



County of Hawai'i

LEEWARD PLANNING COMMISSION

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JAN 03 2012

Peter and Tracy Boynton
74-4920A Palani Road
Kailua-Kona, HI 96740

Dear Mr. and Mrs. Boynton:

Special Permit Application (SPP 11-000127)

Applicant: Peter S. Boynton II & Tracy B. Boynton, Trustees

Request: To Establish a Bed and Breakfast Operation Within Three Bedrooms in
Two Existing Dwellings on Two Separate Parcels in the State Land Use
Agricultural District

Tax Map Key: 7-4-007:009 & 063

The Leeward Planning Commission, at its duly held public hearing on December 15, 2011, voted to approved the above-referenced Special Permit to allow the establishment of a three-bedroom bed and breakfast operation within two existing dwellings, each situated on two separate parcels for a combined 2 acres of land within the State Land Use Agricultural District. The properties are located along the northwestern side of Palani Road in the vicinity of Paniolo Country Subdivision, approximately 360 feet northeast (mauka) of the Palani Road-Hao Kuni Street intersection, Honokohau 2nd, North Kona, Hawai'i.

Approval of the request is based on the following:

The applicants are requesting a Special Permit to allow the establishment of a three-bedroom bed and breakfast operation, in the form of two guest units or suites accommodating a maximum of 6 guests, on the lower levels of two existing and adjacent, single-family dwellings, each situated on separate, adjoining one-acre parcels which together comprise a total of 2 acres of land. No new construction or alterations are proposed. The applicants reside in the one-bedroom upper/main level of the three-bedroom dwelling on TMK Parcel 63 (hereafter called "Parcel 63 Dwelling"), and two of

the three bed and breakfast guest bedrooms are on the lower, basement level of their residence. These two bedrooms, together with a small sitting room, comprise one guest suite or unit. A long-term tenant of the applicants resides in the 2-bedroom upper/main level of the adjacent dwelling (hereafter called "Parcel 9 Dwelling"), and the third of the three bed and breakfast guest bedrooms is on the lower, basement level of the Parcel 9 Dwelling. Together with a small adjoining sitting room, this comprises a second guest suite or unit. The applicants will operate both suites (totaling three bedrooms) from their Parcel 63 Dwelling.

The criteria for approving a Special Permit are set forth in Rule 6-7 of the Planning Commission Rules. Rule 6-7 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 State Land Use 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 the 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 subject 2-acre site is situated within the County's Agricultural (A-1a) zoning 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 applicant's residence in the Parcel 63 Dwelling and, in part, a separate but incidental use of a portion of the adjacent Parcel 9 Dwelling rented to a third party. Being limited to portions of existing dwellings, the operation will not increase the extent of residential activities on the subject property nor will it diminish the potential for any future agricultural activity on the property or surrounding lands. 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 subject property is not in any current agricultural use nor has it been used for any agricultural purpose during the more than thirty years of ownership by the applicants.

Although the State classifies the property as Other Important Agricultural Land, that classification is for lands which have one or more significant deficiencies which exclude them from the "Prime" or "Unique" agricultural land classifications. The soil type identified by the U.S.D.A. Soil Survey (1973), Kaimu extremely stony peat, notes these lands to be unsuitable for cultivation. Accordingly, the potential for productive agricultural use of the subject property is not high. The County General Plan designates these lands for "low density urban" development.

Therefore, the proposed use will not adversely affect the preservation and agricultural use of the County's prime or unique 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 finds 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 or unique agricultural lands.

(B) The desired use would not adversely affect surrounding properties. Surrounding properties are similarly zoned A-1a by the County of Hawai'i. Adjoining parcels are 1 and 2 acres in size, and an undeveloped, vacant 89.9 acre tract in pasture use. The nearest residences are located about 150 feet away from the subject dwellings, to the east and west, respectively. As the proposed establishment of a 3 bedroom bed and breakfast operation between two existing dwellings and accommodating a maximum of six guests will occur within existing, adjacent dwellings and will be limited to activities that will not subordinate the existing residential nature of these properties, approval of this request 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 both adjacent parcels is from a common driveway connection with Palani Road and over a paved private road easement, which is not gated. Traffic anticipated to be generated by the proposed bed and breakfast operation is not anticipated to exceed levels typically associated with single family residential activities. With maximum accommodations for six guests between the two dwellings, traffic generated by the bed and breakfast operation is relatively insignificant, especially when consideration

is given to the fact that these bed and breakfast units could also be utilized by a family or offered as a long term rental.

County water is available and provided to the property. Wastewater from both existing dwellings 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. Reviewing government agencies that provide infrastructural support facilities such as roads and water or public services did not have any comments or objections to this request.

