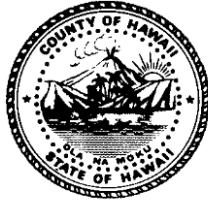


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Mayor

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Managing Director



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County of Hawai'i

LEEWARD PLANNING COMMISSION

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

August 30, 2023

Thomas and Lisa Tice
87-3208 Ama Road
Captain Cook, HI 96704
VIA EMAIL

Dear Mr. and Mrs. Tice:

SUBJECT: Special Permit (PL-SPP-2023-000044)
Applicant: Thomas and Lisa Tice
Permitted Use: Allows the Establishment of a Two-Bedroom Bed and Breakfast Operation Within an Existing Dwelling
Tax Map Keys: (3) 8-7-015:045; South Kona, Hawai'i

The Leeward Planning Commission, at its duly held public hearing on August 17, 2023, voted to approve the above-referenced request to allow the establishment of a two-bedroom bed and breakfast operation within an existing dwelling. The project site is located at 87-3208 Ama Road, approximately 180 feet north of its intersection with Ka'ohē Road, Ka'ohē 4th, South Kona, Hawai'i.

Approval of this permit is subject to the following conditions:

1. The applicant(s), its successor(s), or assign(s) (Applicant) shall be responsible for complying with all of the stated conditions of approval.
2. The operation of a two (2) bedroom Bed and Breakfast establishment shall be conducted in a manner that is substantially representative of plans and details contained within the Special Permit Application received by the Planning Department, any supplemental material, and the representations made before the Leeward Planning Commission. Any expansion of uses beyond what is represented in this document shall require an amendment to this permit.

3. The Applicant shall comply with all requirements of Section 25-4-7 of the County of Hawai'i Zoning Code, as amended, relating to bed and breakfast establishments.
4. The bed and breakfast operation shall be limited to the use of two (2) bedrooms and shall be limited to four (4) guests at any given time.
5. The Applicant shall consult with Hawai'i County Real Property Tax regarding potential modification of the subject property's tax rates and/or tax exemptions which may change as a result of establishing the bed and breakfast operation.
6. The applicant shall comply with Hawai'i Administrative Rules, Department of Health, Chapter 11-50 (Food Safety Code) related to food service for bed and breakfast establishments.
7. The Applicant shall comply with all applicable County, State and Federal laws, rules, regulations, and requirements.
8. Should any of the conditions not be met or substantially complied with in a timely fashion, the Planning 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 request is based on the reasons given in the enclosed Findings Report.

Should you have any questions regarding the above, please contact Alex Roy of the Planning Department at (808) 961-8140 or by email at alex.roy@hawaiiicounty.gov

Sincerely,

Barbara DeFranco
Barbara DeFranco (Aug 30, 2023 13:56 HST)

Barbara DeFranco, Chairperson
Leeward Planning Commission

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Enclosure: Planning Commission Findings Report

Thomas and Lisa Tice
August 30, 2023
Page 3

cc w/enclosure via email: Sherry Potensky
County Real Property Tax Division
State Department of Health
Land Use Commission
GIS Section

COUNTY OF HAWAI‘I
PLANNING COMMISSION FINDINGS

THOMAS & LISA TICE
SPECIAL PERMIT APPLICATION (PL-SPP-2023-000044)

Based on the following findings, a Special Permit to develop and operate a two (2) room bed and breakfast establishment within an existing 4-bedroom dwelling situated on 0.28-acre parcel situated within the Agricultural- 5 acres (A-5a) zoning district is hereby **approved by the Leeward Planning Commission**. The subject property is located at 87-3208 Ama Road, approximately 500 feet east (makai) of the intersection of Ka‘ohe Road and Hawai‘i Belt Road/Māmalahoa Highway, Captain Cook, South Kona District, Hawai‘i, TMK: (3) 8-7-015:045.

The applicant is requesting a Special Permit to develop and operate a two (2) bedroom Bed and Breakfast establishment within an existing single-family residence all within the Agricultural District. There are two (2) existing separate buildings located on the subject parcel. The first dwelling (main) is a two-story house, and the second structure is a garage with a guest room above the garage. The main dwelling includes two (2) bedrooms which will remain for owner use only, while the third bedroom (on the first floor) will be used for guests. The applicant currently resides on the subject parcel within the existing single-family residence which includes a garage with a bedroom located on the second floor. In front of the main house is the parking garage structure. Above the parking garage is where the second rental bedroom is located and includes a full bathroom and wet bar. The Applicant has stated that no more than four (4) guests will be on site at any given time, renting out the two (2) bedrooms, with the owners/operators residing on the second floor of the main home.

The Bed and breakfast Establishment, 24-hrs per day, 7 days per week and will be operated by the full-time landowners who will reside in the main dwelling unit.

