



County of Hawai'i

WINDWARD PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

APR 14 2015

Mr. James Stapleton
Mr. James Ricciuti
13-3545 Maile Street
Pahoa, HI 96778

Dear Mr. Stapleton and Mr. Ricciuti:

Special Permit (SPP 15-000176)

Applicant: James Stapleton and James Ricciuti

Request: To Establish a 5-Bedroom Bed and Breakfast Operation

TMK: 1-3-014:041

The Windward Planning Commission, at its duly held public hearing on April 2, 2015, voted to approve the above-referenced request to allow the establishment of a 5-bedroom bed and breakfast operation within a portion of an existing 8-bedroom single-family dwelling situated on 2 acres of land within the State Land Use Agricultural District. The project site is situated on 13-3545 Maile Street, approximately 930 feet north of its intersection with Malama Street, Leilani Estates Subdivision, Keahialaka, Puna, Hawai'i.

Approval of this permit is subject to the following conditions:

1. The applicant, successor or assigns shall be responsible for complying with all stated conditions of approval.
2. The applicant 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.
3. The bed and breakfast establishment shall be limited to a maximum of five (5) bedrooms and ten (10) guests.

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4. The applicant shall commence operation of the Bed and Breakfast establishment within one (1) year from the effective date of this permit.
5. The applicant shall provide bottled water for the guests of the bed and breakfast operation as use of water from a catchment system is prohibited by the State Department of Health.
6. The applicant shall provide sufficient, on-site water for firefighting in compliance with NFPA1-UFC, prior to the establishment of the bed and breakfast operation.
7. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
8. An initial extension of time for the performance of conditions of the permit may be granted by the Planning Director upon the following circumstances:
 - 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.
 - Granting of the time extension would not be contrary to the General Plan or the Zoning Code.
 - Granting of the extension would not be contrary to the original reasons for the granting of the permit.
 - 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 these conditions not be met or substantially complied with in a timely manner, the Planning Director may initiate procedures to revoke this permit.

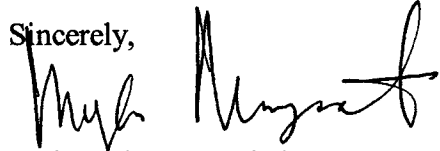
This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies

Approval of this permit is based on the reasons given in the attached Findings Report.

Mr. James Stapleton
Mr. James Ricciuti
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Should you have any questions, please contact Christian Kay of the Planning Department at 961-8136.

Sincerely,

A handwritten signature in black ink, appearing to read 'Myles Miyasato', with a stylized, flowing script.

Myles Miyasato, Chairman
Windward Planning Commission

LStapletonricciutispp15-176wpc
Enclosure: PC Findings Report

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

COUNTY OF HAWAI'I
PLANNING COMMISSION FINDINGS

JAMES STAPLETON AND JAMES RICCIUTI
SPECIAL PERMIT APPLICATION NO. 15-000176 (SPP 15-176)

The Applicants are requesting a Special Permit to allow the establishment of a 5-bedroom bed and breakfast operation within a portion of an existing 8-bedroom single-family dwelling situated on 2 acres of land within the State Land Use Agricultural District. The property is located at 13-3545 Maile Street, approximately 930 feet north of its intersection with Malama Street, Leilani Estates Subdivision, Keahialaka, Puna, Hawai'i, TMK:1-3-014:041.

The applicants are requesting a Special Permit to allow the establishment of a five-bedroom bed and breakfast operation within a portion of an existing 8-bedroom single-family dwelling, which is located on a 2-acre lot in the Leilani Estates Subdivision. The main three-bedroom dwelling was built in 1971 (the applicants will use this main structure for their residence) and three additions, which are connected to the main structure by a carport and covered walkways were constructed in 1999. The applicants propose to locate the 5-bedrooms and 4-bathrooms for the bed and breakfast guest use within the converted additions. The bed and breakfast will operate 7 days a week with the two applicants as employee/operators and there will be no additional employees. Guests will check-in at 4:00 p.m. and check-out at 11:00 a.m. All parking (both residential and bed and breakfast related) will be provided on-site.

The proposed use is an unusual and reasonable use of land situated within the Agricultural District that would not be contrary to the effectiveness and objectives of Chapter 205, Hawai'i Revised Statutes, as amended. 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 subject property is 2 acres in size, rectangular in shape and is situated within the County's Agricultural (A-1a) zoned district. The proposed use is unusual in that it is not agricultural in nature, however, 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 "D" or "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 uses 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 consist mainly of one-acre parcels with a mix of single-family dwellings and vacant lots. The nearest dwelling is located to the north approximately 25-feet from the parcel. The existing dwelling is located on a heavily landscaped lot which should mitigate noise or visual impacts to surrounding properties. In addition, the proposed use will occur within an existing dwelling it is not anticipated to have a significant, adverse effect on the surrounding properties. The Leilani Community Association wrote in opposition to the Special Permit application stating that the subdivision's Covenants, Conditions, and Restrictions (CC&R's) prohibit any non-residential use because "All of the lots shall be used only for single family resident and purposes incidental thereto, one such residence only being permitted on each said lot." According to Hawai'i County Code Section 25-4-7(b)(1) regulating Bed and Breakfast establishments, "The bed and breakfast establishment shall be subordinate and clearly or customarily incidental to the principal use as a residence by its operator and not alter or be detrimental to the character of the surrounding area. In addition, the Planning Department does not regulate private CC&R agreements. Based on the preceding, the Planning Commission has approved several bed and breakfast establishments the Leilani Estates subdivision in the past.

(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 Maile Street, which is a private roadway with 20-foot wide pavement within an approximately 40-foot wide right-of-way. Any increase in traffic generated by the bed and breakfast operation would be minimal. Water is available from an existing water catchment system and UV 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 applicant provide bottled drinking water to guests. Wastewater from the existing dwelling is currently disposed of into two DOH approved cesspools. 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.

(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" uses may be allowed.

(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 or its present use. Thus, the proposed use will not substantially alter or change the essential residential character of the land or its present use.

(G) The request will not be contrary to the General Plan and Community Development Plan (CDP). 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.
- 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 not located within or near the neighborhood village centers, community village centers and regional town centers identified in the PCDP, however, as the bed and breakfast establishment will occur within an existing dwelling it and will provide the applicant an additional source of income. Thus, the request is consistent with the goals and objectives of the Puna CDP

The proposed use is not contrary to Chapter 205A, Hawai'i Revised Statutes, relating to Coastal Zone Management. The subject property is located approximately 4 miles from the closest shoreline and is not located within the Special Management Area. Given the fact that the property has been 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 shoreline or 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.

Lastly, this approval is made with the understanding that the applicant remains responsible for complying with all other applicable governmental requirements in connection with the approved use, prior to its commencement or establishment upon the subject property. Additional governmental requirements may include the issuance of building permits, the installation of approved wastewater disposal systems, compliance with the Fire Code, installation of improvements required by the American with Disabilities Act (ADA), among many others. Compliance with all applicable governmental requirements is a condition of this approval; failure to comply with such requirements will be considered a violation that may result in enforcement action by the Planning Department and/or the affected agencies.

Based on the above considerations, Special Permit No. 15-000176 is approved to establish a 5-bedroom bed and breakfast operation within a portion of an existing 8-bedroom single-family dwelling situated on 2 acres of land within the State Land Use Agricultural District identified as TMK:1-3-014:041.