(D) Unusual conditions, trends, and needs have arisen since district boundaries and regulations were established. In the 1960s and 1970s, 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 this area's proximity to Kailua-Kona, Special Permits have been issued for bed and breakfast operations in other single-family and farm dwellings in near-by subdivisions.

(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 "E" and "very poorly suited" for agricultural use by the Land Study Bureau's Overall Master Productivity Rating. The property's soil type is in the Kaimu series which is typically used for native woodlands, with limited use as pasture and orchards, and is expressly deemed to be not suitable for cultivation. Thus the property has a limited practical potential and suitability for agriculture. Furthermore, the proposed use will be conducted within existing dwellings 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 within an existing dwelling and is residential in nature. A slight increase in traffic will occur, versus the unlikely alternative of the subject existing bedrooms being left vacant and unoccupied by others, but is not expected to change the character of the land over that of the two existing four and five-bedroom homes. 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, Kona Community Development Plan (CDP) and other documents such as Design Plans.

General Plan: 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 Low Density Urban in the General Plan. Low Density Urban lands are intended to be residential in nature, with ancillary community and public uses, including neighborhood and convenience-type commercial uses, with densities up to six dwelling units per acre. As the use is essentially residential in nature, 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.

Section 25-4-7 of the Zoning Code sets forth the permissibility of bed and breakfast operations by zoning district, along with standards applicable to all uses permissible under County zoning law. Section 25-4-7(b)(2) of the Zoning Code states, "The operator of the bed and breakfast establishment shall reside on the same building site [lot] as that being used for the bed and breakfast establishment." The applicants propose to reside on the same building site as that being used for two of the three bedrooms comprising the bed and breakfast operation, and will reside adjacent to the building site and dwelling, which they also own, within which the third bedroom of the operation is located. Although the location of the third bedroom is inconsistent with the

above-cited requirement of the Zoning Code, the application presents the following unusual set of facts:

- (1) Common and complete ownership and control of both the residence parcel (Parcel 63) and the adjacent parcel (Parcel 9);
- (2) Only one guest bedroom within a larger, yet modest three-bedroom dwelling is to be on the adjacent parcel (Parcel 9);
- (3) The common driveway connection, access road, and close proximity of the two dwellings within which the operation is to occur; and
- (4) The adequate distance and landscape-buffered separation from other dwellings on adjacent parcels for protection and maintenance of the residential-agricultural character of the surrounding area.

Special Permits have traditionally be issued with conditions that vary from the standards set forth in the Zoning Code where it has been found to best serve the objectives and purposes of the State Land Use law and related regulations pertaining to lands in the State Land Use Agricultural District. For example, the required number of parking spaces is sometimes increased or decreased, and pavement and substantial landscaping buffers for quasi-industrial or commercial uses is sometimes required. In these cases, the Zoning Code has been used as a guide in establishing site-specific standards appropriate to those uses which the Commission has found to be unusual and reasonable, and to further the objectives of the applicable State Land Use laws. Based on the unusual set of facts comprised in the subject application, the operation of only one bedroom of the proposed bed and breakfast operation in the commonly owned, jointly accessed, adjacent dwelling is an unusual and reasonable use adequately regulated by permit conditions recommended below.

Kona Community Development Plan (CDP): The overall purpose of the Kona CDP is intended to direct growth to appropriate areas in conjunction with necessary infrastructure and public facilities, while preserving valued natural and historic assets. 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 within of the Kona Urban Area, where an alternate use of portions of two existing and adjacent dwellings is proposed with no new construction or reduction of open space. The site is also close to essential public services, including police and fire, and is connected to all essential public utilities. 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 three miles from the closest shoreline and is not located within the Special Management Area. Given the fact that the property has been developed with dwellings 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 or adjacent to the property. Therefore, the proposed use will not adversely impact any recreational resources, including access to and along the shoreline and mountains, 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 three-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 Chapter 25, Hawai'i County Code, (Zoning Code), including without limitation, Article 2, Division 3 (Violations, Penalties, Enforcement) and Section 25-4-7 of Article 4, Division 1 (Use Regulations) thereof, relating to Bed and Breakfast Establishments, with the following exception: the requirement that the operator must reside on the same building site as that being used in the bed and breakfast operation shall be waived so long as (1) the legal ownership of both Parcel 9 and Parcel 63 remain in the same party, and (2) the operator and/or landowner(s) legally reside on the project site.
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.

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.

Peter and Tracy Boynton
Page 8

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

Sincerely,



Geraldine Giffin, Chairman
Leeward Planning Commission

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