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July 9, 2020

Mrs. Patricia A. El-Gasseir
3243 Gloria Terrace
Lafayette, CA 94549

Dear Mrs. El-Gasseir:

Use Permit Nos. 97-000004 and 97-000017

Applicants: Tim and Jeannie Mann

Request: Use Permits to Establish and Expand a Bed & Breakfast Operation

Subject: Revocation of Use Permits

Tax Map Key: (3) 4-5-016:033

This is to acknowledge receipt of your email dated June 22, 2020, requesting that the subject Use Permits be revoked. Use Permit No. 97-000004 was issued by the Planning Commission on June 23, 1997 to operate a bed and breakfast within one bedroom in an existing guest cottage on the subject property. Use Permit No. 97-000017 was issued by the Planning Commission on May 28, 1998 to expand the bed and breakfast operation to an additional two (2) bedrooms within a new guesthouse on the subject property.

Per your email, you have indicated that you have no intention to continue the operation of a bed and breakfast, but wish to operate a Short-Term Vacation Rental (STVR) on the subject property as permitted under STVR Registration No. STVR-19-366288 and Nonconforming Use Certificate No. NUC-19-1925.

Based on the preceding and in accordance with Planning Commission Rule 7-11, Use Permit Nos. 97-000004 and 97-000017 are hereby revoked.

If you have any questions, please feel free to contact Tracie-Lee Camero at (808) 961-8288.

Sincerely,

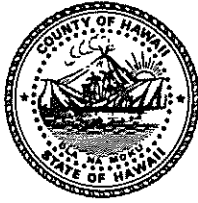
MICHAEL YEE
Planning Director

TC:mad

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cc via email: Gilbert Bailado, GIS Section

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
Z 095 323 844

JUL 23 1997

Mr. and Mrs. Tim Mann
P.O. Box 430
Honokaa, HI 96727

Dear Mr. and Mrs. Mann:

Use Permit Application (USE 97-4)
Applicant: Tim and Jeannie Mann
Request: Establish a Bed & Breakfast Operation in Two Cottages
Tax Map Key: 4-5-16:55

The Planning Commission at its duly held public hearing on July 10, 1997, voted to approve one (1) guest cottage and deny the second guest cottage in accordance with the reasons stated in the Planning Director's recommendation for the above-referenced application. Use Permit No. 157 is hereby issued to allow the establishment of a bed and breakfast operation in one (1) guest cottage situated on approximately 77,829 square feet of land within the County Single Family Residential (RS-7.5) zoned district. The property is located within Honokaa Town off of Koa Street and approximately 330 feet north of Mamane Street, Hamakua, Hawaii.

Approval of the bed and breakfast operation in one guest cottage is based on the following:

In considering a Use Permit for any proposed use, Rule 7 of the Planning Commission Rules of Practice and Procedures relating to Use Permits, and Section 25-2-65, relating to the Criteria for granting a Use Permit, of Chapter 25 (Zoning Code), require that such action conform to the following guidelines:

- (A) The granting of the proposed use shall be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning Code, and the General Plan;
- (B) The granting of the proposed use shall not be materially detrimental to the public welfare nor cause substantial, adverse impact to the community's character, to surrounding properties; and
- (C) The granting of the proposed use shall not unreasonably burden public agencies to provide roads and streets, sewer, water, drainage, schools, police and fire protection and other related infrastructure.

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JUL 23 1997

The applicants are requesting to allow the continued operation of the bed and breakfast accommodations within the two (2) separate existing efficiency dwellings which are referred to as guest cottages. The applicants have been renting these existing two guest cottages for bed and breakfast accommodations since June 1994 about three years. The applicants reside in one of four existing dwellings which is situated on the same building site to the west of the guest cottages and at the southwest portion of the subject property.

Inasmuch as the applicants' foregoing request, the approval of only one guest cottage for the bed and breakfast operation meets the guidelines for approval of a Use Permit, for the reasons outlined below. It should be pointed out that the applicants would be required to designate which of the two existing guest cottages will be used for the bed and breakfast establishment.

