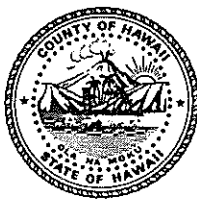


Use 118

Stephen K. Yamashiro
Mayor



County of Hawaii

PLANNING COMMISSION

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 Fax (808) 961-9615

CERTIFIED MAIL

January 10, 1994

Ms. Sandra Pechter Schutte, Esq.
Case & Lynch
460 Kilauea Avenue
Hilo, HI 96720-3084

Dear Ms. Schutte:

Use Permit Application (USE 93-12)
Applicant: Steven Robert Weinstein
Request: Establish 3-Bedroom Bed and Breakfast Operation Within
Existing 5-Bedroom Single Family Dwelling
Tax Map Key: 5-5-15:36

Pursuant to Chapter 25, (Zoning Code), Hawaii County Code 1983, as amended, and Rule 7 of the Planning Commission Rules of Practice and Procedure, the Hawaii County Planning Commission, at its duly held public hearing on December 15, 1993, considered Use Permit Application 93-12. The request to establish a 3-bedroom bed and breakfast operation within the existing 5-bedroom single family dwelling located approximately 700 feet off the northeast (mauka towards Kapaau) corner of the Hawi Road and Hawi-Niuli Road intersection, Hawi, North Kohala, TMK: 5-5-15:36, was denied by the Planning Commission as the proposed bed and breakfast establishment will substantially cause adverse affects to the surrounding area, community or region.

This denial is based on the following findings:

In considering a Use Permit for any proposed use, Rule 7 of the Planning Commission relating to Use Permits require that such action conform to the following guidelines:

- (A) The proposed use will still be consistent with the general purpose of the zoned district, the intent and purpose of this chapter, and the County General Plan;

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- (B) The proposed use will not be materially detrimental to the public welfare nor cause substantial, adverse impact to the community's character or to surrounding properties;
- (C) The proposed use will not adversely affect similar or related existing uses within the surrounding area, community or region; and
- (D) The proposed use will not unreasonably burden public agencies to provide roads and streets, sewer, water, drainage, schools, police and fire protection and other related infrastructure.

Non-conformance with any of the above-mentioned guidelines would require that the requested Use Permit be denied.

The proposed use will cause substantial, adverse impact to the community's character and to surrounding properties. While bed and breakfast establishments as a whole are recognized by the County as viable commercial entities which could be appropriate within a single family residential area, the County also recognizes that the establishment of such an operation within certain locations may not be appropriate given the character or physical attributes of that particular locale, hence, the requirement that a Use Permit be secured from the Planning Commission to permit the thorough assessment of each proposed use within the area it wishes to operate.

The Planning Commission has before it the unique opportunity to assess a proposed use and its effect on surrounding properties and the community before such a use is approved by the Commission. As evidenced by a previous complaint which generated a Stipulated Agreement between the County of Hawaii and the applicant and his co-defendant, an illegally operated bed and breakfast facility was being conducted on the subject property. Prior to, and subsequent to the official filing of the subject application with the Planning Commission, letters in opposition to the proposed use were being submitted to the Planning Department. The following landowners and/or residents who reside in the immediate vicinity of the subject property have expressed their opposition to the request:

1. Frank and Marion Johnson
TMK: 5-5-15:35

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2. George Cushnie
TMK: 5-5-15:30
3. Mew On Yap
TMK: 5-5-15:34
4. Roger and Elizabeth Keller
TMK: 5-5-15:38
5. David Thompson (landowner)
Lou and Yvonne Bonkowski (residents)
TMK: 5-5-15:26

Many of these letters, in addition to comments provided by the State Department of Land and Natural Resources, express the potential adverse impact to the historical character of the affected area, of which two of its homes are listed on the State Register of Historic Places. Mitigative measures to address potential adverse noise, visual and traffic impacts were considered by the Planning Director. However, given the siting of the existing dwelling to within 4 feet of an adjoining residential property, the proximity of State-recognized historic residences, the opposition to the proposed use by surrounding property owners, and the historic character of the affected area, the Planning Director concluded that mitigative measures such as landscaping or other physical barriers to control noise and visual impacts and the paving of roadway, driveway and parking area(s) to accommodate the proposed use would, in fact, mitigate certain impacts while creating others.

An example of potential adverse impact associated with the implementation of mitigative measures would be the installation of an opaque barrier between properties for noise and visual buffers. These opaque barriers could, in themselves, be viewed as out-of-character with the surrounding area. Another example is the parking layout as proposed by the applicant. The three parking stalls located between the private road and retaining wall would not be permitted since it does not provide for a proper on-site turnaround area as required by the County Code. The two additional parking stalls along the eastern property boundary would also require an on-site turnaround area(s). Finally, access to the subject property from Hawi Road is substandard. Initial access from Hawi Road is provided by an undefined, 20-foot wide, 350-foot long, paved access easement located adjacent to the Chalon International of

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Hawaii, Inc. offices' parking lot. At the end of this easement, access then proceeds over a 400-foot long private roadway having a pavement width of 9 to 10 feet in very poor condition within a 30-foot wide right-of-way. As with similar requests before the Commission, a minimum pavement width able to accommodate two-way traffic has always been sought in conjunction with the approval of any bed and breakfast establishment. The applicant has confirmed that pavement improvements to the private roadway (Lot 130) will be made if required. Improvements to the unmarked access easement (Easement 3) may also be required.

Extensive paving for off- and on-site access, parking and turnaround area which would be required for the bed and breakfast operation could detract from the historic character of this "plantation-style" residential neighborhood. The Planning Director is not willing to discount the objections to the proposed use by neighboring residents *who have experienced at first hand*, the operation of a bed and breakfast establishment on the subject property and the adverse impacts generated.

The discussion above has clearly indicated that the proposed use will not be consistent with the goals of the County General Plan which states that the County shall *"Protect and enhance the sites, buildings and objects of significant historical and cultural importance to Hawaii"* and to *"Designate and allocate land uses in appropriate proportions and mix and in keeping with the social, cultural, and physical environments of the County."* (emphasis added)

Based on the foregoing, the request for a Use Permit to allow the establishment of a bed and breakfast establishment within a 5-bedroom single family dwelling located on the subject property is denied.

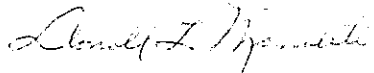
Pursuant to its Rules, the Planning Commission's denial decision is appealable to the Board of Appeals within thirty days after receipt of this written decision.

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Should you have any questions on this matter, please feel free to contact Rodney Nakano or Susan Gagorik of the Planning Department at 961-8288.

Sincerely,



Donald L. Manalili, Chairman
Planning Commission

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xc: Honorable Stephen K. Yamashiro, Mayor
Planning Director
Corporation Counsel
West Hawaii Office