



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

NOV 19 2015

Ms. Theresa Sommer
P.O. Box 174
Volcano, HI 96785

Dear Ms. Sommer:

SUBJECT: Special Permit Application (SPP 15-000183)
Applicant: Theresa Sommer
Request: To Allow the Establishment of a 3-Bedroom Bed & Breakfast
Operation Within an Existing Dwelling
Tax Map Key: 1-9-019:034

The Windward Planning Commission, at its duly held public hearing on November 5, 2015, voted to approve the above-referenced request to allow the establishment of a 3-bedroom bed and breakfast operation within an existing dwelling, which includes two detached bedrooms, on 5 acres of land within the State Land Use Agricultural District. The project site is situated along the east side of Kawailehua Road (Road E) approximately 250 feet south of the Kawailehua Road (Road E) – Olomea Road intersection, Volcano Cymbidium Acres Subdivision, 'Ōla'a, 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 the Zoning Code, as amended by Ordinance No. 00 152, relating to Bed and Breakfast Establishments.
3. The applicant shall secure and finalize the building permit for conversion of the detached bedroom structure from the Department of Public Works-Building Division within one (1) year from the effective date of this permit.

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4. The bed and breakfast operation shall be limited to the use of three (3) bedrooms.
5. The applicant shall provide bottled water for guests of the bed and breakfast operation.
6. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations, and requirements.
7. An extension of time for the performance of conditions of 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 the Zoning Code.
 - C. Granting of the 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 these conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke this Special Permit.

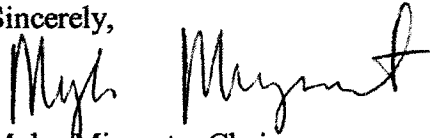
This approval does not, however, sanction the specific plans submitted with the application as they may be subject to change given specific code and regulatory requirements of the affected agencies

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

Ms. Theresa Sommer
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Should you have any questions, please contact Jeff Darrow of the Planning Department at 961-8158.

Sincerely,

A handwritten signature in black ink, appearing to read "Myles Miyasato". The signature is fluid and cursive, with the first name "Myles" and last name "Miyasato" clearly distinguishable.

Myles Miyasato, Chairman
Windward Planning Commission

LSommerSPP15-183wpc
Enclosure: PC Findings Report

cc: Ms. Suzanne Kruppa
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

THERESA SOMMER
SPECIAL PERMIT APPLICATION (SPP 15-000183)

Based on the following, Special Permit No. 15-000183 is hereby issued to allow the establishment of a 3-bedroom bed and breakfast operation within an existing dwelling, which includes two detached bedrooms, on 5 acres of land within the State Land Use Agricultural District is approved by the Planning Commission.

THERESA SOMMER has submitted an application for a Special Permit to allow the establishment of a 3-bedroom bed and breakfast operation within an existing dwelling, which includes two detached bedrooms, on 5 acres of land within the State Land Use Agricultural District. The property is located along the east side of Kawailehua Road (Road E) approximately 250 feet south of the Kawailehua Road (Road E) – Olomea Road intersection, Volcano Cymbidium Acres Subdivision, Ola'a, Hawai'i, TMK: 1-9-019:034.

The applicant is requesting a Special Permit to allow a 3-bedroom bed and breakfast operation within an existing dwelling and two detached bedrooms on the subject property. According to the Hawai'i Real Property Tax records, there is an existing 3,092 square-foot, 3-story, 3-bedroom/3 bath single family dwelling that was constructed in 1991. Additionally, there is a barn and an equipment shed. The equipment shed was built in 1990 and is 672 square feet in size. It has previously been converted into a two bedroom detached unit with a bathroom. The applicant is in the process of permitting the conversion of the equipment shed. The bed and breakfast operation will use one large bedroom on the bottom floor of the main house and the detached two-bedroom unit. The applicant will reside in one bedroom on the top floor of the main house and be the only employee. Off-street parking is available for the guests of the bed and breakfast operation and for the residence.

