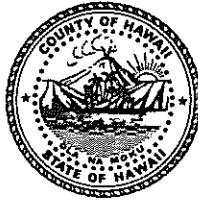


Stephen K. Yamashiro
Mayor



County of Hawaii

PLANNING COMMISSION

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NOV 25 1997

Ms. Patricia S. Oliver
1941 Kalaniana'ole Street
Hilo, HI 96720

Dear Ms. Oliver:

Use Permit Application (USE 97-13)

Applicant: Patricia S. Oliver

Request: Allow the Establishment of an Existing Two Bedroom Bed
and Breakfast Operation

Tax Map Key: 2-1-17:27

The Planning Commission at its duly held public hearing on November 12, 1997, voted to approve the above application. Use Permit No. 167 is hereby issued to allow the establishment of an existing two-bedroom bed and breakfast operation (Hilo Seaside Retreat) within an existing duplex (ohana) dwelling situated on approximately 14,801 square feet of land within the County Single Family Residential (RS-10) zoned district. The property is located at the northwest corner (makai) of Kalaniana'ole Street and Akepa Street intersection at Keaukaha, South Hilo, Hawaii.

It is the Planning Commission's interpretation of the Zoning Code, Section 25-4-7, Bed and breakfast establishments, that the "no ohana provision" also applies to existing bed and breakfast establishments. Therefore, based on discussions during the public hearing, the applicant is required to remove one kitchen in order to convert the existing duplex ohana dwelling into a single-family dwelling.

Approval of a bed and breakfast establishment within an existing dwelling 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, requires that such action conform to the following guidelines:

- A. The granting of the proposed use shall be consistent with the general purpose of the zoned district, the intent and purpose of the Zoning Code and the County General Plan;

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- 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 or to surrounding properties; and
- C. The granting of the proposed use shall not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage, school improvements, police and fire protection and other related infrastructure.

The two (2) bedroom bed and breakfast operation meets the guidelines for approval of a Use Permit, for the reasons outlined below.

The granting of the proposed use shall be consistent with the general purpose of the zoned district, the intent and purpose of the Zoning Code and the County General Plan. The Use Permit process provides an avenue to review and analyze a proposed project on a case-by-case basis relative to infrastructure and impacts on surrounding properties and existing uses, as well as consistency with the goals and policies of the General Plan. According to the Zoning Code, Single Family Residential districts "provide for low density residential area, for urban and suburban family life." This includes bed and breakfast operations, which are considered accessory or subordinate to the principle use of the property as a residence. The County Zoning Code, Section 25-4-7, provides guidelines for bed and breakfast operations. For existing operations, the operator can apply for applicable permits by June 30, 1997 and upon issuance of applicable permits, be considered a permitted use. In this particular situation, the applicant has been in operation since 1997 and is applying for a Use Permit to conform to the Zoning Code requirements. The Planning Commission's interpretation of the Zoning Code, Section 25-4-7, Bed and breakfast establishments, is a bed and breakfast establishment cannot be established in an ohana dwelling, even if they are an existing operation. Therefore, with this interpretation, the operation can only be established within a single family dwelling that the landowner/lessee resides in. This would require the applicant to remove one kitchen in order to convert the duplex ohana into one dwelling. Upon removal of one kitchen, the applicant's existing bed and breakfast operation in one existing dwelling does meet with the requirements of the Zoning Code, Section 25-4-7(b), regarding bed and breakfast establishments. A condition is included to require this change.

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 County residents, who can supplement their incomes by sharing their homes with visitors. Recognizing this benefit, Ordinance No. 92-104 was originally passed by the County Council in 1992 (with recent amendments to the Zoning Code in 1996), to allow for bed and breakfast operations. Restriction and standards continue to focus on the use remaining secondary to the principal use of the property for 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 securance of a Use Permit.

The applicant is requesting to allow the continued operation of a two-bedroom bed and breakfast establishment. The applicant will reside within the existing two-story dwelling, which will be converted from the existing duplex ohana dwelling into a single family dwelling. The dwelling is located within a residential

neighborhood. The proposed activities would complement and be accessory to the use of the dwelling as a residence. The applicant employs a housekeeper, yard maintenance person, gardener and repair person. Adequate utilities and services are available at the site. The property is 14,801 square feet in size with an 1,844 square foot two-story dwelling that can accommodate guests. There is also parking available in an existing carport and on the property to accommodate parking for guests. A condition will be included to require that all parking areas be graveled to accommodate guest parking, which should eliminate erosion, mud and standing water.

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. As the bed and breakfast operation is established in the existing dwellings, the uses should not alter the appearance or character of the neighborhood. Although the bed and breakfast establishment would be open to the public on a daily basis, reservations will be taken for guests.

The bed and breakfast operation would complement the following goals and policies of the General Plan:

Economic Element

- * Provide residents with opportunities to improve their quality of life.
- * Economic development and improvements 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 strive for an economic climate which provides its residents an opportunity for choice of occupation.
- * 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.

