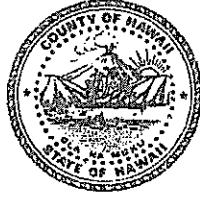


Harry Kim
Mayor



County of Hawaii
PLANNING COMMISSION

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043
(808) 961-8288 • Fax (808) 961-8742

DEC 9 1 2002

Mr. Sidney M. Fuke
Planning Consultant
100 Pauahi Street, Suite 212
Hilo, HI 96720

Dear Mr. Fuke:

Use Permit Application (USE 02-008)
Request: Allow for a 2-Bedroom Bed & Breakfast Establishment
in an Existing Dwelling
Applicant: Viviane Baker
Tax Map Key: 8-2-003:031

The Planning Commission at its duly held public hearing on December 5, 2002, voted to approve the above application. Use Permit No. 195 is hereby issued to establish a 2-bedroom bed and breakfast operation within an existing dwelling situated in the County's Agricultural (A-5a) zoned district. The property is located in the Captain Cook Estates Subdivision approximately 600 feet west (makai) of Māmalahoa Highway and Kealakekua Ranch Center, Waipunaula, South Kona, Hawai'i.

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:

- (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;
- (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;

029495
DEC 9 1 2002

- (C) 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.

The proposed 2-bedroom bed and breakfast operation would meet the guidelines for approval of a Use Permit for the reasons outlined below.

Viviane Baker proposes to establish a 2-bedroom bed and breakfast establishment on the subject property in an existing two-story dwelling if the Use Permit is approved. The applicant originally applied for a 5-bedroom bed and breakfast establishment, however, amended the request to 4 bedrooms by letter dated November 21, 2002. Subsequently, by a floor amendment at the public hearing, the applicant reduced the request to a 2-bedroom bed and breakfast establishment to address concerns by a neighbor. Although there were two completed petitions for standing in contested case hearing, both were withdrawn at the public hearing. There is a change of zone application being processed concurrently to change the zoning designation of the property from Agricultural (A-5a) to Residential-Agricultural (RA-1a). The landowner intends to subdivide the 5.263-acre property into two lots, approximately 1.560 acres and 3.703 acres, and convey the 3.703 acres to Viviane Baker where the dwelling is located. The bed and breakfast operation would be established within the existing dwelling which has a living area of 4,235 square feet. On the lower level, the applicant would convert an exercise room and study into two bedrooms with an existing recreational room with bar sink and playroom. On the upper level are three existing bedrooms with a shared bath. There is no interior circulation. The dwelling is presently legitimized as a three bedroom/two bath dwelling. The applicant intends to apply for building permits to convert the exercise room and study on the lower level into two bedrooms for the bed and breakfast operation.

The granting of the proposed use will be consistent with the general purpose of the zoned district, the intent and purpose of the Zoning Code, and the County General Plan. The subject property lies within the State Land Use Urban District. According to the Zoning Code, Agricultural (A) zoned districts provides "for agricultural and very low density agriculturally-based residential use, encompassing rural areas of good to marginal agricultural and grazing land, forest land, game habitats, and areas where urbanization is not found to be appropriate. The Residential and Agricultural (RA) zoned district provides for activities or uses characterized by low density residential lots in rural areas where city-like concentrations of people, structures, streets and urban level of services are absent, and where small farms are intermixed with low density residential lots. The applicant proposes to have a two-bedroom bed and breakfast establishment in the existing dwelling. The Use Permit would be an appropriate means to establishing the bed and breakfast in either districts.

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 passed by the County Council, effective September 28, 1992, to ensure that bed and breakfast businesses remain secondary to the principal use of the residence as a single family dwelling. Subsequently, Ordinance No. 00-152, adopted by the Hawai'i County Council and effective on December 26, 2000, amended Section 25-4-7 to no longer require plan approval for the establishment of a bed and breakfast in the Single Family Residential (RS) district within the State Land Use Urban District provided that a Use Permit is obtained. Any impacts from the proposed use can be properly addressed and mitigated through the securing of a Use Permit. The applicant proposes a 2-bedroom bed and breakfast establishment within an existing single family dwelling.

