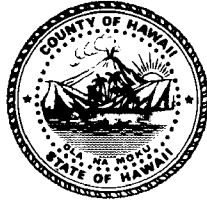


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County of Hawai'i

LEEWARD PLANNING COMMISSION

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

July 05, 2024

John Micah Markley
Mickayla Marie Markley
73-4615 Kohanaiki Rd.
Kailua-Kona, HI 96740
VIA EMAIL

Dear Mr. and Ms. Markley:

SUBJECT: Special Permit Application (PL-SPP-2024-000065)
Applicant: John Micah Markley and Mickayla Marie Markley
Permitted Use: Allows a (1)-Bedroom Bed and Breakfast Establishment
Tax Map Key: (3) 7-3-008:109; North Kona, Hawai'i

The Leeward Planning Commission, at its duly held public hearing on June 20, 2024, voted to approve the above-referenced request to allow the establishment of a one (1)-bedroom bed and breakfast operation within an existing dwelling on a 0.5-acre portion of an approximately 3.3-acre parcel of land in the State Land Use Agricultural District. The project site is located at 73-4615 Kohanaiki Road, approximately 400 feet South of its intersection with Hamiha Street, Por. Kaloko, North Kona, Hawai'i.

Approval of this permit is subject to the following conditions:

1. The applicant, its successors, or assigns ("Applicant") shall be responsible for complying with all stated conditions of approval.
2. The operation of the one-bedroom bed and breakfast establishment and related improvements shall be conducted in a manner that is substantially representative of plans and details contained within the Special Permit application dated February 3, 2024, and representations made to the Leeward Planning Commission. Any substantial expansion of the facility 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 Zoning Code, Hawai'i County Code Chapter 25, as amended, relating to Bed and Breakfast Establishments.
4. The applicant shall redesignate the Farm Dwelling and the Additional Farm Dwelling (AFD) by letter addressed to the Planning Department prior to commencement of the bed and breakfast.
5. Prior to establishing the bed and breakfast use, the applicant shall provide a scale-drawn site plan showing the location of the 0.5-acre permit area. At no time shall the activities permitted under this Special Permit take place outside of the permit area.
6. The bed and breakfast operation shall be limited to the use of one (1) bedroom.
7. The applicant shall comply with all requirements from the Department of Water Supply regulations regarding water supply. Potable water for the bed and breakfast shall not be provided by the County water meter; an alternative source of potable water is required. Prior to commencement of the proposed use, the applicant shall provide evidence to the Planning Department and the Department of Water Supply that the farm dwelling to be used as the bed and breakfast is not connected to the existing County water service.
8. 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.
9. 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 property.
10. Should any of these 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.

John Micah Markley
Mickayla Marie Markley
July 05, 2024
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Should you have any questions, please contact Alukahe Kala of this department at (808) 961-8170 or by email at Alukahe.Kala@hawaiicounty.gov

Sincerely,


Barbara DeFranco (Jul 5, 2024 18:58 HST)

Barbara DeFranco, Chairperson
Leeward Planning Commission

MarkleyPL-SPP-2024-000065lpc

Enclosure: Planning Commission Findings Report

cc w/enclosure via email: John and Mickayla Markley
Department of Water Supply
State Department of Health
County Real Property Tax Division
GIS Section

COUNTY OF HAWAI‘I
PLANNING COMMISSION FINDINGS

JOHN MICAH MARKLEY AND MICKAYLA MARIE MARKLEY
SPECIAL PERMIT APPLICATION NO. PL-SPP-2024-000065

Based on the following findings, a Special Permit to establish a 1-bedroom bed and breakfast establishment within an existing single-family dwelling on a 0.5-acre portion of an approximately 3.3-acre parcel of land in the State Land Use Agricultural District is hereby **approved by the Leeward Planning Commission**. The subject property is located at 73-4615 Kohanaiki Road, approximately 400 feet south of its intersection with Hamiha Street, Por. Kaloko, North Kona, Hawai‘i, TMK: (3) 7-3-008:109.

