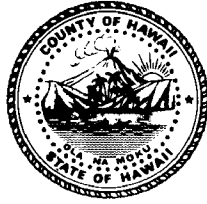


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County of Hawai'i

LEEWARD PLANNING COMMISSION

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

August 05, 2024

Margaret Iliev
78-6935 Mamalahoa Hwy.
Holualoa, HI 96725
VIA EMAIL & MAIL

Dear Ms. Iliev:

SUBJECT: Special Permit Application (PL-SPP-2023-000051)
Applicant: Margaret Iliev
Permitted Use: Operation of a One (1)-Bedroom Bed & Breakfast Establishment
Tax Map Key: (3) 7-8-004:041, Keauhou 2nd, North Kona, Hawai'i

The Leeward Planning Commission, at its duly held public hearing on July 18, 2024, voted to approve the above-referenced request to allow the operation of a one (1)-bedroom bed and breakfast establishment within an existing dwelling on a 26,761-square foot parcel of land in the State Land Use Rural District. The subject property is located at 78-6935 Māmalahoa Hwy, approximately 580 feet south of its intersection with Kalelei Street, Keauhou 2nd (Mauka), North Kona, Hawai'i.

Approval of this permit is subject to the following conditions:

1. The applicant(s), their successor(s), or assign(s) ("Applicant") shall be responsible for complying with all stated conditions of approval.
2. The operation of the one-bedroom bed and breakfast 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 and any representations made to the Leeward Planning Commission. Any substantial expansion or uses beyond what is represented in these documents 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 one (1) bedroom.
5. The Applicant shall maintain County water consumption at an average daily usage of 400 gallons per day (gpd). Should water consumption exceed the rated capacity of the existing meter, the Department of Water Supply may install a flow-reducing device on the meter.
6. The Applicant shall comply with food service operations notification and permit requirements in the State Department of Health's Administrative Rules, Title 11, Chapter 50, Food Safety Code, as it pertains to bed and breakfast operations.
7. The Applicant shall comply with all applicable County, State and Federal laws, rules, regulations, and requirements in connection with the approved use, prior to its commencement upon the subject properties.
8. Should any of these conditions not be met or substantially complied with in a timely manner, 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 request is based on the reasons given in the enclosed Findings Report.

Should you have any questions, please contact Jessica Andrews of this department at (808) 961-8155 or by email at Jessica.Andrews@hawaiicounty.gov

Sincerely,



Barbara DeFranco (Aug 5, 2024 12:44 HST)

Barbara DeFranco, Chairperson
Leeward Planning Commission

IlievPL-SPP-2023-051pc

Enclosure: Planning Commission Findings Report

Margaret Iliev
August 05, 2024
Page 3

cc w/enclosure via email: County Real Property Tax Division
State Department of Health
Department of Water Supply
Land Use Commission
GIS Section
Leeward Planning Commission

COUNTY OF HAWAI‘I
PLANNING COMMISSION FINDINGS

MARGARET ILIEV
SPECIAL PERMIT APPLICATION NO. PL-SPP-2023-000051

Based on the following findings, a Special Permit to allow the operation of a 1-bedroom bed and breakfast establishment within an existing dwelling on a 26,761-square foot parcel of land in the State Land Use Rural District is hereby **approved by the Leeward Planning Commission**. The subject property is located at 78-6935 Māmalahoa Hwy, approximately 580 feet south of its intersection with Kalelei Street, Keauhou 2nd (Mauka), North Kona, Hawai‘i, TMK: (3) 7-8-004:041.

The applicant requested a Special Permit to establish a 1-bedroom bed and breakfast establishment within an existing 1,864-square foot, 3-bedroom single-family dwelling. The remaining two bedrooms will be used by the applicant who will also be the onsite caretaker. The bed and breakfast will provide overnight accommodation and breakfast for a maximum of 2 guests.

The applicant would like to operate a bed and breakfast to supplement their income and to provide hospitable accommodations, education and understanding for tourists in Hawai‘i.

The applicant will continue to reside on site and operate the bed and breakfast. If the applicant is absent, a designated representative will live on site and assume the same responsibilities. Off-street parking is available as the applicant has designated one parking stall for guests of the bed and breakfast. The applicant intends to begin operating the bed and breakfast upon approval of the Special Permit and does not feel improvements to the existing dwelling will be necessary.

The criteria 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 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 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 Rural District, HRS 205-2(c) includes single-family dwellings as a permitted use. Further, the proposed bed and breakfast will occur within the footprint of the existing single-family dwelling, and the Hawai‘i County zoning code considers bed & breakfast establishments to be subordinate to the primary use of a single-family dwelling.

Therefore, the proposed use is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

The proposed use is an unusual and reasonable use of land situated within the State Land Use Agricultural District. The proposed bed and breakfast use is reasonable as it occurs within an existing single-family dwelling to provide overnight accommodations

and single-family dwellings are a permitted use in the State Land Use Rural District, as noted previously.

Based on the preceding, the subject request is a reasonable use of land in the State Land Use Rural District.

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. The subject request is considered an unusual and reasonable use of the agricultural land. The subject request is considered an unusual and reasonable use of the land, and the proposed use will not be contrary to State law which allows single-family dwellings as a permitted use in the Rural District.