The subject property is located within an area with a mix of urban and agricultural uses. The applicant proposes to reside in the existing dwelling. As such, the proposed activity would complement and be accessory to the dwelling being used as a residence. The applicant will be the only employee. Adequate utilities and services are available at the site. The property is approximately 5.263 acres, however, upon approval of the change of zone and subsequent subdivision, the dwelling will lie on approximately 3.703 acres of land. There is adequate space along the existing driveway to accommodate guest parking. Thus, the proposed 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 Medium Density Urban, which allows for village and neighborhood commercial and residential and related functions (3-story commercial; residential - up to 35 units per acre). The bed and breakfast establishment will be accessory to the existing dwelling. As such, the use will not alter the appearance or character of the neighborhood. The applicant will comply with applicable requirements of the Zoning Code for operating a bed and breakfast operation. Further, the proposed bed and breakfast operation 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 Hawai'i.

- 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 Hawai'i 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 proposed use would operate within the parameters of an existing dwelling and is consistent with the General Plan designation and is in keeping with the policies of the General Plan.

The granting of 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. The existing dwelling is located in an area zoned A, RA and CN (Neighborhood Commercial). The proposed bed and breakfast would also be appropriate in the RA zoned district if the change of zone request from A to RA is approved. The applicant has an existing driveway area sufficient to provide for the 2 guest parking stalls. The applicant also intends to clear an area above the dwelling to allow for additional parking. The resulting 3-acre lot will be large enough and has adequate landscaping to mitigate any possible visual impacts on the neighbors. Further, adequate public services and utilities area available to accommodate the use. The proposed use will be accessory to the main use of the property as a residence, and in keeping with the primary use of surrounding properties. Various bed and breakfast establishments have been approved in the South Kona district. However, it is not anticipated that the establishment of this bed and breakfast will affect other similar uses in the area.

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 subject property is via a 50-foot wide roadway easement with an approximately 20-foot wide pavement. The applicant has the right to use this easement by deed. As a bed and breakfast establishment is looked upon as a use that is accessory and subordinate to the use of a residence by the owners, it is not anticipated to generate any more

traffic than that expected from single family dwelling uses. The existing dwelling was constructed as a 3 bedroom/2 bath dwelling. As the applicant would like to establish a 2-bedroom operation, applicable building permits shall be secured to convert the exercise room and study on the lower level to bedrooms. As a condition of approval, the applicant shall convert the two rooms to bedrooms on the first level and they shall not be used until applicable conversion permits have been secured from the Building Division, Department of Public Works. Wastewater is disposed of in the existing cesspool. Police and fire protection are available at the site, as is County water. The applicant shall install a backflow preventer required by the Department of Water Supply and to abide by the Department of Health standards on guidelines for Bed and Breakfast operations. The applicant shall comply with all other applicable agencies' requirements relating to the operation of a bed and breakfast establishment at this location.

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 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. Further, the property is not affected by any coastal hazards or beach erosion. As a result, 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.

Based on the above, this request is approved subject to the following conditions. However, 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 applicant, 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.

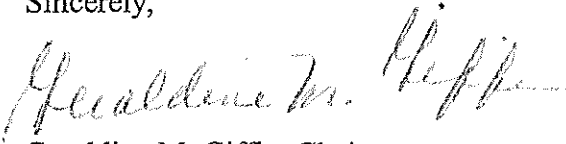
3. The bed and breakfast shall be limited to the use of two (2) bedrooms.
4. The applicant shall secure and finalize all necessary permits to convert the two bedrooms as required from the Department of Public Works, Building Division within six (6) months from the effective date of this permit.
5. A backflow preventer shall be installed within six (6) months from the effective date of this permit.
6. The applicant shall comply with all applicable laws, rules, regulations and requirements of other affected agencies, including the Department of Water Supply, Department of Public Works and Department of Health for this use.
7. A final status report shall be submitted for approval by the Planning Director demonstrating compliance with all conditions of this permit.
8. An initial extension of time for the performance of conditions 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, 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 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.

Mr. Sidney M. Fuke
Page 7

Should you have any questions, please contact Alice Kawaha of the Planning Department at 961-8288.

Sincerely,



Geraldine M. Giffin, Chairman
Planning Commission

Lbaker01pc

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
State Land Use Commission
Brian Minaai, Director/DOT-Highways, Honolulu
Ms. Viviane Baker
Plan Approval Section
Planning Dept. – Kona