The applicants are requesting a Special Permit to allow a 1-bedroom bed and breakfast operation within an existing 480-square foot farm dwelling, to provide accommodations for no more than 2 guests at a time. The applicants have obtained approval for an Additional Farm Dwelling (AFD) and propose to change the designations of the existing dwellings so that the applicants’ residence will be classified as the AFD while the primary farm dwelling will operate as the bed and breakfast. The applicant intends to provide a minimum of one (1) unpaved parking stall onsite to accommodate the proposed bed and breakfast operation.

The applicants who will be the primary operators of the bed and breakfast intend to commence the proposed use immediately following approval of the Special Permit, subject to any building permit requirements, with no expected construction costs.

The applicants’ objective is to provide alternative accommodations for visitors to the Big Island of Hawai‘i while being able to continue their farm operations. The bed and breakfast operation will provide an additional stream of income which will aid the economic stability and success of their farm while also bringing awareness to the importance of sustainability and supporting local agriculture.

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 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 3.3-acres in size, of which the applicant proposes to use a 0.5-acre portion for the proposed use and is situated within the County’s Agricultural (A-3a) zoning district. There is an existing single-story, one-bedroom/one-bathroom single-family dwelling currently designated as an additional farm dwelling, and a one story two-bedroom/two-bathroom single-family dwelling with an open permit to construct a detached

garage with a bedroom above. The applicants propose to change the designations of the existing dwellings so that the larger residence will be classified as the AFD while the primary farm dwelling will operate as the bed and breakfast. This is being done in order to comply with State land use law, which requires additional farm dwellings to be utilized by a family that receives income from the agricultural activity occurring on the property. The remainder of the property will continue to be used for avocado farming.

The request is unusual in that the proposed uses are not strictly agricultural in nature. However, the proposed bed and breakfast uses and activities will occur within an existing structure and will not require any further clearing of the parcel, thus the proposed use will not diminish the potential for agricultural activity on the property. Therefore, it is reasonable that this use be allowed in 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 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.

Soil within the property is classified as “C” or “Fair” and “D” or “Poor” for agricultural productivity and designated “Other Lands” on the Agricultural Land of Importance to the State of Hawai‘i (ALISH) map. Based on the preceding, the lands are not considered to have high agricultural potential. Furthermore, as the proposed use will be conducted within the existing dwelling on 0.5 acres of a total of 3.3, it will not displace any existing agricultural activity or diminish the agricultural potential of the property. Therefore, the use will not adversely affect the preservation and agricultural use of the County’s agricultural lands of high agricultural potential and is not contrary to the objectives sought to be accomplished by the State Land Use Law and Regulations.

(B) The desired use shall not adversely affect the surrounding properties. Lands surrounding the subject parcel are zoned Agricultural-1 acre (A-1a) and Agricultural-3 acres (A-3a), with uses consisting of agriculture and farm dwellings. The subject property is bordered by dwellings toward the north, east, and the west, with the closest dwelling approximately 208 feet from the proposed bed and breakfast structure to the north of the subject property. TMKs 7-3-008:070,122 and 123, approximately 398 feet northeast of the subject property, were approved by Special Permit No. 00-028, to establish a 5-bedroom guest ranch in an existing farm operation.

The proposed use will abide by the rules and regulations for bed and breakfast operations as stated in Hawai‘i County Code Chapter 25. No traffic impacts are anticipated due to the limited number of rooms for rent.

As the proposed uses will occur within an existing dwelling and the applicant will be managing the bed and breakfast on site, the proposed use should not generate significant noise and thus not impact 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 subject parcel abuts the east side of Kohanaiki Road which, according to

the Department of Public Works, is designated as a “Road in Limbo”. Although the public has a right of access through this right-of-way, it is not being maintained by any government entity. To minimize conflicts with school and commuter traffic, the applicant intends to schedule guest check-in and check-out between the hours of 10am-3pm, 7 days a week.

