

County of Hawai'i

PLANNING COMMISSION

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720
Phone (808) 961-8288 • Fax (808) 961-8742

February 23, 2010

Mr. Michael Tuttle
Hale Ohia LLC
P.O. Box 758
Volcano, HI 96785

Dear Mr. Tuttle:

Use Permit Application (USE 09-000016)

Applicant: Hale Ohia LLC

Request: To Allow the Establishment of a 5-Bedroom Bed and Breakfast Operation
On 14,961 Square Feet of Land Within the County's Single Family Residential
(RS-20) Zoned District

Tax Map Key: 1-1-5:46

The Windward Planning Commission at its duly held public hearing on February 5, 2010, voted to approve the above-referenced application to allow the establishment of a 5-bedroom bed and breakfast operation within an existing dwelling and a detached bedroom situated on approximately 14,961 square feet of land within the Single Family Residential (RS-20) zoned district. The property is located along Hale Ohia Road approximately 65 feet south of its intersection with Highway 11 (Volcano Highway), Hale Ohia Tract Subdivision, Volcano, Puna, Hawai'i.

Approval of this request is based on the following:

The applicant is requesting a Use Permit to allow the establishment of a five-bedroom bed and breakfast operation (Hale Ohia Cottages). Hale Ohia, also known as uluwena or "hidden place", was built in 1931 by James Johnston. The applicant has operated Hale Ohia bed and breakfast operation since 1992. The bed and breakfast operation will consist of the following:

- Four bedrooms in the Ohia Cottage.
- One bedroom in a detached cottage (Cottage 44).

The applicant has recently subdivided his property into two parcels and would like to operate a five-bedroom bed and breakfast operation on each parcel. An amendment

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request for the existing Use Permit (Use Permit No. 165) on TMK: 1-1-5: 19 has been submitted concurrently with this application.

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;
- 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 five-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 Zoning code and with the goals and polices of the General Plan. According to the Zoning Code, Single Family Residential districts “provide for lower or low and medium density residential use, 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. Section 25-4-7 of the Zoning code provides guidelines for bed and breakfast operations. Based upon the applicant’s representation, the bed and breakfast operation will meet with the requirements of the Zoning Code, Section 25-4-7(b), regarding bed and breakfast establishments.

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

amendments to the Zoning Code in 1996 and 2000), to allow for bed and breakfast operations. Restrictions and standards continue to focus on the use remaining secondary to the principal use of the property as a residence. On residential zoned lands within a State Land Use Urban District, impacts from bed and breakfast operations can be properly addressed and mitigated through the approval of a Use Permit.

The applicant is requesting to allow the establishment of a five-bedroom bed and breakfast establishment within an existing 2-story, single family dwelling and a detached cottage on a 14,961-square foot lot located within the Hale Ohia Tract Subdivision. An operator will live within Ohia Cottage on the subject property. There will be three (3) additional employees, which consist of a two (2) part-time cleaning people and a person to care for the lawn, as well as the operator of the B&B. The amount of guests on the property will not exceed 10 at any given time. The driveway and parking areas are graveled to accommodate guest parking, which should eliminate erosion, mud and standing water. Adequate utilities and services are available at the site.

The General Plan designation for this area is Medium Density Urban, which allows for village and neighborhood commercial and single family and multiple family residential and related functions (multiple family residential -- up to 35 units per acre. As the proposed bed and breakfast operation will be established within an existing single family dwelling and a detached cottage, the use will not alter the appearance or character of the neighborhood, which is made up of several single family dwellings and cottages owned by applicant.

The proposed bed and breakfast operation will complement the following goals, policies and standards of the Economic and Land Use elements of the General Plan:

Economic Element

- Provide residents with opportunities to improve their quality of life through economic development that enhances the County's natural and social environments.
- Economic development and improvements shall be in balance with the physical, social and cultural environments of the island of Hawai'i.
- Provide an economic environment that allows new, expanded, or improved economic opportunities that are compatible with the County's cultural, natural and social environment.