The grounds for approving a Special Permit are based on Rule 6-6 in the Planning Commission Rules. It 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 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 subject property is 5 acres in size and situated within the County's Agricultural (A-20a) zoned district. The applicant currently resides in the existing dwelling, which is proposed as part of the bed and breakfast operation and is the primary residence. The 3-bedroom bed and breakfast operation will consist of one bedroom within the existing dwelling and in two (2) detached bedrooms and will be subordinate to the primary use of the single family dwelling. Therefore, the subject request is considered an unusual and reasonable use of the 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 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 situated on land characterized as Puaulu silt loam, 0 to 10 percent slopes. The use will be located within the existing single family dwelling and detached bedrooms, which is situated within an area where soils are classified as "C" or "Fair" by the Land Study Bureau's Overall Master Productivity Rating and is classified as mainly Prime Agricultural Land with a portion unclassified by the Department of Agriculture's ALISH Map. The proposed bed and breakfast use will be subordinate and incidental to the principal use of the residence by the applicant. The 3-bedroom bed and breakfast operation will be confined to the existing single-family dwelling and detached bedrooms on-site. The proposed use will not displace any existing agricultural activity or diminish the agricultural potential of the subject property. 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. Based on the previous discussion listed above, 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 and is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

(B) The desired use would not adversely affect surrounding properties. The property is located in the Volcano Cymbidium Acres Subdivision. It is 5 acres in size with an existing dwelling and two detached bedrooms that will be used for the bed and breakfast operation, and a barn. The proposed bed and breakfast operation will be conducted within the existing dwelling and the two detached bedrooms. The remainder of the property is planted in ohia and hapuu, along with assorted fruit trees and ornamental plants.

The surrounding area is zoned A-20a and consists of vacant parcels and scattered dwellings. The nearest dwellings are located to the south on Road E. The area is heavily forested to help minimize any visual or noise impacts. The bed and breakfast operation will generate very minimal traffic in the area. In addition, there have been no objections or concerns received from the surrounding property owners regarding this request. Based on the above information, it is not anticipated that the proposed use will adversely affect surrounding property owners.

(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 available from Road E, which is a private roadway that has a 20-foot wide pavement within a 40-foot right-of-way. Electricity and telephone are available to the property. There is no municipal sewer system in the subdivision. The applicant currently utilizes an existing

cesspool system. County water is not available to the subject site. The applicant relies on water catchment in conjunction with the residence. As a condition of approval, bottled drinking water will be made available to the guests. The property is situated within an area designated as Flood Zone X, an area determined to be outside the 500-year flood plain. Additionally, a condition of approval will include that the applicant meet all applicable County, State and Federal laws, rules, regulations and requirements.

The dwelling and accessory structures have been permitted in the past. The current structure that is being proposed as the detached two-bedroom unit was originally permitted as an equipment shed. The applicant is in the process of changing the permit from an equipment shed to a detached unit with two bedrooms. As such a condition of approval will be added requiring the applicant to finalize the change of use building permit within one year from the effective date of this approval.

(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 property and surrounding areas are designated for agricultural uses by both State and County land use laws. Through the issuance of a Special Permit, a community may establish various "non-agricultural" services that may not be available or allowed by zoning for its residents. The request to allow a 4-bedroom bed and breakfast operation in this area is in line with the intent for allowing the issuance of 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 on soil identified as Puалу silt loam, classified as "C" or "Fair" by the Land Study Bureau's Overall Master Productivity Rating and is unclassified by the Department of Agriculture's ALISH Map. Although the soil is suited for uses permitted within the Agricultural district, the proposed request will be conducted entirely within an existing dwelling and detached bedrooms and will not displace any active or potential agricultural activity on the property.

(F) The use will not substantially alter or change the essential character of the land and the present use. The proposed request will be conducted within the existing dwelling and detached bedrooms located on the 5-acre parcel. The proposed request 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 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 located in area mainly identified as Important Agricultural Lands, which are those lands with better potential for sustained high agricultural yields because of soil type, climate, topography, or other factors. Additionally, a portion of the property is identified as Extensive Agricultural, which are lands not classified as Important Agricultural Land and includes lands that are not capable of producing sustained, high agricultural yields without the intensive

application of modern farming methods and technologies due to certain physical constraints such as soil composition, slope, machine tillability and climate. As previously mentioned, the proposed request will not displace any active or potential agricultural activity on the property. The proposed request is consistent with the following goals and policies of the Land Use and Economic Elements of General Plan.

Land Use Element

- Designate and allocate land areas in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the County.
- 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.
- Economic development and improvements shall be in balance with the physical, social, and cultural environments of the island of Hawai'i.
- Provide an economic environment which allows new, expanded, or improved economic opportunities that are compatible with the County's cultural, natural, and social environment.
- 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 proposed request will allow the applicant an opportunity to improve their quality of life, provide an economic environment that allows this new, economic opportunity, and increase the development of the visitor industry for Hawai'i.

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. Given the fact that the property has been developed with a residential dwelling, it is unlikely that any archaeological features and threatened species of plant or animal are present on the property. There is no designated public access to the mountain areas over the property. It is near to existing residences and vacant lands. The property is not located within the Special Management Area. 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.

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 properties. 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.