According to the Department of Environmental Management, the subject property is not served by the existing county sewer system; thus, the applicant shall follow Department of Health (DOH) regulations for wastewater. The proposed bed and breakfast structure is serviced by an individual septic system as approved by the DOH. The Department of Water Supply (DWS), by memo dated May 22, 2024, noted that the existing meter could only serve the primary dwelling, not the additional dwelling on the property. DWS had similar comments in a memo dated September 6, 2018 during their review of the AFD, which was approved through the Planning Department with the suggestion to construct a rain water catchment system with a minimum of 6,000 gallons for domestic consumption and an additional 3,000 gallons of water for firefighting. However, if the dwellings are more than 50 feet apart, 4,000 gallons of water per dwelling would be required. As such, a condition of approval will be included requiring the applicant to comply with DWS regulations regarding water supply prior to commencement of the bed and breakfast operation.

All essential utilities and services are available to the site and solid waste will be disposed of by the applicant at an approved transfer station or landfill. Based on the discussion above, the proposed use will not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, or police and fire protection.

(D) Unusual conditions, trends, and needs have arisen since district boundaries and regulations were established. Since the State Land Use district boundaries were established in the 1960’s, demand has increased for alternative overnight accommodations for guests who seek a more peaceful, remote environment as an alternative to resort venues. The proposed use would meet this demand by providing visitors with an opportunity to have a more remote and peaceful stay on the island.

(E) The land upon which the proposed use is sought is unsuited for the uses permitted within the district. The land is suitable for agriculture and there is an active avocado farm on the property. However, the proposed use will take place within an existing farm dwelling on a small portion of the larger property.

Based on the discussion above, the proposed use will not diminish agricultural opportunities on the subject property and thus will not adversely impact the agricultural potential of the land.

(F) The proposed use will not substantially alter or change the essential character of the land and the present use. The essential characteristic of the property and surrounding area is agricultural and residential. The proposed bed and breakfast establishment will operate within the existing farm dwelling on the property and will not require any construction to establish this use. Therefore, it is not anticipated that the proposed use will substantially alter the essential character of the land and 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 project site is identified by the LUPAG map as Low Density Urban (Ldu) which refers to residential, with ancillary community and public uses, and neighborhood and convenience-type commercial uses; overall residential density may be up to six units per acre.

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 and social 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 Island in a manner that is compatible with the County's cultural, natural, and social environment.

The proposed use is consistent with the zoning code criteria for a "bed and breakfast establishment" as the bed and breakfast will operate out of a single-family dwelling, one (1) bedroom will be rented out to two (2) guests at any one time for periods of less than 30 days, and only breakfast meals will be provided. The applicant proposes to redesignate the current primary farm dwelling as the additional farm dwelling where the operator will reside in order to comply with State land use law for farm dwellings. A condition of approval will require the applicant to secure this redesignation as well as any other applicable building permits prior to commencement of the proposed bed and breakfast use.

The proposed operation is located on land with the State Land Use designation of Agricultural, which allows for the establishment of bed and breakfast operations via a Special Permit. Accordingly, the proposed operation will not be contrary to Zoning Code.

The Kona Community Development Plan (KCDP) identifies the preferred land use pattern for the Kona districts and supports the current strengths in agriculture and tourism for the region. Although the KCDP does not provide guidance on Special Permit applications, Section 4.8.2 identifies the importance of enhancing agricultural tourism. As the bed and breakfast operation will host visitors within an existing dwelling, with the goal of supporting an active avocado farm on the property, the request is consistent with the goals and objectives of the KCDP.

Based on the preceding, the proposed use will not be contrary to the General Plan, Community Development Plan, or the Zoning Code.

The request is not contrary to Chapter 205A, Hawai‘i Revised Statutes, relating to Coastal Zone Management. The property is not situated in the Special Management Area as it is located approximately 2.73 miles away from the nearest shoreline and will not be impacted by coastal hazards or affect beach erosion, coastal ecosystems, and marine resources.

There is no record of a designated public access to the shoreline or mountain areas that traverses 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 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 dwellings, driveways, and agricultural structures. The remainder of the property is used for avocado farming. 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, due to the site’s elevation, there is potential that the Hawaiian Hawk (I‘o), Hawaiian Hoary Bat, and Owl (Pu‘eo) may frequent the general area, but there are no signs that the parcel itself serves as a habitat for those birds.

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: According to the applicant, there are no known traditional or customary Native Hawaiian cultural rights being practiced within the subject property or any known cultural or historic resources existing on the property. Thus, 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.

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 Building Code and 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.