The granting of the proposed use shall be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning Code, and the General Plan. According to the Zoning Code, Single Family Residential districts "provide for low density residential area, for urban and suburban family life." Single-family dwellings, family care homes, neighborhood parks and "buildings and uses normally considered directly accessory to the above permitted uses" are permitted in this district. The subject property is designated Single Family Residential with minimum lot size of 7,500 square feet (RS-7.5). It consists of approximately 77,829 square feet and, therefore, with the RS-7.5 zoning, a maximum of 10 dwellings may be permitted on the property, provided that the minimum setback yards and other requirements of the Zoning Code and affected agencies are met.

Bed and breakfast accommodations are becoming increasingly popular with visitors to the island, who seek a quieter, more authentic experience of local life. Bed and breakfast businesses provide an economic opportunity for residents who can supplement their incomes by sharing their homes with visitors. Recognizing this benefit, Ordinance No. 92-104 was passed by the County Council in 1992, and further amendments within the new Zoning Code, effective December 7, 1996 help to ensure that bed and breakfast establishments remain secondary to the principal use as a residence. On Residential zoned lands within a State Land Use Urban district, impacts from the proposed use can be properly addressed and mitigated through the Use Permit.

The Zoning Code defines *Bed and Breakfast Establishment* as "a single-family dwelling, including a single guest house, in which overnight accommodations and only breakfast meals are provided to a maximum of ten guests, for compensation, for periods of less than thirty days." Section 25-4-7 of the Zoning Code, relating to bed and breakfast establishments, states that "A bed and breakfast establishment may be permitted in the RS districts provided that a use permit is obtained for each such use and that plan approval for each such use has been secured from the director." Besides other restrictions and standards for bed and breakfast establishments, this section further states that, "The bed and breakfast establishment shall be accessory and subordinate to the principal use as a residence by its owners or lessee" and that "The bed and breakfast establishment may be located within a single-family dwelling unit and a guest house, pursuant to section 25-4-9, on a building site." The Zoning Code defines *Guest House* as "an accessory building used as sleeping quarters for guests of

the occupants of the main dwelling and having no cooking facilities." It should be pointed out that Section 25-4-9, relating to Guest Houses, states that "One guest house may only be established on a building site that is at least seven thousand five hundred square feet in area. A guest house shall not exceed five hundred square feet in gross floor area, shall not be more than twenty feet in height, and shall not have a kitchen."

As previously noted, the applicants reside within one of the four existing dwellings which is located on the same building site. The bed and breakfast establishment will occur in an existing guest cottage and would be accessory and subordinate to the principal residential use by the applicants. The applicants will be operating the bed and breakfast establishment and anticipate to hire a housecleaner and a landscaping maintenance person. There is existing parking areas and driveway that can accommodate the guests at the one guest cottage. Thus, the use of one guest cottage for the bed and breakfast establishment will be consistent with the intent and purpose of the Zoning Code for the Single Family Residential zoned district.

The General Plan designation for this area is Low Density Urban Development, which allows for single-family residential uses, ancillary community and public uses and convenience-type commercial uses. The bed and breakfast use within one guest cottage would complement the following goals and policies of the General Plan Land Use and Economic Elements:

Land Use Element

- * 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 improvement shall be in balance with the physical and social environments of the island of Hawaii.
- * 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 of Hawaii shall encourage the development of a visitor industry which is consistent with the social, physical and economic goals of the residents of the County.

Therefore, the requested bed and breakfast use would operate within the parameters of being single-family residential in character, is consistent with the General Plan designation and is in keeping with the goals and policies of the General Plan.

The Northeast Hawaii Community Development Plan (CDP) and the Honokaa Urban Design Plan and its Land Use Concept Map reflect the maintenance of single family residential uses at the subject property and surrounding area.

The granting of the proposed use shall not be materially detrimental to the public welfare nor cause substantial, adverse impact to the community's character or to surrounding properties. The bed and breakfast use has been established in the guest cottage since June 1994, nearly 3 years ago. A building permit was issued to the applicants in November 1993 for the construction of the one-story efficiency dwelling containing a bath, kitchen, living room and lanai. As the bed and breakfast operation will be continued in only one existing efficiency dwelling which is referred to as the guest cottage, the use should not alter the appearance or character of the single family residential neighborhood. The bed and breakfast establishment would be open to the visitors on a daily basis. The surrounding uses in the area are primarily in single family residential uses. The subject property has adequate landscaping to mitigate any possible visual or noise impacts on the neighbors. There are adequate public services and utilities available to accommodate the bed and breakfast use.