- Strive for an economic climate which provides its residents an opportunity for choice of occupation.
- Encourage the development of a visitor industry that 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.
- 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 be consistent with the Zoning Code and is in keeping with the goals, policies and standards 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 subject property is located in the Hale Ohia Tract Subdivision. The adjacent parcels to the west, the adjacent parcel to the east and the road lot are owned by the applicant and are similarly zoned RS-20. There is a large vacant parcel, which is approximately 300 acres in size, to the rear of the subject property that is owned by W.H. Shipman and zoned A-20a. Additionally, there are several other approved bed and breakfast establishments in the Volcano area. As such, it is not anticipated that the approval of this bed and breakfast operation will have any adverse impact in the community or on 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, school improvements, police and fire protection and other related infrastructure. Access to the subject property is from Volcano Highway (Highway 11) onto Hale Ohia Road, which is a private road owned by the applicant (TMK: 1-1-05:42). The section of Hale Ohia Road that fronts the subject property has an approximate pavement width of 10 feet with grass shoulders. The gravel driveway is approximately 14 feet 5 inches wide and there is adequate guest parking located on site for guests.

County water is not available to the project site. A water catchment system is available and is filtered twice through charcoal filter systems. A condition of approval will be added requiring the applicant to provide bottled water for guests of the bed and breakfast operation. Wastewater will be disposed of into an existing cesspool. Lastly, a

condition will be added requiring the applicant to comply with all applicable County, State and Federal laws, rules, regulations and requirements. Based on the above information, it is not anticipated that the granting of the proposed request will unreasonably burden public agencies to provide additional improvements or infrastructure.

The proposed request will not have a significant adverse impact to traditional and customary Hawaiian Rights. In view of the Hawai'i State Supreme Court's "PASH" and "*Ka Pa'akai O Ka'Aina*" decisions, the issue relative to native Hawaiian gathering and fishing rights must be addressed in terms of the cultural, historical, and natural resources and the associated traditional and customary practices of the site:

Investigation of valued resources: No formal archaeological reconnaissance survey, oral history of kamaaina accounts of the area, historical survey of documentary records, botanical and/or fauna study was submitted.

The valuable cultural, historical, and natural resources found in the permit area: As the property has been cleared, landscaped and developed, an archaeological inventory survey of the site was not conducted. The Department of Land and Natural Resources-State Historic Preservation Division has issued a "no-effect" letter dated November 23, 2009 stating that DLNR-SHPD determines that no historic properties will be affected by this project.

Possible adverse effect or impairment of valued resources: The property does not abut the shoreline, therefore Hawaiian gathering and fishing rights is not an issue.

Feasible actions to protect native Hawaiian rights. To the extent to which traditional and customary native Hawaiian rights are exercised, the proposed action will not affect traditional Hawaiian rights and no action is necessary to protect these rights. A condition of approval will be included to require the applicant to notify the DLNR-SHPD should any unidentified sites or remains be encountered, and proceed only upon an archaeological clearance from the DLNR-SHPD.

Based on the above, the request to allow the establishment of a five-bedroom bed and breakfast operation is hereby approved by the Windward Planning Commission. Approval of this request is subject to the following conditions:

1. The applicant, successor or assigns shall be responsible for complying with all stated conditions of approval.

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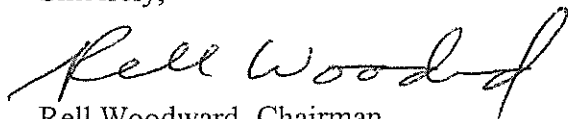
2. The applicant shall comply with all applicable requirements of Section 25-4-7 of Chapter 25, Hawai'i County Code, (Zoning Code), relating to Bed and Breakfast Establishments.
3. The bed and breakfast operation shall be limited to the use of five (5) bedrooms.
4. The applicant shall provide bottled water for the guests of the bed and breakfast operation.
5. The applicant shall comply with the requirements of the Department of Health regarding individual wastewater systems.
6. Should any remains of historic sites, such as rock walls, terraces, platforms, marine shell concentrations or human burials be encountered, work in the immediate area shall cease and the Department of Land and Natural Resources-Historic Preservation Division (DLNR-HPD) shall be immediately notified. Subsequent work shall proceed upon an archaeological clearance from the DLNR-SHPD when it finds that sufficient mitigative measures have been taken.
7. The applicant shall comply with all applicable County, State and Federal laws, rules, regulations and requirements.
8. Should any of these conditions not be met or substantially complied with in a timely fashion, the Director may initiate procedures to revoke this Use Permit.

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.

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

Sincerely,

A handwritten signature in cursive script that reads "Rell Woodward".

Rell Woodward, Chairman
Windward Planning Commission

Lhaleohiause09-000016PC

cc: Department of Public Works
Department of Water Supply
County Real Property Tax Division
DOT-Highways, Honolulu
Department of Health
State DLNR-HPD
Mr. Gilbert Bailado ✓