The grounds for approving a Special Permit are based on Rule 6-7 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 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 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 proposed development is the establishment of a Bed and breakfast establishment within an existing 0.28-acre residential property is unusual in that it is not an agricultural use of that property. However, as the subject parcel is zoned “extensive agriculture” that means that without the intensive application of modern farming methods and technologies due to certain physical constraints the property does not have a high potential for agriculture and may better provide for the landowner through its use as a Bed and Breakfast. Additionally, the small acreage of the parcel, combined with its existing development, makes it not conducive for agricultural pursuits. It is therefore determined that the proposed use is an unusual and reasonable use within the Agricultural District and will not be contrary to the objectives of 205A, HRS, as amended.

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 would not be contrary to the objectives sought to be accomplished by the Land Use Law and Regulations. 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 and 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 uses. The property is not considered to have high agricultural potential from a resource perspective due to the soil type and its low productivity rating, which is typically used for grazing pasture lands and not agriculture. The property is not considered important agricultural land as the property’s soils are designated “D” or “Poor” for agricultural productivity by the Land Study Bureau Soil Classification System and is classified as “Other Important Agricultural Land” by the Department of Agriculture’s ALISH Map. As evaluated above, the applicants’ request is considered an unusual and reasonable use of agricultural land that will not adversely affect the preservation of lands with high agricultural potential in the County of Hawai‘i. Thus, the establishment of the proposed use will not be 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. All the immediately surrounding properties are zoned Agricultural (A-5a) and are either similarly sized parcels as is found within the Kona Paradise Subdivision or are over 5 acres in size with small farming operations and residential dwellings. Most of the area within the Kona Paradise Subdivision is developed with similar single-family residential structures and related development. Some small farms and grazing lands are located mauka of the highway on ;larger lots within the A-5a zoning district, however, most of the coastal parcels remain undeveloped. The operation of the Bed and breakfast, especially one that will house only four (4) guests total, will unlikely cause an increase in noise, traffic, or other offensive community impact. The proposed request is to utilize an existing dwelling and related structures with no construction proposed or required to conduct the use. Staff notes that a simple search on the internet shows there are a number of existing short-term vacation rentals located throughout the Kona Paradise Subdivision.

(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 applicant proposes to utilize the existing utilities (wastewater, electric) located on the parcel, with water being provided via an on-site 10,000-gallon catchment tank system. A private paved road (Ama Road) leads to the subject property where the applicant has a paved driveway on to the property with parking for the two (2) rooms to be provided on site and off-street; the applicants stated they have three (3) available off-street parking spots for the Bed and breakfast. According to the DOH – Sanitation Branch, if the bed and breakfast offers non-hazardous breakfast foods such as commercial cereal, certain pastries, breads, fruits, coffee, tea, or juice, then a food establishment permit is not required, however the limited menu must be documented with DOH. Additionally, DOH notes that according to their sanitation code, a bed and breakfast establishment is defined as a single-family dwelling in which overnight accommodation and breakfast is included, and the number of guests does not exceed 6. If the applicant exceeds these parameters, DOH rules state that the applicant will need to obtain a food establishment permit, which may include the construction of a separate commercial kitchen.

According to the Department of Water Supply (DWS), there is no existing water service to the site. Water for the proposed Bed and Breakfast will be provided by an existing 10,000-gallon water catchment tank that is currently in use by the applicants.

A condition of approval will be included requiring the applicants to meet all applicable County, State and Federal laws, rules, regulations, and requirements. Based on the preceding, the requested use will not burden public agencies to provide additional services.

(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 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. Since the district boundaries were established in the 1960's, Kona's population has grown substantially and the establishment of opportunities for landowners, such as a Bed and Breakfast establishment for visiting guests, has not been able to keep pace with this growth. The State Land Use Commission has not designated new urban lands where these private visitor accommodations can be established, therefore, a Special Permit is the only way to provide these opportunities to the community.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. The proposed use is situated on lands whose soils are classified as "D" or "Poor" for agricultural productivity by the Land Study Bureau's Overall Master Productivity Rating. The Department of Agriculture's ALISH map does classify the subject property as "Other Important Agriculture land", however the LUPAG designation is extensive agriculture which means the land would need significant assistance to be productive. Additionally, as the parcel is fully developed, sloped heavily, and only 0.28-acres it would not be suitable for major agricultural pursuits. The proposed bed and

breakfast will take place within the existing single-family dwelling structures and thus will not reduce the land available for agricultural use. The existing uses of the area include residential development and as such no lands of high agricultural potential will be removed with the approval of this request.

(F) The use will not substantially alter or change the essential character of the land and the present use. The character of the surrounding area is primarily a residential subdivision located approximately 1-mile from the shoreline and beach area. There are existing short term vacation rentals and Bed and breakfast establishments within the subdivision, and the beach and shoreline area are already a public access point that the public enjoys and will continue to enjoy if this project is approved. Since there is no proposed construction for this request and all structures are existing, the proposed use would not substantially alter the essential character of the land.