The granting of the proposed use shall not unreasonably burden public agencies to provide roads and streets, sewer, water, drainage, schools, police and fire protection and other related infrastructure. As previously noted, the applicants would be required to designate which of the two existing guest cottages will be used for the bed and breakfast establishment. Kawila Street leads to the first guest cottage and a private driveway easement off of the end of Kawila Street leads to the second guest cottage. Kawila Street is a County road and has an approximate 10-foot wide pavement (in poor condition), with varying 1 to 5-foot wide grass shoulders, within an approximate 30-foot right-of-way. The driveway easement leading to the second guest cottage has an approximate 9-foot wide pavement (in fair condition) with no shoulders. By recorded easement dated June 27, 1994 with the State of Hawaii Bureau of Conveyances, Lisa Marie Liljeberg the owner of the adjacent property identified as Tax Map Key: 4-5-13:6 granted to the applicants a perpetual non-exclusive right and easement for ingress and egress purposes only, over and across said Parcel 6. The Department of Public Works has expressed that the minimum acceptable two-way vehicular traffic pavement width should be 16 feet, poor sight distance occurs at the end of Kawila Street and that safe vehicular turnarounds in the parking areas should be provided. However, there will be no recommendations for roadway improvements as the existing guest cottage for the bed and breakfast use contains a studio-type unit for no more than two guests and as such, the potential for a minimum one car traffic. County water service is currently available to the existing guest cottage. Wastewater system for the existing guest cottage is disposed off in an existing cesspool, which is shared with the other existing guest cottage. All other essential utilities and facilities are available to support the requested use.

Approval of the bed and breakfast for one guest cottage is subject to the following conditions. Should any of the conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke the permit.

1. The applicants, successors, or assigns shall be responsible for complying with all stated conditions of approval.
2. Final Plan Approval for the bed and breakfast use shall be secured from the Planning Director within six (6) months from the effective date of this permit. Final Plan Approval shall be secured in accordance with the Zoning Code, Section 25-2-72, 25-2-73 and 25-4-7. Plans shall identify existing and proposed

structures, a minimum of two (2) paved parking stalls (asphaltic or concrete) and driveway, landscaping and fire protection measures associated with the bed and breakfast use.

3. The bed and breakfast use shall be limited to the use of one (1) guest cottage.
4. Comply with all applicable laws, rules, regulations and requirements of the affected agencies for this project, including the Department of Water Supply, Department of Public Works and the Department of Health.
5. A final status report shall be submitted to the Planning Director upon compliance with all conditions of approval.
6. If the applicant fails to comply with the conditions of approval or is unable to resolve any public complaint(s), the Planning Director shall investigate and, if necessary, enforce the appropriate conditions. The Planning Director may, as part of any enforcement action, refer the matter to the Planning Commission for review. Upon appropriate findings by the Planning Commission, that the applicant has failed to comply with the conditions of approval or has caused an unreasonable adverse impact on surrounding properties, the permit may be suspended or revoked.
7. An initial extension of time for the performance of conditions within this 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, successor, 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 original reasons for granting of the permit.
 - C. Granting of the time extension would not be contrary to the General Plan or Zoning Code.
 - D. The time extension granted does not 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).

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.

The denial recommendation for the second guest cottage for use as a bed and breakfast operation is based on the following findings:

In considering a Use Permit for any proposed use, Rule 7 of the Planning Commission Rules of Practice and Procedures relating to Use Permits, and Section 25-2-65, relating to the Criteria for granting a Use Permit, of Chapter 25 (Zoning Code), require that such action conform to the following guidelines:

- (A) The granting of the proposed use shall be consistent with the general purpose of the zoning district, the intent and purpose of the Zoning Code, and the General Plan;
- (B) The granting of the proposed use shall not be materially detrimental to the public welfare nor cause substantial, adverse impact to the community's character, to surrounding properties; and
- (C) The granting of the proposed use shall not unreasonably burden public agencies to provide roads and streets, sewer, water, drainage, schools, police and fire protection and other related infrastructure.

The applicants are requesting to allow the continued operation of the bed and breakfast accommodations within the two (2) separate existing efficiency dwellings which are referred to as guest cottages. The applicants have been renting these existing two guest cottages for bed and breakfast accommodations since June 1994 about three years. The applicants reside in one of four existing dwellings which is situated on the same building site to the west of the guest cottages and at the southwest portion of the subject property.

