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 D. Tuttle
P.O. Box 758
Volcano, HI 96785

Dear Mr. Tuttle:

Use Permit No. 165
Applicant: Michael Tuttle
Request: Amendment to Use Permit No. 165 (Five-Bedroom Bed and Breakfast) To Change Land Area From 34,163 Square Feet to 20,802 Square Feet) and Change Rooms to be Used for Bed and Breakfast
Tax Map Key: 1-1-5:19

The Windward Planning Commission at its duly held public hearing on February 5, 2010, voted to approve the above-referenced request for an amendment to Use Permit No. 165 by reducing the land area for the permit and also to change the location of the five bedrooms that will be used for the bed and breakfast operation. Use Permit No. 165 originally allowed the establishment of a 5-bedroom bed and breakfast operation (Hale Ohia Cottages) within an existing dwelling and a guest house on 34,163 square feet of land within the Single Family Residential (RS-20) zoned district. The property involved 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 the following amendments to Use Permit No. 165:

1. Change the permit area from 34,163 square feet of land to 20,802 square feet of land, and;

2. Change the five (5) bedroom units that will be used for the bed and breakfast operation, which consist of the following units:

   - Three bedrooms in the main dwelling.
   - One bedroom in the Ihilani Cottage, which is a detached bedroom.

- One bedroom in the Lehua Cottage, which is a detached bedroom.

Use Permit No. 165 was approved on September 26, 1997 and re-affirmed on November 12, 1997, to allow the establishment of an existing five-bedroom bed and breakfast operation (Hale Ohia Cottages) within an existing dwelling (Ohia Cottage) and a guest house (Lehua Cottage) situated on approximately 34,163 square feet of land within the County's Single Family Residential (RS-20) zoned district.

The reason for the amendment request is that 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. TMK: 1-1-5:19 was previously 34,163 square feet in size but now has been reduced in size to 20,802 square feet. The applicant has concurrently submitted a Use Permit to operate a five-bedroom bed and breakfast operation on the new adjacent parcel, TMK: 1-1-5:46, which is 14,961 square feet in size. Ohia Cottage, which was part of the original permit, is now on the new adjacent parcel. The applicant will reside in the main residence located on TMK: 1-1-5:19 and an operator will reside in Ohia Cottage, which is on the new adjacent parcel, TMK: 1-1-5:46.

The amendment request, which involves only a reduction in size of the permit area and a change in the bedrooms, is not contrary to the original reasons for approving the bed and breakfast permit. Additionally, it is not contrary to the Zoning Code, which allows bed and breakfast operations with a Use Permit, and it is not contrary to the General Plan designation for this area, which is Medium Density Urban.

Approval of the amendment request is subject to the following amended conditions (material to be deleted is bracketed and struck through and material to be added is underlined):

[~~1. The applicants, successors, or assigns shall be responsible for complying with all stated conditions of approval.~~

~~2 The landowner/operator shall reside in the dwelling known as "Ohia Cottage."~~

~~3 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 existing and proposed structures, driveway, landscaping, fire protection measures, five graveled parking stalls (asphalt or concrete) and exterior signs associated with the business.~~

~~4 The bed and breakfast operation shall be limited to the use of five bedrooms.~~

~~5 Drinking water shall meet the Department of Health standards and only breakfast meals may be offered to guests.~~

~~6. Comply with all applicable requirements as stated in the Zoning Code, Section 25-4-7, regulating bed and breakfast establishments.~~

~~7. Comply with all applicable laws, rules, regulations and requirements of other~~

~~affected agencies, including the Department of Health.~~

~~8. A written final status report shall be submitted to the Planning Director upon compliance with all conditions of approval.~~

~~9. 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.~~

~~10. 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).~~]

1. The applicant, successor 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 Chapter 25, Hawaii 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 sell 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.

Should you have any questions, please contact the Planning Department at 96l-8288.

Sincerely,

Rell Woodward

Rell Woodward, Chairman
Windward Planning Commission

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