(G) The request will not be contrary to the General Plan and official Community Development Plan and other documents such as Design Plans. The County of Hawai'i's General Plan is the policy document for the long-range comprehensive development of the island of Hawai'i. One of the purposes of the General Plan is to guide the pattern of future development in this County based on long-term goals. The General Plan Land Use Pattern Allocation Guide (LUPAG) Map designates the property and proposed Special Permit area as extensive agriculture (ea). The extensive agriculture designation 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. Other less intensive agricultural uses such as grazing, and pasture may be included in the Extensive Agriculture category. Staff notes that the topography of the site, its limited size, and existing development do not support agricultural pursuits in this area which is evident by the myriad of single-family dwellings located throughout the subdivision. While this bed and breakfast operation is not agricultural in nature, the use has been in the neighborhood and permitted via Special Permit. The proposed B&B use of this site will not result in the reduction of any currently cultivated land with its predominantly residential use.

The proposed use is consistent with the following goals and policies of the 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.
- The County shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.

Economic Element

- Economic development and improvements shall be in balance with the physical and social environments of the island of Hawai'i.
- The County shall provide an economic environment which allows new, expanded, or improved economic opportunities that are compatible with the County's natural and social environment.

- The County shall strive for diversification of its economy by strengthening existing industries and attracting new endeavors.
- The County of Hawai‘i shall encourage the development of a visitor industry that is in harmony 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 which allows this new opportunity and increase the development of the visitor industry for Hawai‘i.

Based on the preceding, the proposed request is consistent with the Land Use and Economic goals and policies of the General Plan.

The Kona Community Development Plan (KCDP) was adopted by the Hawaii County Council, Ordinance No. 08-131, on September 25, 2008. The subject property is located outside the majority of urban development centers in a rural section of the South Kona District within a well-established residential subdivision called Kona Paradise. Because of its low impact to the surrounding community, the use of existing development without the need for additional construction, and the opportunity for landowners to supplement income all while providing transient housing for visitors, this project supports certain guiding principles and objectives of the KCDP. The following objectives that align with this proposed project are within the Land Use, Housing, and Environmental Resources sections of the development plan:

- Provide housing choices.
- Provide recreational opportunities.
- Protect Kona’s natural resources and culture.

As the proposed bed and breakfast operation will be located within an existing dwelling and established community, it will provide the applicant with supplemental income and encourage the use of shoreline resources and eco-tourism. Given the preceding, the request is consistent with the goals and objectives of the KCDP.

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 Special Management Area (SMA) is part of the Coastal Zone Management Program regulated by the County. The subject property is not proximate to the shoreline and will not be impacted by coastal hazards or affect beach erosion, coastal ecosystems, and marine resources. Additionally, while the proposed project site is located in the SMA, it is approximately 1 mile from the shoreline.

The subject property is located approximately 1 mile from the nearest shoreline and will not be impacted by coastal hazard and beach erosion. There is no designated public access to the mountain or shoreline areas over the property, however, the public does enjoy existing access at the shoreline which will not be impacted or altered. 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. Therefore, the proposed use is not contrary to the objectives of Chapter 205A, Hawai‘i Revised Statutes.

The request will not have a significant adverse impact to traditional and customary Hawaiian Rights. In view of the Hawai‘i State Supreme Court’s “PASH” and “Ka Pa‘akai O Ka‘Aina” decisions, the issue relative to native Hawaiian gathering and

fishing rights must be addressed in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site.

Investigation of valued resources: No formal archaeological reconnaissance survey, oral history of kama'āina accounts of the area, historical survey of documentary records, or botanical study was included in the application.

The valued cultural, historical, and natural resources found in the special permit area: No archeological or historical features are known to exist on the subject property nor is the property listed as a historic site on the State or National Register of Historic Places.

The subject property has been cleared for construction of a dwelling and related accessory structure. The subject property is extensively landscaped with landscaping, ornamental and flowering shrubs and garden. There are no known endangered or listed plant species on the property.

No professional surveys were conducted of the flora/fauna resources on the property. According to the applicants, the likelihood of any rare or endangered species, habitat or flora on the property is remote given the developed nature of the property and surrounding area.

Possible adverse effect or impairment of valued resources: Native plants and/or endangered species are unlikely to be impacted by the proposed development due to the already impacted property as mentioned above.

Feasible actions to protect native Hawaiian rights: To the extent to which traditional and customary native Hawaiian rights are exercised, the proposed action will not affect traditional Hawaiian rights; therefore, no action is necessary to protect these rights.

Public access to the shoreline is provided via trails and parking areas located at the maki end of the subdivision, such that this project will have no impact on that existing use.

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, compliance with the Fire Code, installation of improvements required by the American with Disabilities Act (ADA), among 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 affected agencies.