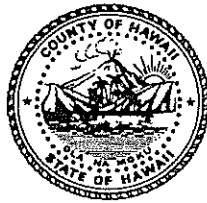


Harry Kim
Mayor



County of Hawaii

PLANNING COMMISSION

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CERTIFIED MAIL

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JUN 03 2002

Mr. Gregory Mooers
Mooers Enterprises
P.O. Box 1101
Kamuela, HI 96743

Dear Mr. Mooers:

Use Permit Application (USE 02-004)

Applicant: Dolores Mosbacher

Request: Establish a Two-Bedroom Bed and Breakfast Operation

(One in Main Dwelling and One in Guest House)

Tax Map Key: 7-7-12:6

The Planning Commission at its duly held public hearing on May 3, 2002, voted to approve the above-referenced application. Use Permit No. 190 is hereby issued to allow the existing two-bedroom bed and breakfast operation within an existing dwelling and guest house situated in the County's Single Family Residential (RS-10) zoned district. The property is located in the Sunset View Terrace Lots Subdivision, along the west side of Kilohana Street and approximately 370 feet south of its intersection with Sunset Drive, Holualoa 4th, North Kona, Hawaii.

Approval of this request is based on the following:

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:

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- (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;
- (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, sewer, water, drainage, schools, police and fire protection and other related infrastructure.

The applicant is requesting to continue the existing operation of the two-bedroom bed and breakfast within the existing dwelling and a studio guest house situated on approximately 13,467 square feet of land. The applicant has owned the property since 1977 and has been operating the existing Bed & Breakfast continuously since 1989. The applicant lives on the second floor of the dwelling, which is approximately 2,375 square feet and has 2 bedrooms, 1 1/2 baths, kitchen, living room, dining/den, office, storage, and lanai. The guests would use the one bedroom studio with a bathroom, 445 square feet, on the first floor of the dwelling; and the studio guest house with a bathroom, 483 square feet. It is pointed out that the applicant would be required to comply with the Department of Public Works, Building Division requirements relating to the Electrical and Plumbing permits.

The existing 2-bedroom bed and breakfast operation would meet the guidelines for approval of a Use Permit, for the reasons outlined below. In addition, no complaints have been received from the general public or adjacent landowners.

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. 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 applicant requests to continue the operation of the existing two-bedroom bed and breakfast. The operation is subordinate to the primary residential use of the property.

Bed and breakfast accommodations are 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 the first provision passed by the Hawaii County Council, effective September 28, 1992, to ensure that bed and breakfast establishments remain secondary to the principal use of the residence as a single family dwelling and that the operator reside within the single-family dwelling unit being used as a bed and breakfast establishment. Recently, the County Council adopted Ordinance No. 00-152, effective on December 26, 2000, which amended the definition and certain provisions of Sections 25-2-73 and 25-4-7 certain provisions relating to Bed and Breakfast establishments. This ordinance maintained that bed and breakfast establishment shall be subordinate and clearly or customarily incidental to the principal use as a residence of its operator. However, the operator of the bed and breakfast establishment shall reside on the same building site as that being used for the bed and breakfast establishment. Any impacts from the existing bed and breakfast use can be properly addressed and mitigated through securing a Use Permit. The applicant requests the continued operation of the 2-bedroom bed and breakfast establishment within the existing single family dwelling and the guest house.

The applicant resides on the second floor of the single family dwelling. The subject property is located within a single family residential neighborhood; as such, the bed and breakfast use would complement and be accessory to the dwelling being used as a residence. The applicant has been managing the operation by herself. Adequate utilities and services are available at the site. The property is approximately 13,467 square feet in size. There are two adequate existing guest parking spaces on the parcel, along the frontage of Kilohana Street. Thus, the existing two (2) bedroom bed and breakfast establishment will not substantially alter the character of the surrounding neighborhood, and it will be consistent with the intent of the Zoning Code for this 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. As stated previously, the bed and breakfast establishment will be accessory to the single family residential use of the property. As such, the use will 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, requests will be by reservations.

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

Economic Element

- 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 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

- The County shall encourage the development and maintenance of communities meeting the needs of its residents in balance with the physical and social environment.
- The development of commercial facilities should be designated to fit into the locale with minimal intrusion while providing the desired services.