Inasmuch as the applicants' foregoing request, the approval of the second guest cottage for the bed and breakfast operation will not meet one of the guidelines for approval of a Use Permit, for the reasons outlined below.

Although the granting of the proposed use will be consistent with the General Plan, it will not be consistent with the general purpose of the zoning district and the intent and purpose of the Zoning Code. According to the Zoning Code, Single Family Residential districts "provide for low density residential area, for urban and suburban family life." Single-family dwellings, family care homes, neighborhood parks, and "buildings and uses normally considered directly accessory to the above permitted uses" are permitted in this district. The subject property is designated Single Family Residential with minimum lot size of 7,500 square feet (RS-7.5). It consists of approximately 77,829 square feet and therefore, with the RS-7.5 zoning a maximum of 10 dwellings may be permitted on same building site, provided that the minimum setback yards and other requirements of the Zoning Code and affected agencies are met.

The Zoning Code defines *Bed and Breakfast Establishment* as "a single-family dwelling, including a single guest house, in which overnight accommodations and only breakfast meals are provided to a maximum of ten guests, for compensation, for periods of less than thirty days." Section 25-4-7 of the Zoning Code, relating to bed and breakfast establishments, states that "A bed and breakfast establishment may be permitted in the RS districts provided that a use permit is obtained for each such use and that plan approval for each such use has been secured from the director." Besides other restrictions and standards for bed and breakfast establishments, this section further states that "The bed and breakfast establishment shall be accessory and subordinate to the principal use as a residence by its owners or lessee" and that "The bed and breakfast establishment may be located within a single-family dwelling unit and a guest house, pursuant to section 25-4-9, on a building site." The Zoning Code defines *Guest House* as "an accessory building used as sleeping quarters for guests of

the occupants of the main dwelling and having no cooking facilities." It should be pointed out that Section 25-4-9, relating to Guest Houses, states that "One guest house may only be established on a building site that is at least seven thousand five hundred square feet in area. A guest house shall not exceed five hundred square feet in gross floor area, shall not be more than twenty feet in height, and shall not have a kitchen."

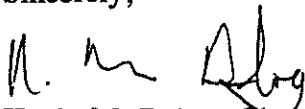
In accordance with the foregoing provisions of the Zoning Code, the bed and breakfast establishment may be located within a single-family dwelling unit and a guest house on a building site. In November 1993, a building permit was issued to the applicants for the construction of a second separate and identical one-story efficiency dwelling with a bath, kitchen, living room and lanai. The total gross floor area for the efficiency dwelling, referred to as guest cottage, consists of approximately 651 square feet. Even though the applicants should propose to convert the existing guest cottage to a guest house by the removal of the existing kitchen, the total gross floor area of the existing guest cottage far exceeds the five hundred square feet in gross floor area regulation for a guest house. Therefore, the applicants would not meet all of the requirements of a guest house in accordance with the Zoning Code. Thus, the use of the second guest cottage for the bed and breakfast establishment will not be consistent with the intent and purpose of the Zoning Code for the Single Family Residential zoned district.

It should be pointed out that the applicants have the alternative to rent the second guest cottage on a long-term basis. Further, the denial recommendation of the second guest cottage for a bed and breakfast use would not hinder nor cause any hardship on the applicants. As previously pointed out, the subject property consists of approximately 77,829 square feet and therefore, with the RS-7.5 zoning a maximum of 10 dwellings may be permitted on the same building site, provided that the minimum setback yards and other requirements of the Zoning Code and affected agencies are met. The applicants have other alternatives, although not to be construed as an automatic approval, such as subdividing the property to smaller parcels or applying for a change of zone for a higher density.

Based on the above considerations, the request for a bed and breakfast establishment in the second guest cottage is hereby denied. Therefore, the existing bed and breakfast use within one of the existing guest cottages shall immediately cease and desist.

Should you have any questions, please feel free to contact Alice Kawaha or Susan Gagorik of the Planning Department at 961-8288.

Sincerely,



Kevin M. Balog, Chairman
Planning Commission

LMann02.PC

cc: Department of Public Works
Department of Water Supply
Kazu Hayashida, Director/DOT-Highways, Honolulu
County Real Property Tax Division