



County of Hawai'i

WINDWARD PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
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DEC 20 2012

Mr. Edwin L. Lilley
2250 Kaumana Drive
Hilo, HI 96720

Dear Mr. Lilley:

Special Permit Application (SPP 12-000142)

Applicant: Edwin L. Lilley

Request: To Establish a Real Estate Office as a Home Occupation
Within an Existing Dwelling

Tax Map Key: 2-5-064:008

The Windward Planning Commission, at its duly held public hearing on December 6, 2012, voted to approve the above-referenced request for a Special Permit to allow the use of a portion of an existing dwelling as a real estate office that resides on approximately 1.27 acres of land situated within the State Land Use Agricultural District. The subject property is located on the east side of Kaluiiki Road, east of the Hilo Hongwanji Mission Cemetery, and approximately 250 feet north of the Kaluiiki Road – Kaūmana Drive intersection, Kaūmana Homesteads, South Hilo, Hawai'i.

Approval of the request is based on the following:

The applicant is requesting a Special Permit to establish a real estate office as a home business in the front bedroom of his existing residence. The front bedroom has an exterior entrance. Office activities will include communication with clients by phone and e-mail, document preparation, marketing, MLS property searches and scheduling appointments and property showings. The applicant will be the only employee. The applicant meets clients at venues throughout Hilo or at properties listed for sale; therefore, clients will rarely come to the property for meetings.

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 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 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. 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. In recognizing that lands within the 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 proposed use is considered a "home occupation" as defined by the County's Zoning Code. A home occupation is any activity intended to provide income that is carried out within a dwelling, within an accessory structure to a dwelling, or on a portion of a building site used principally for dwelling purposes. The County's Zoning Code and State Land Use Law require a Special Permit to allow a home occupation on lands designated Agricultural by the County and State. The proposed use is not agricultural in nature but will occur entirely within an existing dwelling, and therefore will not foreclose opportunities to use the remainder of the property for agriculture.

The State Office of Planning, in its letter dated November 15, 2012, views this particular application as introducing a non-agricultural business in the absence of bona-fide agricultural activity occurring on the property that will increase land agricultural land values to the detriment of farmers seeking to acquire agricultural lands and pursue agricultural activities. We respectfully disagree with the conclusions being drawn by the State Office of Planning. Due to the very limited nature of this request as a real estate office in an existing dwelling accommodating the homeowner as the only employee, we fail to see how approval of this request will jeopardize the preservation of agricultural lands for bona-fide farmers. If approved, the existing farm dwelling will continue to be the primary use of the property with the real estate office relegated to something akin to a home occupation, which is permitted everywhere else except on Agricultural-designated lands. If this very same use was proposed in a single family residential area, it would be considered an outright permitted use. We fail to understand the difference between a

single-family dwelling located in an urban residential area versus an agricultural area. Both homeowners and farmers alike need opportunities to supplement their income in these difficult and diverse economic times. Approval of this Special Permit will provide this landowner with an opportunity afforded to every other homeowner in urban-designated areas. We do not view the approval of this Special Permit as a threat to our farmers or our agricultural land inventory. Thus, the proposed use is an unusual but reasonable use within the Agricultural District.

In addition to the above listed criteria, the Planning Commission shall also consider the following criteria listed under Section 6-3(b)(5) (A) through (G) of its rules of practice and procedure:

(A) Such use shall not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. The subject property is not classified as prime agricultural land. Thus the proposed use is considered an unusual and reasonable use of the agricultural land that 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 zoned A-20a and A-1a. Lands to the north and west are undeveloped agricultural land. A cemetery is located on a .82-acre parcel to the southwest. Properties to the east and south are zoned A-1a and developed with farm dwellings. The closest dwelling is located on the adjacent property to the south. Since the proposed use will occur within the existing dwelling and will not generate noise or odors, it is unlikely that the use will have any adverse impacts on surrounding properties. No traffic impacts are anticipated because clients will not be coming to the real estate office.

(C) The proposed use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, and police and fire protection. Access to the property is via Kaluiiki Road from Kaūmana Drive. Kaluiiki Road is a one-lane County maintained roadway. County water is available to the property. Wastewater for the existing residence is disposed of into a septic system. All essential utilities and services are available to the site. The real estate office will operate as a home business within one room of a single-family dwelling, and therefore, will not increase demand on services. As no clients will come to the site, there will be no impacts to public roads. Based upon the above information, the proposed use will not unreasonably burden public agencies to provide infrastructure and services to the site.

(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 project site and surrounding areas are designated for agricultural uses by both State and County land use laws but the area has become more urban in nature since the land use boundaries were established. Additionally, many technological changes have occurred, such as the internet, which make it easier for people to operate home-based business. Thus the issuance of a Special Permit for the proposed "non-agricultural" use is appropriate.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. Soils on the project site are classified as "C" or "Fair" and "E" or "Very Poor" by the Land Study Bureau's Overall Master Productivity Rating and are Unclassified by the Department of Agriculture's ALISH Map. The U.S. Soil Survey Type for the subject property is Pāhoehoe lava flows, (rLW). Pāhoehoe lava has no soil covering and is typically bare of vegetation except for mosses and lichens.

The property has not been used for commercial agriculture in the past and due to its poor soil qualities is not ideal for producing sustained high agricultural yields. Based on the above information, it has been determined that the land upon which the proposed use is sought is unsuited for the uses permitted within the district.

(F) The use will not substantially alter or change the essential character of the land and the present use. The current character of the property and surrounding area is agricultural with farm dwellings. A farm dwelling was constructed on the property in 2003, a portion of which will be used for the real estate office. Since all activities associated with the proposed use will take place within the existing dwelling, the essential character of the land is not expected to change.

(G) The request will not be contrary to the goals, policies, objectives and actions of the General 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 majority of the property is designated Low Density Urban, which includes residential uses (up to six units per acre), with ancillary community and public uses, and neighborhood and convenience-type commercial uses. The northwestern corner of the property is designated Important Agricultural Lands, which are those lands with better potential for sustained high agricultural yields because of soil type, climate, topography, or other factors.

The proposed use is considered a home occupation-type business because it occurs entirely within a dwelling and does not involve a large number of clients going to and from the business. Based on this information, the proposed use will not be contrary to the goals, policies, objectives and actions of the General Plan.

The proposed use is not contrary to the objectives sought to be accomplished by Chapter 205A, Hawai'i Revised Statutes, relating to the coastal zone management program. The property is located well outside of the Special Management Area (SMA) and tsunami evacuation zone. There is no designated public access to the mountain or shoreline 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 nor visual resources, coastal ecosystems, and marine and coastal resources. Further, the property will not be affected by any coastal hazards or beach erosion. Therefore, the proposed use is not contrary to the objectives of Chapter 205A, Hawai'i Revised Statutes.

Based on the above considerations, the approval of the request to allow the use of a portion of an existing dwelling as real estate office would support the objectives sought to be accomplished by the Land Use Law and Regulations. Approval of this request is subject to the following condition.

1. The applicant, successors or assigns shall comply with all applicable County, State and Federal laws, rules, regulations and requirements, including Section 25-4-13 (Home Occupations) of the Zoning Code (Chapter 25), County of Hawai'i.
2. Should this condition 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.

Mr. Edwin L. Lilley
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Should you have any questions, please contact Maija Cottle of the Planning Department at 961-8288, ext. 8159.

Sincerely,



Dean Au, Chairman Pro Tem
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
Mr. Gilbert Bailado /