Therefore, the 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 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 consists of 13,467 square feet, created as part of the Sunset View Terrace Lots Subdivision Unit II (SUB No. 1587) that was approved on January 20, 1961. The existing dwelling and guest house are located in a subdivision zoned for single family residential uses. 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 bed and breakfast use. The Planning Department has not received any written objections from the general public or adjacent landowners. The use will be accessory to the main use of the property as a single-family residence, in keeping with the primary use of surrounding properties. There are no other approved bed and breakfast establishments in this area. It is not anticipated that the

establishment of this bed and breakfast will affect other similar uses in the area. Therefore, from a physical standpoint, there will be no major alteration to the landscape which would give this area an appearance other than what is presently there. Some neighbors have submitted written support of the request.

The granting of 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. Access to the property is from Kuakini Highway onto Sunset Drive and Kilohana Street. Both Sunset Drive and Kilohana Street are two-lane County roads that have 40-foot rights-of-way, and 16-foot asphalt pavements. The bed and breakfast establishment is looked upon as a use that is accessory and subordinate to the use of a residence by the owner and therefore, not anticipated to generate any more traffic than that expected from single family dwelling uses. The parcel receives County water through an existing 5/8-inch meter. Recently, the applicant installed a required backflow prevention assembly that was inspected and approved by the Department of Water Supply. Wastewater is presently disposed of into existing cesspool systems. Police, fire and emergency services are available to the project area. The Police services are located in Kealakehe approximately 6 miles north of the property, and fire services located in Keauhou, approximately 2 miles south of the site.

The existing bed and breakfast operation use is consistent with the objectives, policies, and guidelines of the Special Management Area as provided by Chapter 205A, HRS, and Rule No. 9 of the Planning Commission Rules of Practice and Procedure. Given the extensive clearing activities that have taken place and the existing single family residential use, it is unlikely that any archaeological features and threatened species of plant or animal are present on the property. At present there is no evidence of traditional and customary Native Hawaiian rights being practiced on the property. Therefore, no feasible action is necessary to protect these rights.

According to the Planning Department's file, there is no designated public access to the mountain areas or to the shoreline traversing the subject property. The property is approximately 1 1/2 miles from the nearest coastline and is not located in the tsunami inundation area. The property is located in Flood Zone X, areas determined to be outside of the 500-year flood plain. It is anticipated that the bed and breakfast use will not adversely impact any archaeological resources, gathering rights, recreational resources, scenic resources, open space, coastal ecosystems, and marine and coastal resources. Further, the property is not affected by any coastal hazards or beach erosion.

Based on the above, it is recommended that this request be approved subject to the following conditions. However, should any of the conditions not be met or substantially complied with in a timely fashion, the Planning Director may initiate procedures to revoke the permit.

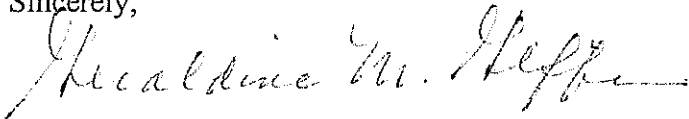
1. The applicant, its successors, or assigns shall be responsible for complying with all stated conditions of approval.
2. The applicant shall comply with all applicable requirements of Section 25-4-7 of the Zoning Code, as amended by Ordinance No. 00 152, relating to Bed and Breakfast Establishments.
3. The bed and breakfast shall be limited to the use of two (2) bedrooms.
4. The applicant shall secure and finalize all necessary permits as required by the Department of Public Works, Building Division within six (6) months from the effective date of this permit.
5. The applicant shall comply with all applicable laws, rules, regulations and requirements of other affected agencies, including the Department of Health and the Department of Water Supply, for the bed and breakfast use.
6. An initial extension of time for the performance of conditions within the 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, its successors, 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 General Plan or Zoning Code.
 - C. Granting of the time extension would not be contrary to the original reasons for the granting of the permit.
 - D. The time extension granted shall be for a period not to 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).

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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 contact Daryn Arai of the Planning Department Kona office at 327-3510 or Alice Kawaha of the Hilo office at 961-8288.

Sincerely,



Geraldine M. Giffin, Chairman
Planning Commission

Lmosbacher01PC

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division - Kona
Planning Department - Kona
Brian Minaai, Director/DOT-Highways, Honolulu
Department of Health
Ms. Dolores Mosbacher