(B) The desired use shall not adversely affect the surrounding properties. Properties surrounding the subject property are zoned Residential Agricultural-0.5 acres (RA-.5a) and Agricultural-1 acre (A-1a), with uses consisting of dwellings, agriculture, commercial uses permitted by Special Permits, and vacant lands. The closest residence to the permit area is located approximately 80 feet to the north. Bed and breakfast establishments are by definition accessory to single-family dwelling use and thus should not have any more impact than that of the existing dwelling. There will be no employees other than the applicant, or their designated representative in their absence, associated with the bed and breakfast.

According to comments from the Department of Public Works, Building Division, a complaint is on file regarding retaining walls used in landscaping on the subject property and the alleged violation is outstanding. The applicant has stated that they will communicate with the Building Division to address this issue. Given that the complaint pertains to landscaping elements that have no physical connection to the dwelling, the Planning Director believes that the issue can be resolved outside of the special permit process and does not require an additional condition of approval.

Based on the preceding it is not anticipated that the proposed use will adversely affect 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 applicant anticipates that traffic impacts from the proposed one-bedroom bed and breakfast facility would be minimal. Access to the property is from Māmalahoa Highway, a County-owned and maintained roadway, and guests will utilize an existing paved driveway to cross the subject property.

There is no county sewer system in the area and the applicant plans to continue use of an existing, permitted cesspool. According to the Department of Water Supply (DWS), the subject parcel is currently served by an existing 5/8-inch meter which is allotted one unit of water, equivalent to an average daily usage of 400 gallons per day (gpd). While there is no objection to the establishment of the proposed bed and breakfast, DWS may install a flow-reducing device on the meter should consumption through the existing meter exceed its rated capacity. The applicant states that water usage should not exceed the allotted amount as demand will be no different than that of an average dwelling. A condition of approval will be included to address the preceding.

According to the Department of Health (DOH), 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. A condition of approval will require the applicants to comply with food service notification and permit requirements, meeting with the approval of DOH.

The property is situated within an area designated as Flood Zone X on the Flood Insurance Rate Map (FIRM) by FEMA, an area of minimal flood hazard located outside the 500-year flood plain. Electrical, telephone and internet services are available to the property. Fire and medical services are available from the Kailua Fire Station and police services are available in Kailua-Kona.

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. Since the district boundaries were established in the 1960's, demand has increased for accommodation for guests who seek an alternative to resort venues. The proposed use would meet this demand by providing visitors with an opportunity to experience a small-scale bed and breakfast establishment.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. The property is suited for residential use and is used additionally for small-scale agricultural use, consisting of existing fruit trees and a vegetable garden. As previously stated, the bed and breakfast will take place entirely within the existing single-family dwelling.

(F) The proposed use will not substantially alter or change the essential character of the land and the present use. The character of the surrounding lands is predominantly residential/agricultural in nature, with present uses including dwellings, agriculture, commercial uses permitted by Special Permits, and vacant lands. The number of bed and breakfast guests will be limited to a maximum of 2 and on-site parking will be provided, therefore, the applicant does not anticipate significant adverse traffic impacts on the local roadway system.

Based on the preceding, the proposed request will not substantially change the essential character of the land and the 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 subject property is designated as both Rural and Important Agricultural Lands (ial) by the General Plan. Rural designation refers to lands that include existing subdivisions in the State Land Use Agricultural and Rural districts that have a significant residential component. Typical lot sizes vary from 9,000-square feet to two acres. 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. The ial designation refers to lands with better potential for sustained high agricultural yields because of soil type, climate, topography, or other factors. As mentioned previously, the proposed use occurs entirely within an existing dwelling and will not diminish agricultural use of the subject property.

The approval of the subject request would support the goals and policies of the Land Use and Economic elements 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 applicants 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.

The Kona Community Development Plan (KCDP), originally adopted by the Hawai‘i County Council on September 25, 2008 and most recently amended on September 18, 2019, identifies the preferred land use pattern for the Kona districts. The subject property is located outside of the Kona Urban Area and is not within any Rural Town Areas. The KCDP does not provide guidance on Special Permit applications.

As the bed and breakfast operation will be located within an existing dwelling, it will provide the applicants with supplemental income. Given the preceding, the request is consistent with the goals and objectives of the KCDP and General Plan.

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 approximately 1.6 miles from the nearest shoreline, is not within the Special Management Area 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. 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: According to the applicant, no archeological or historical features are known to exist on the subject property. The site has been previously impacted by ground-disturbing activities associated with residential development and the land is being used to grow fruit trees, ornamental plants and vegetables. There are no known endangered or listed plant species on the property and the likelihood of any rare or endangered species, habitat or flora on the property is unlikely, given that the property has been extensively improved. According to the applicants, it is not known whether the subject property or immediate surrounding area was ever used for traditional and customary rights by native Hawaiians

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 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.

Lastly, this recommendation is made with the understanding that the applicants remain responsible for complying with all other applicable governmental requirements in connection with the proposed use, prior to its commencement or establishment upon the subject properties. Additional governmental requirements may include the issuance of building permit, 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.