Land Use Element

- * Designate and allocate land uses 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.

Therefore, the bed and breakfast establishment 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 policies of the General Plan.

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 property is located in the Keaukaha area. The surrounding uses in the area are in single-family residential use. There are also public beach parks, condominiums and apartments in the area. As popular beach areas are located within the surrounding area, Akepa Street is identified as a shoreline access to Leleiwi Beach Park and Lalakea Ponds by the County of Hawaii in the report entitled "Inventory of Public Shoreline Access." The property has a duplex ohana dwelling which will be converted into a single dwelling, by the removal of one kitchen and the cancellation of the ohana dwelling permit, to accommodate the bed and breakfast operation. To accommodate guest parking, the applicant will need to provide two dedicated gravel parking stalls on site for their bed and breakfast guests, plus one additional stall for her home occupation. The property has adequate landscaping to mitigate any possible visual impacts on the neighbors and adequate public services and utilities are available to accommodate the existing use.

As a matter of record, the Planning Commission received and heard testimony from the public regarding their concerns on bed and breakfast establishments in the Keaukaha area.

There is one other approved bed and breakfast establishment in Keaukaha located approximately two-thirds of a mile east from the applicant. Use Permit No. 149 was approved by the Planning Commission for Douglas and Piper McKern for a two-bedroom operation on October 10, 1996. It is not anticipated that the establishment of this bed and breakfast operation will affect other similar uses in the area.

The granting of the proposed use shall not unreasonably burden public agencies to provide roads and streets, sewer, water, drainage, school improvements, police and fire protection and other related infrastructure. The subject property is located on the corner of Kalaniana'ole/Akepa Streets. Access to the property is from Akepa Street, which is an unmaintained gravel State-owned road with an approximate 40-foot right of way. It is not anticipated that guests of the bed and breakfast establishment will substantially increase traffic on the existing roadways. The subject property is designated as Flood Zones VE on the FIRM Maps. For this particular area, it means that the property may be subject to tsunami (tidal waves) or flooding. Any new construction would be subject to Chapter 27, Flood Control, of the Hawaii County Code. As guests may be affected by the possibility of a tsunami alert, a condition will be included to require the applicant to have a Tsunami Evacuation Plan in place. This plan shall be submitted for review and approval by the Planning Director in conjunction with securing Final Plan Approval. The Department of Public Works has informed us that there is a possibility of trees encroaching in the right-of-way along Kalaniana'ole Street and Akepa Street. The property would have to be surveyed and trees removed if there is an encroachment on Kalaniana'ole Street. A condition will be included to require the applicant to remove any encroachments along Kalaniana'ole Street only. In regards to Akepa Street, it is an unmaintained gravel State roadway that is used by one other lot, and which terminates approximately 120 feet from its entrance. The Department of Land and Natural Resources - Land Management Division expressed no comments in regards to the request. As a concern was expressed at the public hearing in regards to Akepa Street's use as a public access, a condition is included that Akepa Street shall not be used for parking by guests and residents. The subject property is connected to the County

sewer system. Police and fire protection are available at the site, as is County water. However, the applicant shall comply with applicable requirements of the Department of Water Supply regarding water conservation. The applicant shall also comply with all other applicable agency requirements, including any requirements of the Department of Public Works. Finally, agencies reviewing the request had no objections to the establishment of the bed and breakfast operation at this location.

Based on the above, the request to allow the establishment of an existing two (2) bedroom Bed and Breakfast operation in a single family dwelling on the subject property is approved.

Approval of this request 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 shall be secured from the Planning Director in accordance with the Zoning Code, Sections 25-2-72, 25-2-73 and 25-4-7, within six (6) months of the effective date of this permit. Plans shall identify the five-foot future road widening setback, existing and proposed structures, driveway, landscaping, fire protection measures and evacuation plan, three gravel parking stalls and exterior signs associated with the business.
3. The applicant shall submit a Tsunami Evacuation Plan, for review and approval by the Planning Director in consultation with Civil Defense, concurrently with plans submitted for Final Plan Approval.
4. Any tree encroachment within the Kalaniana'ole Street right-of-way shall be removed within one year from the effective date of this permit.
5. The bed and breakfast operation shall be limited to the use of two (2) bedrooms.
6. Only breakfast meals may be offered to guests.
7. Upon submittal of documentation that one kitchen has been removed, the applicant shall request that the ohana dwelling permit be cancelled by the Planning Director.
8. Comply with all applicable requirements as stated in the Zoning Code, Section 25-4-7, regulating bed and breakfast establishments.
9. Akepa Street shall not be used for parking by guests and residents.
10. Comply with all applicable laws, rules, regulations and requirements of other affected agencies, including Department of Water Supply and the Department of Public Works.

11. A written final status report shall be submitted to the Planning Director upon compliance with all conditions of approval.
12. 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.
13. 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.

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

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