. Additionally, 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.
- 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 Kona CDP is to direct urban uses to the Kona Urban Area defined in the Kona Land Use Map. The subject property is located outside of the Kona Urban Area. In these rural areas, the protection of important agricultural land is a priority objective of the CDP. While the property is classified as Important Agricultural Land by the County's General Plan, no new construction is proposed and the proposed use will occur within an existing dwelling. The remainder of the property will be planted in fruit trees and flowering shrubs for the guests use and enjoyment. Lastly, the Kona CDP is supportive of ecotourism, which typically involves travel to places where flora, fauna, and cultural heritage is the primary attraction. The proposed use will provide a place for tourists to stay that want a more personal experience of the flora and culture of Hawai'i than a hotel can offer. Thus, the request is consistent with the goals and objectives of the Kona CDP.

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 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 four-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 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.
2. The applicants, successors or assigns 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.

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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 "Lani Bowman".

Lani Bowman, Vice-Chairman
Leeward Planning Commission

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